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**‘You’re in no man’s land’: Exploring adult men’s
experiences of pre-trial and pre-sentence custody in
England and Wales**

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Abstract

Until the start of the COVID-19 pandemic, the remand population in England and Wales had remained relatively stable. Following the shuttering of courtrooms across England and Wales, the remand population began to increase, marking a departure from the historically stable trends amongst this prison sub-population. The increase has taken up space in the public discourse, being remarked upon by media, parliamentarians, and non-governmental organizations. However, in spite of recent attention, remand has been an under-researched topic. In comparison with other forms of incapacitation (e.g., terms of imprisonment), experiences of remand custody remain largely under-explored and under-conceptualized. This thesis fills this gap by empirically exploring the experiences of 20 adult men with a history of being detained before their trial and/or sentencing date. Given the realities of conducting research in a pandemic, which precluded entry into custodial environments, participants in this study were adult men with previous experience of being either unconvicted or unsentenced prisoners. Interviews revealed three dominant pains associated with periods of time detained on remand: the pains of disruption, the pains of disempowerment, and the pains of uncertainty and liminality. The findings of this study depict the challenges associated with being confined before trial and/or sentencing, both interior to the prison and outside it, and lend weight to existing notions that criminal justice institutions have punitive tendencies. By identifying the pains associated with confinement in pre-trial and pre-sentence detention, this research explores approaches which would allow the pains of remand to be incorporated in the measurement of penal severity and into punishment proper.

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List of Abbreviations

BC	British Columbia
CPS	Crown Prosecution Service
CTL	Custody Time Limit
ED	Executive Director
HMPPS	His Majesty's Prison and Probation Service
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
HM Inspectorate of Prisons	His Majesty's Inspectorate of Prisons
MOJ	Ministry of Justice
RQ	Research Question
PoI	Presumption of Innocence
UN	United Nations
U.S.	United States
UK	United Kingdom
VoIP	Voice over Internet Protocol
VPU_s	Vulnerable Prisoners' Units
WHO	World Health Organization

Introduction

On March 11, 1887, *The British Architect* published an article titled ‘The Accommodation for Unconvicted Prisoners’. It described the deplorable conditions of confinement for this group of detainees, depicting not only the space itself but the troublesome ‘moral atmosphere’ created by these living environments (“The Accommodation for Unconvicted Prisoners”, 1887: 189). The impetus for the article was the *Report of the Committee on the Accommodation of Prisoners Awaiting Trial at the Assizes and Sessions*, which had recently been tabled in the UK Parliament. The Report was the culmination of the first investigation, conducted by the Home Office, into locations used as a prison and a ‘place of temporary confinement’ (Howard Association, 1887: 1). Sentenced prisoners and unconvicted individuals were detained alongside one another in environments described as ‘chambers of darkness’, where unconvicted prisoners were kept in ‘exceptionally small’ rooms and frequently victimized by ‘habitual prisoners’ (Howard Association, 1887: 1-2). The findings of the investigation resulted in a few recommendations: regular inspections, separate accommodation for unconvicted prisoners, and procedures for escorting this group of prisoners from one location to another to reduce ‘mischievous and demoralizing exposure [...] to other prisoners and bystanders’ (Howard Association, 1887: 3). In light of the recommendations and the revelation of conditions of confinement for unconvicted persons, *The British Architect* called for ‘the inauguration of a new and better order of things’ (“The Accommodation for Unconvicted Prisoners”, 1887: 189). While public and political attention had been drawn to the conditions of confinement of unconvicted prisoners, the outcry was brief.

Although 135 years have passed since these publications, unconvicted and unsentenced prisoners, known collectively as remand prisoners, continue to periodically garner attention from the media and political leaders. Most recently, focus has been on the growth in the remand population in England and Wales, a phenomenon owed to the COVID-19 pandemic and its effect on court operations (Ministry of Justice, 2022). Articles such as ‘Third of remand prisoners in England being held beyond legal time limit for trials’ (Quinn, 2021) and ‘Defendants waiting over six months for trial up 15% in England and Wales’ (Siddique, 2022) have been published in response to delays in the justice system. As evidenced by these articles, attention has been drawn to the length of time remand prisoners are held in custody before their trial and/or sentencing, demonstrating a growing concern over the right to a trial within a reasonable time as well as public confidence in the administration of justice. While the length

of confinement has been remarked upon, much less is known about the ways in which time and space affect remand prisoners. For example, how is remand imprisonment experienced by those subjected to it? Are conditions of confinement painful and, if so, in what ways? Though the practice of detaining the presumptively innocent and the not-yet punished is a long-standing one, it has received little scholarly attention. In the academic and grey literature, the pains of remand have remained lamentably under-explored and under-conceptualized. Few empirical studies have explored the events and experiences which unfold after a decision to deny bail. To date, remand custody has been described as a source of frustration (Ugelvik, 2013) and a ‘difficult’ experience (Pelvin, 2019: 69). This group of prisoners, by virtue of their uncertain legal status and place within the carceral estate, struggle to acclimate to life inside the prison and face barriers in their attempts to manage their ongoing criminal case (Casale, 1989; Pelvin, 2019; Ugelvik, 2013). However, the extant literature on remand has remained descriptive. Unlike the pains of imprisonment scholarship, where a framework and vocabulary has been developed to characterize the experience of sentenced custody (see, for example, Crewe, 2011; Sykes, 1958), research on remand has yet to develop a conceptual framework comprised of descriptors which would allow a more detailed understanding of experiences of pre-trial and pre-sentence detention. Given this gap in the literature, this study investigates two research questions. The first research question asks: How is remand experienced in England and Wales? Through semi-structured interviews with adult men with experience being detained in pre-trial and pre-sentence custody, this research identifies the pains associated with confinement before trial and/or sentencing and develops a conceptual framework with which to analyze these pains. The second research question concerns itself with how, in sentencing schemes grounded in the principle of proportionality, judicial office-holders should engage with remand. Alongside developing a conceptual framework for the pains of remand, this research reflects on an approach which would allow judicial office-holders the flexibility to engage with these pains.

Chapter One sets the foundation for this study. It begins by exploring the relationship between bail and remand, providing a brief history of bail law, including the grounds for denying bail, and an overview of the early research conducted on remand in England and Wales and other jurisdictions. The purpose for reviewing bail is to showcase that remand is inextricably linked with the bail process. After a review of bail, the chapter moves into an examination of the contemporary use of remand, highlighting that the remand population in England and Wales, unlike many similarly situated jurisdictions, has remained relatively stable over the last three decades (Hucklesby, 2009; Player et al., 2010; Smith, 2021). Factors contributing to the

number of individuals detained on remand, such as the length of detention, are investigated. While historical data is reviewed, current trends are also explored, in particular the effect of COVID-19 on the remand population. As regular court operations slowed and stalled to protect public health, the impact was felt by those detained on remand. Prior to the pandemic, the remand population made up 11 percent of the total prison population, increasing to 14 percent in 2020 and to 16 percent in 2021, where it has remained stable (Ministry of Justice, 2022). Between 2019 and 2022, the number of remand prisoners grew from approximately 9,000 to nearly 13,000 (Ministry of Justice, 2022). After reviewing the data on the remand population in England and Wales, Chapter One concludes with an overview of the rules and regulations guiding the treatment of unconvicted and unsentenced prisoners. Here, both domestic legislation and international guidelines are outlined, demonstrating the protections afforded to those remanded to custody before their trial and/or sentencing.

Following a review of bail law, statistics on the remand population, and domestic and international rules on the treatment of unconvicted and unsentenced prisoners, Chapter Two engages with the extant literature on remand. This chapter identifies themes in the literature on remand and the challenges faced by individuals detained in custody before their trial and/or sentencing date. Remand has been found to impact identity, mental health, and relationships with families left behind in the community (Casale, 1989; Liebling, 1999; Pelvin, 2019; Ugelvik, 2013). However, the struggles associated with life on remand are not limited to the individual or to their relationship with loved ones. Remand influences a person's ability to actively participate in the criminal process and has been found to impact the trajectory of criminal cases (Euvrard & Leclerc, 2017; Kellough & Wortley, 2002; Vacheret & Brassard, 2015). The prison walls act as a barrier, making it difficult for remand prisoners to contact their legal representation due to a host of factors, including inadequate access to the telephone (Casale, 1989; Pelvin, 2019). Time spent detained in prison before trial can influence decisions on whether or not to plead guilty, with some pre-trial prisoners feeling pressured to change their plea to escape their conditions of confinement (Euvrard & Leclerc, 2017; Kellough & Wortley, 2002; Vacheret & Brassard, 2015).

The struggles outlined in Chapter Two have been used as evidence to categorize remand as a form of punishment (Pelvin, 2019). However, this classification has not been properly explored, as much of the existing literature on punishment theory has been overlooked by those claiming that remand is punishment. Given this oversight, Chapter Three theorizes remand,

exploring whether this practice is a form of prevention, punishment, or a hybrid of both. For decades, preventive measures, such as the civil commitment of offenders with a history of sexual offending, have been increasingly exercised by the State (Ashworth & Zedner, 2014; Zedner, 2016). These measures of control have been termed ‘quasi-penal methods’ (Zedner, 2016: 8) due to the difficulty in situating them within existing punishment theory. The objective of exploring remand in the wider context of punishment is to investigate the State response to time served in custody in advance of a conviction and/or formal sanction. Although the State may not intentionally inflict pain on unconvicted and unsentenced prisoners, these two forms of State custody are experienced as punitive (Roberts, 2005). Given the harms caused by the deprivation of liberty and its manifold consequences, there is a duty on the State to respond to these harms. The complexities affiliated with defining remand in its entirety are investigated, as is the practice of attempting to respond to the harms it causes. Chapter Three reveals that it is difficult to situate pre-trial and pre-sentence detention within definitions of formal punishment, but that this difficulty does not preclude the State from developing a scheme to account for the pains inflicted by remand.

The methods used to investigate the research questions are detailed in Chapter Four. Adult men were selected for the sample, as the majority of individuals detained in pre-trial and pre-sentence custody are men (Ministry of Justice, 2022). As this study coincided with the COVID-19 pandemic, research plans shifted to accommodate public health restrictions. The beginning of the chapter describes the challenges associated with conducting empirical research during a global pandemic and the many steps taken to arrive at the final research design. To gain insight into experiences of remand, this study recruited participants living in the community using the assistance of a charity which supports individuals with a criminal record in England and Wales: Unlock. Following efforts to recruit individuals with a history of being remanded to custody before trial and/or sentencing, twenty participants formed the sample of this study. Chapter Four provides data on participants, such as the length of time each participant was detained on remand, and thereafter explores the experience of conducting research at a distance. All participants in this study were interviewed by either the telephone or Voice over Internet Protocol (VoIP) technology. There were a number of benefits to conducting this research via telephone and VoIP technology, such as allowing participants to be interviewed in their preferred location, but there were drawbacks as well. The advantages and disadvantages of remote interviews are considered, as are the challenges experienced as a result of interviewing adults during a global pandemic. Given ‘lockdown’ measures, which prevented most

individuals from associating with anyone outside their immediate household, some participants were lonely, an emotion displayed during the course of their interview. The concluding sections of the methods chapter examine ethical considerations and offer personal reflections on the research process.

Chapter Five and Six form the substantive body of this study. These chapters detail the findings of this research, beginning from the time a person is swept into the criminal justice system. Chapter Five specifically explores the transition from life in the community to life behind prison walls, and the struggle to adapt to being detained in custody before trial and/or sentencing. The chapter begins at the start of the process: engagements with police and the speedy process of being arrested, denied bail, and remanded to custody. It investigates life inside prison as an unconvicted or unsentenced prisoner, and paints a vivid, yet grim picture of remand prisoners' everyday life. Many of the pains experienced by this group of prisoners share similarities with other pains of punishment, including pains experienced by police detainees (Skinns & Wooff, 2020), sentenced prisoners (Crewe, 2009, 2011, 2015; Jewkes, 2002, 2005; Warr, 2016), and probationers (McNeill, 2018). However, there are pains which are unique to this sub-population within prisons, such as the challenges associated with membership of a transient prison population. By virtue of their pending criminal case, remand prisoners are frequently on the move, travelling back and forth between courts and prisons. This movement between locations managed by criminal justice agencies was painful as it required participants to pack their belongings each time, never certain whether they would return to the same prison establishment after their day in court. Although participants' lives had been uprooted by a decision of a court to deny them bail, the experience of remand was layered with disruptions. After exploring life inside the prison, Chapter Six examines the loss of control resulting from remand detention. In particular, it demonstrates the disempowering effect of the prison. Engagements with staff were a daily reminder of participants' dependence on others, leaving many to feel as though they had been infantilized. However, interactions with prisons staff were not the only reminder of participants' lack of control. As a group, remand prisoners have pending legal proceedings. Whether it be preparing to go to trial or waiting for a sentencing date, unconvicted and unsentenced prisoners have unfinished business with the criminal justice system. However, trying to engage with legal counsel and ascertain details of their criminal case proved to be challenging given participants' location within a carceral environment. Chapter Six explores the many ways in which participants felt disempowered, both within and outside the prison.

Chapter Seven brings together the findings outlined in Chapters Five and Six and reflects on the wider implications of the research. This final chapter establishes and explains the three primary pains associated with remand: the pains of disruption, the pains of disempowerment, and the pains of uncertainty and liminality. Each of these three pains is investigated and then framed against the backdrop of the ‘penal painscape’ (Skinns & Wooff, 2020: 2), a concept developed to demonstrate the breadth of pain inflicted, intentionally or not, by criminal justice agencies. Although pre-trial and pre-sentence detention are difficult to situate within orthodox definitions of what constitutes punishment, these practices, as experienced by those subjected to them, are painful. By developing a conceptual framework which demonstrates the myriad of harms caused by remand custody, this research demonstrates that the experiences of being detained in prison before a trial or before a sentencing date feel punitive. In the final chapter, this study examines approaches which would allow the pains of remand to be incorporated into punishment proper. To borrow wording used by *The British Architect* in 1887, this study examines the potential ‘inauguration of a new and better’ way of responding to the pains of remand. Before concluding, the limitations of the research are explored and acknowledged, and future opportunities for research are discussed.

Chapter One: The Concept of Remand

Any matter relating to the deprivation of a person's liberty should, justifiably, attract the attention of critical comment and scrutiny. This is, arguably, even more true when the person so deprived has not yet been convicted of any criminal offence. The impact on fundamental rights, such as the right to liberty and presumption of innocence (Articles 5 and 6 of the European Convention on Human Rights (ECHR) respectively), is potentially significant (Smith, 2021: 46).

1. Introduction

The state has a suite of sanctions at its disposal to restrict the freedom of movement of its populace. It can imprison those found guilty of a criminal offence; subject citizens to quarantine under threat of fines for non-compliance with public health restrictions; incapacitate defendants prior to a criminal trial; and detain offenders before a sentencing hearing. Remand involves the latter two practices, where individuals are deprived of their liberty in advance of a trial or a sentencing date. In the name of prevention, whether it be preventing a future crime, preventing a person from absconding, or preventing the obstruction of justice, courts can deny bail and remand a person to a custodial environment. Across the prison estate in England and Wales sits two groups of remand prisoners: the unconvicted and unsentenced, who wait indefinitely for the criminal process to unfold and conclude. Confined to a prison, remand prisoners wait for police to finish investigations, for additional charges to be laid by the Crown Prosecution Service (CPS), and for various court dates to be scheduled. To set the foundation for this study, this chapter explores the concept of remand. It begins by examining the legal context for remand in England and Wales, exploring the historical underpinnings for remand (and bail) and the criteria on which courts can rely to deny bail. Next, this chapter investigates the existing lexicon to describe the practice of incapacitating unconvicted and unsentenced prisoners, pointing to a lack of specificity in terminologies. It then moves on to explore trends in the use of remand, examining the remand population both before and during the COVID-19 pandemic. The chapter concludes with an outline of international and domestic protections afforded to (certain) remand prisoners.

2. The concept of remand

The criminal justice system is made up of a series of decision-making points (Goldkamp & Gottfredson, 1979). From the time of arrest to a date of eligibility for conditional release, actors and institutions in the criminal justice system are charged with exercising discretion on individual liberty interests (Goldkamp & Gottfredson, 1979; Trotter, 1999). One of these

decision-making points flows from the arrest of an individual for a criminal offence. After a charge is made against a person, actors in the criminal justice system, such as police and judicial office-holders, are delegated with the decision to either release an accused person to the community or detain them in custody pending the outcome of criminal proceedings. The bail decision-making process determines whether a suspect will navigate the criminal process from the comfort of their home or the confines of a cell. As one of the two possible outcomes of the bail decision-making process, remand is inextricably linked to bail. While an in-depth review of bail falls outside the scope of this research, it is important to acknowledge that the remand process is only triggered once a decision is made to hold a criminal defendant or unsentenced person in custody (i.e., to deny or revoke bail).

There are several grounds on which the court can rely to deprive a person of their liberty before the conclusion of criminal proceedings. The list of factors is enumerated in legislation and expressly provides courts with discretion to deny bail in cases where there are ‘substantial grounds’ to believe an individual, if released to the community, would abscond, interfere with the administration of justice, or commit an offence on bail (CPS, 2022). Remand, therefore:

... appears to have three different, but connected, functions: to incapacitate (to ensure a defendant cannot fail to surrender); to prevent (to prevent anticipated offending if released); and to protect (to safeguard both persons connected to the case and the ongoing investigation into the alleged offence(s)). All seek to pre-empt unlawful behaviour by the denial of liberty (Smith, 2021: 52).

No matter the rationale, a decision to remand a person to pre-trial or pre-sentence custody results in the same outcome: the deprivation of liberty and the myriad consequences stemming from that deprivation (discussed in Chapter Two). Remand shares many parallels with sanctions imposed on the convicted, in particular a sentence of imprisonment, as individuals remanded to custody are typically co-located in institutions housing sentenced prisoners in England and Wales. Following the court’s decision to deny bail, a person is transferred from the court to a local prison, where he or she may remain until the outcome of their criminal case. As with sentenced persons, individuals denied bail enter prison where they are branded with the moniker of ‘prisoner’, regardless of the absence of guilt or the imposition of a formal disposition. This sub-population within prisons is incorporated into the daily regime of prison life, eating the same meals as sentenced prisoners, participating in activities alongside their

sentenced counterparts, and sharing intimate spaces with those convicted and sentenced to a term of imprisonment (Casale, 1989; Pelvin, 2019; Ugelvik, 2013).

For some unconvicted and unsentenced prisoners, the experience of prison will prove useful if the person is convicted and sentenced to a term of imprisonment. In cases where a conviction is followed by the imposition of a prison sentence, His Majesty's Prison and Probation Service (HMPPS¹) officials tally the number of days the offender spent on remand to reduce the global sentence by the time already served in custody. The practice of reducing a custodial sentence by time served on remand is rooted in the view that to do less 'would be patently unfair [since] the offender has already discharged part of his or her debt to society incurred as a result of their offending' (Roberts, 2005: 203). In England and Wales, crediting time served on remand toward a custodial sentence has been codified since the 1960s. First introduced by the Criminal Justice Administration Act of 1962, and later incorporated into the Criminal Justice Act (CJA) 1967, the credit scheme expressly mandated that a custodial sentence be reduced by the period of time the offender was already in custody (CJA 1967). It precluded, however, sentence reductions for non-custodial sentences, such as a probation order, an order of conditional discharge, or a suspended sentence (CJA 1967). Credit was excluded from these forms of punishment over concerns that the calculation would impose a time-consuming and administrative burden on judicial office-holders and courts more generally (*Hansard HC Deb vol 751 col 881, 26 July 1967*). As such, time served in pre-trial or pre-sentence custody has no benefit to defendants found not guilty or to persons sentenced to a non-custodial sanction. Only offenders punished by a term of imprisonment are eligible for credit, which is administered by HMPPS officials following the offender's intake to custody.

2.1. Legal context in England and Wales

Bail first emerged in penological literature in the 1950s and early 1960s in the United States (U.S.). In 1954, the Philadelphia Bail Study, which relied on court observations to collect data, struggled to identify the criteria applied by courts to deny bail and remand a person to custody (Foote, 1954). While courts had once justified remand on the grounds of securing accused persons' appearance in court, Foote (1954: 1038) found that 'normal magisterial practice

¹ Throughout this text, HMPPS is used to denote the current and former organizational structures responsible for the delivery of custodial services, though recognizes that the title was established in 2017.

indicated that bail was often used for punishment purposes'. Results from the Philadelphia Bail Study triggered other studies in the U.S., such as the Manhattan Bail Project in 1961, as well as research projects in Canada (Friedland, 1965) and in England and Wales (Bottomley, 1968; Bottoms & McClean, 1976; Davies, 1971). A common theme across these studies was concern over inconsistent decision-making by bail courts (Bottomley, 1968; Friedland, 1965). In England and Wales, Bottomley (1968) recommended that the principles for granting bail be clarified after finding inconsistent decisions on bail across a number of courts. While early studies primarily focused on decision-making practices at the front-end of the bail process, Friedland's (1965) study of bail in Toronto, Canada, broadened the scope of inquiry to include the experiences of remand and its impact on the outcome of a criminal case. He found that pre-sentence custody 'affects the accused's ability to engage counsel, hinders his attempt to present a proper defence, and increases the likelihood that he will be sentenced to imprisonment' (Friedland, 1965: 124). These findings were corroborated by research in England and Wales in the 1960s and 1970s (see Bottoms & McClean, 1976; Davies, 1971). Davies (1971) compared outcomes between men who had been remanded to custody and bailed in Liverpool, finding that the men remanded to custody were more likely to plead guilty to the charges against them and more likely to receive custodial sentences. Following his interviews with men detained on remand, Davies (1971: 47) reflected that many believed they had been remanded to custody 'for punitive reasons'. In terms of the qualitative experience of remand, the study revealed that the institution 'attracted bitter censure almost universally mainly, it seems, because of its distance from Liverpool, its isolation and transit-camp atmosphere' (Davies, 1971: 47). In these early studies, researchers highlighted problematic practices with judicial decision-making, the effects of remand on the outcome of criminal cases, and its consequences on the individual (Bottomley, 1968; Bottoms & McClean, 1976; Davies, 1971; Friedland, 1965).

Following the release of research findings into bail practices, the United Kingdom (UK) government launched an inquiry to review the use of bail; an inquiry which coincided with a period of penal welfarism (Garland, 2001). In 1971, the UK government appointed the Home Office Working Party to review practices in magistrates' courts with a view to making recommendations on bail decision-making (Gravells, 1977). The Working Party wrote in its 1974 report that its intention had been to find ways in which courts could release more accused persons on bail 'in the interests of the defendant himself and in order to reduce the pressure on prisons' (Bottomley & Dell, 1975: 81). The report recommended a proposal to guide bail decision-making: a presumed right to bail for all accused persons (Gravells, 1977). The

findings by the Royal Commission, alongside those of academic studies, were made at a time when a movement was taking place to embed human rights protections in criminal justice processes (Hucklesby, 2009; Trotter 2010). In an effort to simultaneously limit judicial discretion in bail decision-making, curb the use of remand, and introduce protections for criminal defendants, the general right to bail was passed into law in England and Wales in 1976 (Bail Act 1976; Hucklesby, 2009). The Bail Reform Act 1976 codified the presumption in favour of bail, emphasizing a need for ‘restraint on the various compulsory measures that may properly be taken against suspects in the period before trial’ (Ashworth, 2006: 243). The general right to bail entrenched the presumption of innocence (PoI) at one of the earliest stages of the criminal process and safeguarded a criminal defendant’s right to liberty before conviction and sentencing (Hucklesby, 2009; Trotter, 2010). It cemented the principle that the release of criminal defendants is the rule and their detention, the exception. To support these principles, the UK established legislative and regulatory frameworks for bail. In addition to public protection and securing attendance in court, two grounds to refuse bail which had been established through jurisprudence (Manson, 2004; Trotter, 2010), bail reform laws granted discretion to courts to deny bail on the basis that an accused person would obstruct the course of justice. Criteria were thereafter developed to guide courts in their decision-making on whether to release or remand an accused person to custody in advance of their trial or sentencing. In the history of bail law, the amendments in the 1970s have been described as the ‘enlightened’ era (Grech, 2015; Trotter, 2010).

This era was, however, short lived. From the late 1970s onwards, criminal justice policy shifted gears. Criminological ideals which once attributed criminality to ‘a problem of defective or poorly adapted individuals and families’ (Garland, 2001: 15) were replaced by more punitive attitudes towards those who committed crimes (Garland, 2001; Newburn, 2007; Webster & Doob, 2007). Instead of seeking to reform behaviour, penal policies sought to control individuals who had broken the social contract (Garland, 2001). In the 1980s and early 1990s, police across the UK began arguing that bailed defendants were abusing the bail process by reoffending while in the community (Hucklesby, 1996). Spurred by media accounts sensationalizing offences committed by accused persons on bail, the view became ‘that the balance of the [criminal justice] process had moved too far in favour of the accused’ (Hucklesby, 1996: 213). In response to changing public attitudes, the UK government introduced its first suite of legislative amendments to bail in 1994, restricting the right to bail for persons accused of serious offences (e.g., murder) with a prior record of similar offences

(Grech, 2015). Further legislative amendments were passed in 2003, reversing the presumption of bail for persons accused of committing indictable or either way offences while on bail, and further directing that bail be denied if an accused person, charged with a drug related offence, tested positive for drug use (Grech, 2015). Over the last three decades, the policy choice has been to incrementally claw back on the presumed right to bail.

In a review of bail practices in England, Dhami (2010: 350) explains that ‘courts must perform a tremendous balancing act’. Bail decisions compel courts to consider the safety of the public while, on the other, protecting a person’s right to liberty and right to be presumed innocent. When deciding in which direction to tip the scale, courts may take into account a number of factors. Under current legislation, courts examine the nature and seriousness of the offence; the defendant’s character, antecedents, and associations and community ties; the defendant’s bail record; and the strength of evidence of the defendant having committed the offence (Bail Act 1976, Schedule 1, Part 1, para. 9). In addition, judicial office-holders may consider any other factor(s) deemed relevant to the decision on whether to bail a defendant to the community or remand them to prison. The law provides no direction on the interpretation of the provisions outlined in the Bail Act 1976 (Dhami, 2010; Smith, 2021), though case law provides some ‘loose guidance’ (Smith, 2021: 53). The European Court of Human Rights has ruled that, when considering whether a defendant may commit a further offence if released on bail, courts cannot automatically assume a risk of possible re-offending based solely on the defendant’s criminal history (*R (Thompson) v. Central Criminal Court*, 2005; Smith, 2021). Instead, courts should consider whether previous convictions are comparable, either in nature or seriousness, to the charges the defendant currently faces (*R (Thompson) v. Central Criminal Court*, 2005; Smith, 2021). Even with precedent, however, few limitations have been placed on judges’ and magistrates’ discretion to deny bail and remand individuals to custody (Dhami, 2010; Smith, 2021). In England and Wales, courts have been left to determine what information should be considered in bail cases, how information relevant to the case should be weighed, and how to make a final assessment on the level of risk a defendant may pose to the community, if released (CPS, 2022; Dhami, 2010).

2.2. Terminology

Most western jurisdictions practice similar control measures to those applied to individuals denied bail in England and Wales. However, exploring these practices reveals significant

variation in terminologies. In England and Wales, the Bail Act 1976 uses the word ‘remand’ as both a noun and a verb. It references ‘custodial remand’ and the act of being ‘remanded’ to custody. While consistent in UK bail legislation, the terminology for the practice of confining individuals before trial or sentencing is varied. Across the English-speaking world, the confinement of a person charged with a criminal offence has been called pre-sentence custody (Judicial Commission of New South Wales, 2021; Library of Parliament, 2020; Provincial Court of British Columbia, 2021), pre-trial detention (Department of Justice Canada, 2021; Penal Reform International, 2015; Prison Policy Initiative, 2022), pre-sentence detention (Office of Public Prosecutions Victoria, 2017; Sentencing Advisory Council Victoria, 2020), remand (Government of Alberta, 2021), remand detention (Council of Europe, 2017) and custodial remand (Bail Act 1976). There is no universally accepted term to describe the outcome of a court’s decision to deny bail. Instead, the norm is to apply a variety of terms interchangeably to describe the incapacitation of persons before trial or sentencing. On its face, the substitutable nature of terms appears harmless, but the existing lexicon conceals complexities associated with the legal status of those detained in custody before trial and/or sentencing.

As noted earlier in this chapter, there are two distinct categories of remand prisoners in England and Wales: the unconvicted and the unsentenced. The former refers to a criminal defendant in custody who is presumptively innocent. That is, a person who has yet to be convicted of a criminal offence. In its internal policy, HMPPS (2022) defines unconvicted prisoners as follows:

Unconvicted prisoners have not been tried and are presumed to be innocent, the Prison Service’s sole function is to hold them in readiness for their next appearance at court. Their imprisonment should not deprive them of any of their normal rights and freedoms as citizens, except where this is an inevitable consequence of imprisonment, of the court’s reason for ordering their detention and to ensure the good order of the prison.

Given their status as legally innocent persons, unconvicted prisoners are, in theory, meant to enjoy as many of their rights and freedoms as possible, save those limited by virtue of their incapacitation. In contrast, unsentenced prisoners are persons who have pleaded guilty or been found guilty of a criminal offence and await their sentencing date from behind prison walls. For this second group, the presumption of innocence is no longer engaged given that a finding

of guilt has been made by a court of law. Unlike the unconvicted, unsentenced prisoners wait for a formal punishment to be imposed by the court. HMPPS (2022) describes an unsentenced prisoner as one who ‘loses his or her special privileges at the point of conviction. From that point they have been convicted of an offence and are treated accordingly.’ Despite distinctions in legal status, the academic and grey literature rarely employ terminologies to capture differences between the two statuses and, in some cases, even conflate the terms. For example, in 2008, Prison Reform International (2008: 139) wrote, ‘Unsentenced prisoners are those persons who have yet to be convicted by a court. They are also known as ‘remand’ prisoners; or prisoners who are: under-trial or awaiting trial or pre-trial.’ Although the language exists to differentiate between the two separate groups of prisoners detained in custody before trial or sentencing, it is rare to see terms such as ‘pre-trial detention’ and ‘pre-sentence detention’ used alongside each other to denote the custody of both the unconvicted and the unsentenced. The existing vernacular steers clear of treating remand prisoners as two separate groups of detainees in prisons in England and Wales, preferring instead to lump them together under universal terms such as ‘remand’.

This lack of specificity is problematic on two fronts. First, it assumes and infers the unfolding of a future event (e.g., a guilty verdict), which is particularly troublesome in cases where the presumption of innocence is still intact. At present, the only terms which accurately convey the detention of the presumptively innocent are ‘pre-trial custody’ or ‘pre-trial detention’. These terms reflect the reality that the person in custody awaits the outcome of the trial process and, therefore, remains unconvicted of a criminal offence. Clarity in language protects their legal status, keeping them at bay from being viewed or categorized as guilty. While most defendants held before trial or sentencing go on to receive a custodial sentence, a small group of defendants held in pre-trial detention are released to the community without conviction (Ministry of Justice, 2020). In 2019, 3,300 (10 per cent) adults remanded to custody at the Crown Court went on to be acquitted, not tried, or dismissed (Ministry of Justice, 2020). Failing to use and promote language which encourages engagement with nuances behind terms such as ‘remand’ jeopardises the PoI, and therefore, justice. The second issue is that the current lexicon prevents the public from fully engaging with the legal and operational realities following a decision to deny bail. Terminologies surrounding pre-trial and pre-sentence custody offer little representation of who and what lie behind these words. Writing about the vernacular on crime control, Christie (1981: 13) comments on words being ‘a good means of disguising the character of our activities’. Christie (1981: 18) discusses the disappearance of pain and

suffering from the language on crime and punishment and the societal choice to rely on ‘neutralizing words’ to describe the infliction of pain. Words such as ‘remand’ shelter the public from facing the uncomfortable truth that the State can and does restrict the liberty of thousands of individuals presumed innocent or who, if found guilty, may not go on to receive a custodial sentence. The term ‘remand’ is more palatable than its definition. It is a tidy word for the practice of plucking a person from society to then place them in a carceral environment in the name of prevention. The vocabulary selected to describe one of the outcomes of bail decision-making has whitewashed its true nature, failing to accurately convey to the public the shaky foundation on which the presumption of innocence rests and, more broadly, the softening of limits on the exercise of coercive State power.

The purpose of exploring language around the use of pre-trial and pre-sentence detention is not to strike any one word from the glossary of criminal justice. Instead, it is to examine terms which capture the different stages in the criminal process, reflect the appropriate legal status of a person moving through this process, and which allow for the identification of potential similarities or differences in the experience of custody before trial or sentencing. The lack of clarity in the current lexicon muddies the water, making it difficult to be precise about which group of remand prisoners are being referred to in the public narrative. A recent example of the lack of specificity can be found in the study launched by the UK House of Commons Justice Select Committee in April 2022, which seeks to: ‘[...] understand why the number of people on remand has increased since Covid, whether remand to custody is fit for purpose and being appropriately applied, and what effect custodial remand has on the prison population.’ (House of Commons, 2022a). At the time of this submission, no distinction had been made by the UK House of Commons Justice Select Committee between the incapacitation of the unconvicted and the unsentenced.

For the sake of clarity, the remainder of this thesis will use pre-trial detention/custody and unconvicted persons to refer to the presumptively innocent detained in custody before their trial. Pre-sentence detention/custody and unsentenced prisoners will refer to individuals in detention before their sentencing date. Remand (and remand prisoners) will be used as an umbrella term to capture both groups of prisoners in custody before their trial or sentencing date.

3. Remand population in England and Wales

England and Wales has one of the highest incarceration rates in Western Europe (Prison Reform Trust, 2021; Sturge, 2021). Since the early 1990s, the imprisonment rate increased from 87 per 100,000 population in 1993 to 173 per 100,000 in 2019 (Sturge, 2021). This upward trend in the incarceration rate is owed primarily to the ‘punitive turn’ in the 1990s (Newburn, 2007). As highlighted above, criminal justice rhetoric, once centred on human rights and rehabilitation, was replaced by a focus on the protection of the public and victims’ rights (Garland, 2001; Newburn, 2007; Webster & Doob, 2007). As the ‘tough on crime’ agenda permeated the halls of political power, attitudes and responses to criminal behaviour hardened (Garland, 2001; Newburn, 2007; Pratt, 2000, 2002; Tonry, 2006; Webster & Doob, 2007). Punitive reforms to criminal justice policies and practices were rife throughout the 1990s and into the 21st century (Garland, 2001; Newburn, 2007; Pratt, 2000, 2002; Tonry, 2006; Webster & Doob, 2007; Zedner, 2016). Governments of all political stripes introduced suite after suite of legislative bills in the UK Parliament under the auspice of protecting the rights of victims and ensuring the safety of the public (Garland, 2001; Newburn, 2007; Pratt, 2000, 2002; Tonry, 2006; Zedner, 2016). As tougher policies and practices emerged, the incarceration rate began to climb (Newburn, 2007). However, in contrast to the sentenced population, the adult remand population has remained largely stable over the last 30 years (Hucklesby, 2009; Smith, 2021). It peaked in the late 1990s and again in the early 2000s but began to decrease after 2009 (Hucklesby, 2009; Smith, 2021). The adult remand population stood at its lowest in 2019, a year prior to the COVID-19 pandemic (see Figure 1.1).

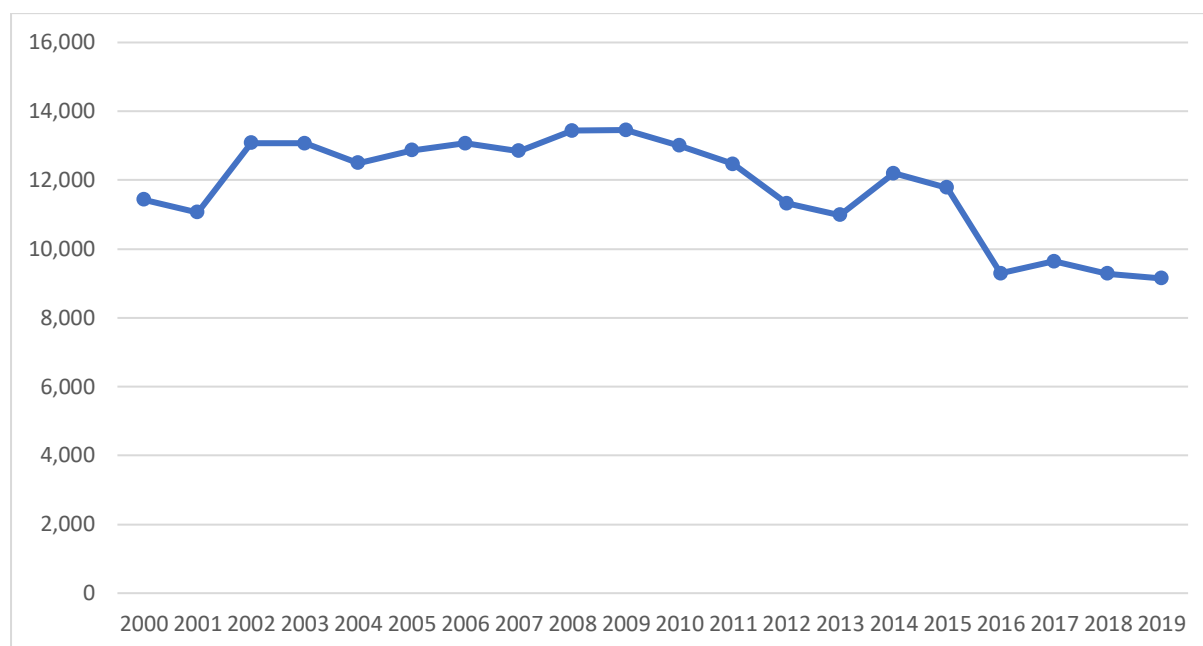
Given the impact of the COVID-19 pandemic on the operation of criminal courts in England and Wales, remand data is explored in two separate sections. The first section explores the adult remand population data before COVID-19, while the second examines trends in the adult remand population during the global pandemic. For ease of reference, certain data referenced in Section 3.1 are replicated in Section 3.2.

3.1. Remand trends before COVID-19

Until recently, the remand population, as a proportion of the prison population, was on a downward trend (see Figure 1.1 and Table 1.1). In 2000, the remand population represented 18 per cent of the total prison population, decreasing to 11 per cent in 2019. Between 2000 and

2019, the remand population, as a percentage of the total prison population, decreased nearly every year. In exploring remand on its own, the population remained relatively stable up until 2014, when there was a slight increase in the population. The next year, however, the remand population fell again, remaining stable until the COVID-19 pandemic.

Figure 1.1: Total remand population in custody on the 30th June in England and Wales, 2000 to 2019



Sources: (Ministry of Justice, 2007, 2008, 2010a, 2010b, 2012, 2022)

Table 1.1: Population in custody in England and Wales as of 30th June, 2000-2019

	Remand Population			Total prison population	% of Prison Population on Remand
	Unconvicted	Unsentenced	Total Remand population		
2000	7,219	4,214	11,433	65,194	18%
2001	6,801	4,260	11,061	66,403	17%
2002	7,877	5,204	13,081	71,218	18%
2003	7,896	5,177	13,073	73,657	18%
2004	7,716	4,779	12,495	74,488	17%
2005	8,084	4,780	12,864	76,190	17%
2006	8,064	5,003	13,067	77,982	17%
2007	8,387	4,457	12,844	79,734	16%
2008	8,750	4,690	13,440	83,194	16%
2009	8,933	4,523	13,456	83,454	16%
2010	8,487	4,517	13,004	85,002	15%
2011	8,299	4,165	12,464	85,374	14%
2012	7,993	3,756	11,324	86,048	13%
2013	7,755	3,231	10,986	83,842	13%

2014	8,618	3,579	12,197	85,509	14%
2015	8,271	3,514	11,785	86,193	14%
2016	6,278	3,010	9,288	85,134	11%
2017	6,601	3,037	9,638	85,863	11%
2018	6,307	2,978	9,285	82,773	11%
2019	5,996	3,149	9,145	82,710	11%

Sources: (Ministry of Justice, 2007, 2008, 2010a, 2010b, 2012, 2022)

Exploring trends in the remand population requires investigating its two main drivers. On the one hand, the remand population is influenced by the number of individuals remanded to custody by courts (Hucklesby, 2009; Ministry of Justice, 2008; Webster et al., 2009). The more individuals denied bail, the more people in prison. On the other hand, the remand population is affected by the length of time an individual is detained in custody awaiting their trial or sentencing (Hucklesby, 2009; Ministry of Justice, 2008; Webster et al., 2009). The following subsections explore the two main drivers of the remand population.

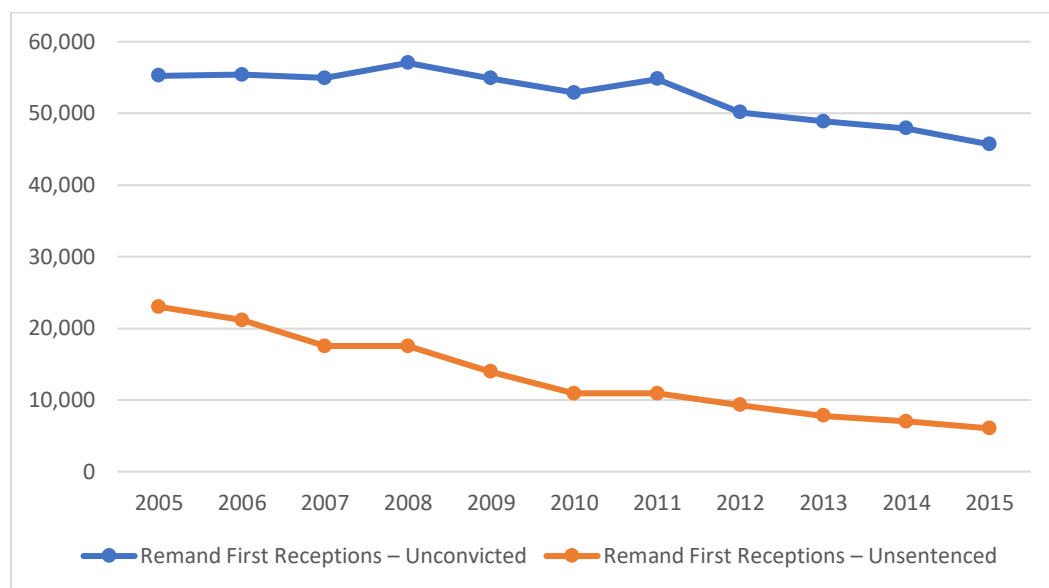
The number of individuals remanded to custody

The number of individuals remanded to custody is captured by first receptions to prisons, which calculates the number of new prisoners entering custody (Ministry of Justice, 2021a). ‘Remand first receptions’ identify a prisoner’s first movement into custody (i.e., the day they arrive at prison: Ministry of Justice, 2021a). By collecting data at entry into custody, ‘remand first reception’ ensures that a remand prisoner, who may move in and out of custody several times for court appearances, is not counted twice (Ministry of Justice, 2021a). First reception data is reviewed herein, but in two separate datasets. The first dataset explores figures prior to 2016, inclusive from 2005 to 2015 (see Figure 1.2), while the second dataset explores first receptions for remand prisoners from 2016 to 2019 (see Figure 1.3). The discussion of first entries on remand is split across these two time periods because of changes in the methodology used to count prison receptions initiated by the Ministry of Justice in 2015 (Ministry of Justice, 2017; Ministry of Justice, 2021a). This rendered these two datasets incomparable, although the changes did not impact other Ministry of Justice statistics used in this chapter.²

² ‘[D]ue to improvements in IT systems, from 1 January 2015, the data extracts used to produce statistics on prison receptions transitioned to a new extract, which is taken from the PrisonNOMIS system directly and without needing to be processed by the Inmate Information System. The new extract contains more detailed and accurate information about prison receptions which has resulted in a change in the methodology used to count prison receptions’ (Ministry of Justice, 2017; Ministry of Justice, 2021a).

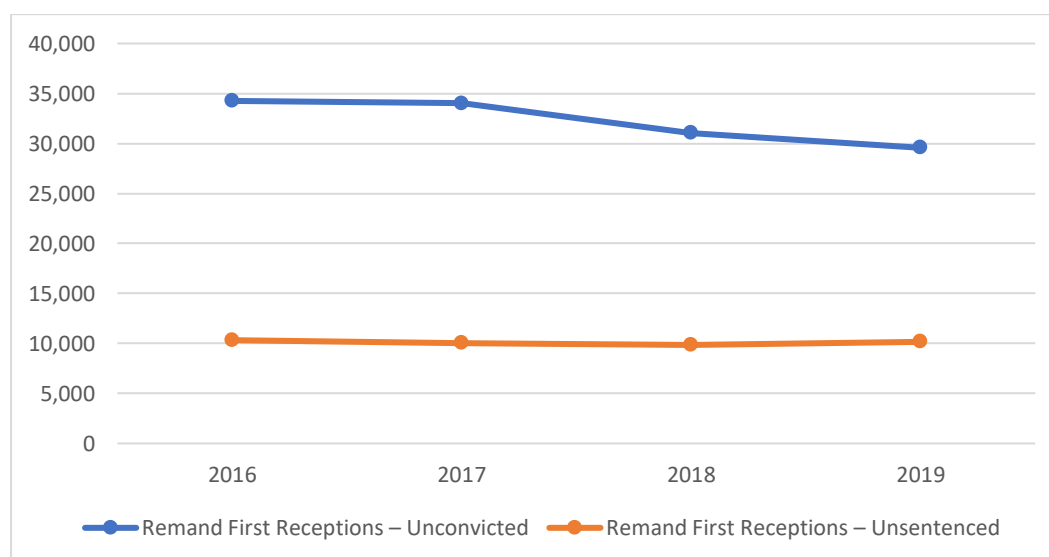
Unlike the remand data captured above, which looked at a specific date (i.e., June 30th of each year), the data below reflects the total number of remand prisoners admitted to custody within a specific year. Figure 1.2 shows that the number of unconvicted and unsentenced prisoners declined between 2005 and 2015. New receptions for unconvicted prisoners fell 18 per cent ($N = 55,242$ to $45,677$). Since the introduction of new methods of extracting data, remand first receptions for unconvicted prisoners declined after 2016 (see Figure 1.3). First receptions for unsentenced prisoners remained stable over the same period (see Figure 1.3).

Figure 1.2: Remand First Receptions, Unconvicted & Unsented Prisoners, 2005-2015



Sources: (Ministry of Justice, 2007, 2008, 2010a, 2010b, 2012, 2017, 2022)

Figure 1.3: Remand First Receptions, Unconvicted & Unsented Prisoners, 2016-2019



Sources: (Ministry of Justice, 2022)

The number of individuals entering custody is dependent on several factors, including decisions by police following arrest, the number of criminal cases preceded against in court, and the number of individuals denied bail (Hucklesby, 2009; Ministry of Justice, 2021b; Smith, 2021). The remand population fluctuates depending on the volume of cases being channelled into the court system (Hucklesby, 2009; Ministry of Justice, 2021b; Smith, 2021). A decrease in cases appearing before courts results in fewer opportunities for individuals to be remanded to custody (Hucklesby, 2009). In her research exploring remand population trends between the 1980s and mid-2000s, Hucklesby (2009) found that a decrease in court caseloads correlated with a decrease in the remand population. Hucklesby (2009) posits that the downward trend in the number of cases appearing before courts during this time period resulted from criminal justice reforms granting police additional discretionary power. For example, the years following the introduction of cannabis warnings (in 2005), which granted police discretion to funnel cases out of the formal justice system, correlated with years when HMPPS had lower remand populations (Hucklesby, 2009).

Police discretion influences more than the number of individuals subject to out-of-court disposals. After arresting an individual for a criminal offence, police decide whether to bail a defendant or detain them in police custody until their first appearance in court. At this juncture, police either choose to release a defendant to the community on bail or funnel them into the court system for bail decision-making. Essentially, the police can decide to either release a defendant to the community or punt the decision to judicial office-holders. In cases where police opt to detain an individual pending a bail hearing, a recommendation is made by police to the CPS on whether the person should be released on bail or remanded to custody. While the CPS is responsible for making the bail recommendation to the court, there is a high level of concordance between police recommendations and those of the CPS (Burrows et al., 1994; Morgan & Henderson, 1998; Phillips & Brown, 1998). In a Home Office study exploring arrests and detention in England and Wales, the CPS followed police advice in 85 percent of cases (Phillips & Brown, 1998). Agreement between police agencies and the CPS has been attributed to CPS reliance on police files to render their recommendation on bail (Hucklesby, 2009). More recently, Smith (2021) found that English courts continue to rely heavily on information provided by the police. In addition to their influence within the CPS, police decisions at the outset of the criminal process have also impacted bail decisions by courts (Dhami & Ayton, 2001; Hucklesby, 2009; Morgan & Henderson, 1998). Defendants appearing in court from police custody are more likely to be denied bail and remanded to custody, likely

due to perceptions that the defendant must continue to be maintained under the care and custody of the State (Dhami & Ayton, 2001; Hucklesby, 2009; Morgan & Henderson, 1998).

While police and the CPS make recommendations on liberty interests, it is ultimately up to the court to decide whether a person will be released on bail or remanded to prison. Unlike data collected from prisons, court data does not differentiate between remand status. For example, there is no distinction between persons denied bail before trial or persons whose bail may have been revoked between their conviction and sentencing date. However, Table 1.2 demonstrates the percentage of cases appearing in magistrates' court where the defendant was remanded to custody. In 2013, approximately 71,000 remanded criminal defendants stood before magistrates' court, the highest figure prior to the start of the global pandemic. In the Crown Court, the percentage of cases has remained relatively stable (see Table 1.2). The higher proportion of cases remanded to custody at the Crown Court is owed to the volume of more serious offences being dealt with at the Crown Court (Ministry of Justice, 2021b).

Table 1.2: Defendants' remand status with police, at magistrates' courts, and at the Crown Court, 2005 to 2019 (all raw numbers are rounded to the nearest thousand)

	Police	Magistrates' Court	Crown Court
2005	6.6% (<i>N</i> = 135,000)	2.9% (<i>N</i> = 59,000)	40.7% (<i>N</i> = 39,000)
2006	6.4% (<i>N</i> = 123,000)	2.9% (<i>N</i> = 55,000)	36.6% (<i>N</i> = 36,000)
2007	5.9% (<i>N</i> = 110,000)	2.8% (<i>N</i> = 52,000)	35.7% (<i>N</i> = 37,000)
2008	7.5% (<i>N</i> = 131,000)	4.0% (<i>N</i> = 70,000)	35.7% (<i>N</i> = 39,000)
2009	10.0% (<i>N</i> = 179,000)	3.4% (<i>N</i> = 61,000)	34.2% (<i>N</i> = 40,000)
2010	11.2% (<i>N</i> = 194,000)	3.5% (<i>N</i> = 60,000)	33.5% (<i>N</i> = 43,000)
2011	11.6% (<i>N</i> = 201,000)	3.3% (<i>N</i> = 56,000)	34.7% (<i>N</i> = 44,000)
2012	11.5% (<i>N</i> = 184,000)	4.1% (<i>N</i> = 66,000)	33.9% (<i>N</i> = 37,000)
2013	11.7% (<i>N</i> = 175,000)	4.7% (<i>N</i> = 71,000)	35.3% (<i>N</i> = 37,000)
2014	11.1% (<i>N</i> = 170,000)	4.5% (<i>N</i> = 68,000)	36.9% (<i>N</i> = 39,000)
2015	10.2% (<i>N</i> = 159,000)	4.1% (<i>N</i> = 63,000)	36.3% (<i>N</i> = 39,000)
2016	10.1% (<i>N</i> = 154,000)	3.8% (<i>N</i> = 57,000)	34.6% (<i>N</i> = 35,000)
2017	9.6% (<i>N</i> = 141,000)	3.9% (<i>N</i> = 57,000)	35.1% (<i>N</i> = 33,000)
2018	9.0% (<i>N</i> = 131,000)	3.7% (<i>N</i> = 53,000)	36.4% (<i>N</i> = 31,000)
2019	8.4% (<i>N</i> = 121,000)	3.5% (<i>N</i> = 51,000)	37.1% (<i>N</i> = 32,000)

Sources: (Ministry of Justice, 2008, 2021c, 2021d)

A further influence on the number of receptions to prison for remand includes the use of alternatives to remand, such as electronically monitored curfew order or bail support schemes (Hucklesby, 2011). These programmes provide judicial office-holders with options to divert defendants from spending time in prison prior to a conviction and/or sentence. As an alternative

to remand, courts may divert defendants from remand imprisonment by subjecting a person to a curfew, enforced by an ankle monitor, or referring them to a bail support scheme, where a person would receive a tailored plan to support them while on bail (Hucklesby, 2011; UK Government, 2022). Bail support may include direct supervision, advice on structured leisure time, and/or treatment for substance use issues (Coventry City Council, 2022; Devon City Council, 2022). There is limited research, however, exploring the effect of alternatives to remand on decisions made by judicial office-holders.

A final driver contributing to the number of defendants remanded to custody are legislative changes. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) introduced a rule that a person should be released on bail if there was ‘no real prospect’ the person would go on to receive a custodial sentence, if convicted. The aim of this amendment was to reduce the population of unconvicted and unsentenced prisoners in custody (LASPO, Schedule 11; Smith, 2021). While data from magistrates’ courts points to a decline in remand statuses following the introduction of LASPO, save for its first year, it is not possible to directly attribute the decrease in the use of remand to a specific piece of legislation, as there are other factors, explored herein, which influence the remand population.

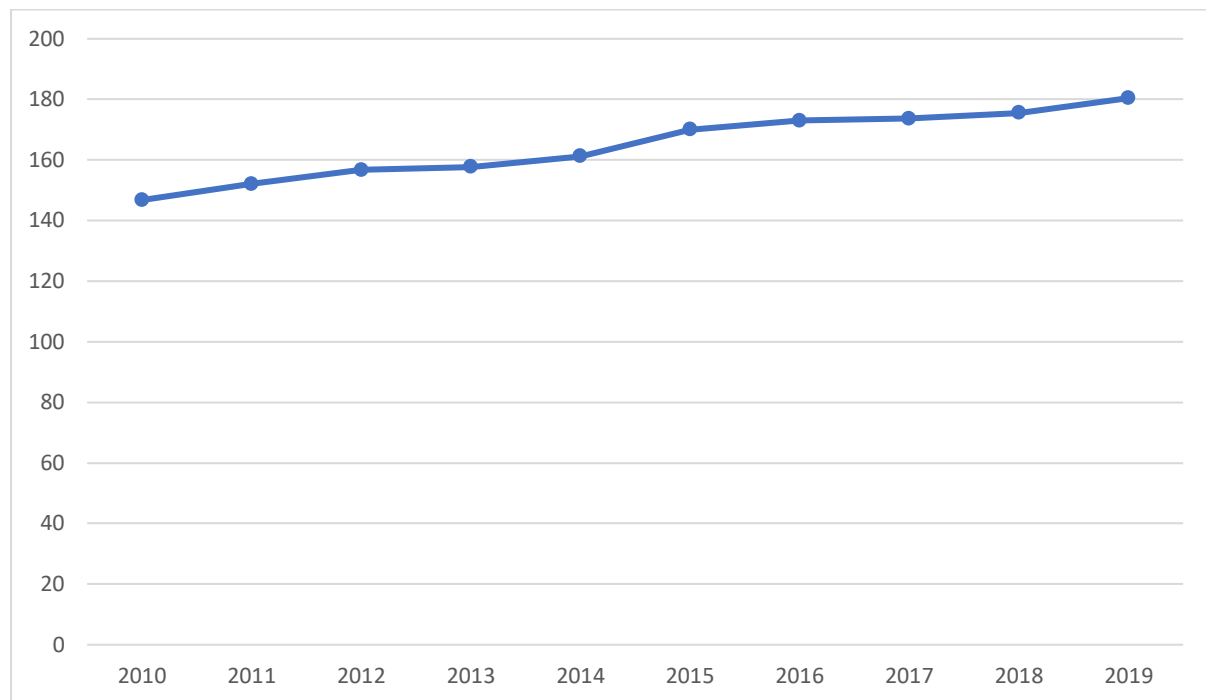
One of the difficulties in exploring trends in the use of remand in England and Wales results from a lack of recent empirical examination. Remand decision-making and trends in the remand population have gone largely unexplored (HM Inspectorate of Prisons, 2012; Player et al., 2010; Smith, 2021). In 2010, Player et al. (2010: 231) wrote that ‘little attention has been paid to the remanded population’, a sentiment echoed by Smith (2021) in a recent study on bail decision-making. The lack of engagement with remand renders it difficult to identify factors influencing this particular population in prison. While operational realities, such as the application of discretion by police and the use of the ‘no real prospect’ test, may influence the number of individuals remanded to custody, the problems faced today are the same as those highlighted by Hucklesby (2009: 18), namely that the picture of remand is ‘complex and a lack of research evidence hampers any firm conclusions being drawn’ on its use in England and Wales.

Length of time on remand

The second factor influencing remand populations is the length of detention (Hucklesby, 2009; Webster & Doob, 2007). The amount of time a person spends waiting in custody has a direct impact on the remand population. Court cases which take longer to process through the system result in lengthier periods in custody on remand, thereby increasing the overall number of prisoners held before conviction and/or sentencing at any one time. It is difficult, however, to determine the average length of time a defendant spends in custody on remand as the Ministry of Justice (MOJ) does not publish this type of data (Sturge, 2021). A close alternative, however, is the amount of time it takes courts to process a criminal case.

Most criminal defendants appear in magistrates' court to respond to the charges against them. In 2019, the year prior to the World Health Organization (WHO) declaring a global pandemic, magistrates' courts received 1.48 million cases and disposed of 1.47 million (Ministry of Justice 2019a; Sturge 2021). Of the cases received, 80 per cent were summary offences or breaches (e.g., breach of a community order, breach of a suspended sentence order: Ministry of Justice 2019a; Sturge, 2021). In comparison, the Crown Court received 104,000 cases the same year (Ministry of Justice 2019a; Sturge, 2021). Within the data published by the MOJ on magistrates' courts, it is not possible to isolate defendants remanded to custody. This data is not collected and/or published by the MOJ. However, it is possible to explore the average number of days it takes to complete a case in magistrates' courts. The time to complete a criminal case in magistrates' court slowly increased between 2010 and 2019 (see Figure 1.4). In 2010, the average was 147 days (21 weeks) which increased year-on-year. By 2019, the average number of days to complete a criminal case in magistrates' court was 180 (25.7 weeks). These figures, however, include all cases appearing before magistrates' court and do not represent the average number of days from offence to completion of a criminal case for remand prisoners (i.e., unconvicted and unsentenced). Exploring the existing data, however, offers the best (and only) picture available for the length of time remand prisoners *may* wait for a case to conclude, if their case is being dealt with in magistrates' court.

Figure 1.4: Average Number of Days Taken from Offence to Completion for all Criminal Cases in Magistrates' Courts in England and Wales, 2010 to 2019

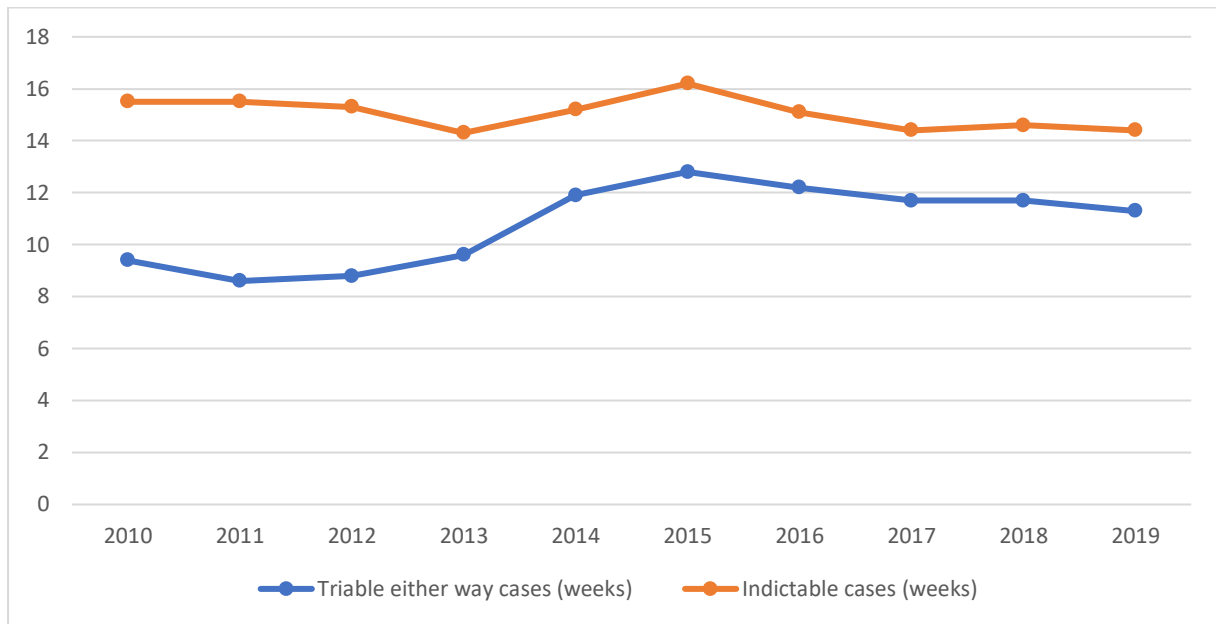


Sources: (Ministry of Justice, 2014, 2019a, 2021c, 2021d)

In the case of the Crown Court, the MOJ collects data on wait times, including the period of time a defendant remanded to custody waits for their first main hearing. The MOJ defines the wait time in the Crown Court as ‘the duration in weeks between a case being sent to the Crown Court and the first main hearing’ (Ministry of Justice, 2019a). Exploring the length of time a defendant waits for their first hearing may produce a rough picture of the average length of stay on remand for those appearing before the Crown Court.³ On average, prior to the COVID-19 pandemic, indictable cases resulted in longer wait times for defendants who were remanded to custody (see Figure 1.5). For example, in 2015, which represented the peak wait times in the Crown Court before the pandemic, indictable cases had an average wait time of 16 weeks, compared to almost 13 weeks for triable-either-way cases (see Figure 1.5). The additional time for indictable cases may be due to their serious nature (Hucklesby, 2009). Complex cases involving serious offences generally take longer to process, as the case may require additional steps before a plea is entered in court or a trial is concluded (Hucklesby, 2009). Following the peak in 2015, the wait times for both types of cases began to decline, remaining relatively stable between 2015 and 2019 (see Figure 1.5).

³ The MOJ describes the first main hearing as a hearing with one of four outcomes: a defendant pleads guilty; a jury is sworn in; a bench warrant is issued; or the case is disposed of other than by a guilty plea or verdict.

Figure 1.5: Wait times in the Crown Court (weeks) for defendants remanded to custody, 2010 to 2019 (Ministry of Justice 2021)



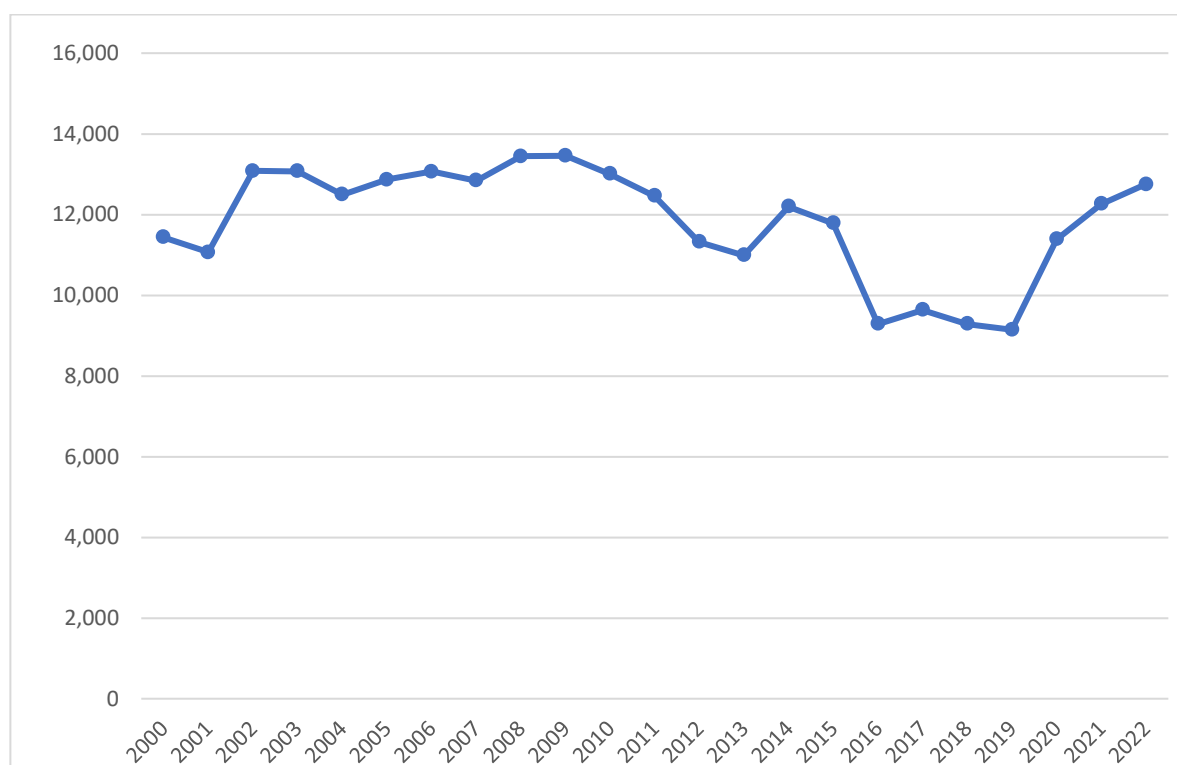
Sources: (Ministry of Justice, 2014, 2019a, 2021c, 2021d)

Although it is not possible to establish the average length of time an unconvicted or an unsentenced prisoner spends detained on remand, given shortcomings to data collection methods by the MOJ, exploring wait times in the Crown Court and the average number of days from offence to completion of a case in magistrates' court can roughly illustrate the time it takes for a case to work its way through the court system.

3.2. Remand and COVID-19

As illustrated above, the remand population remained relatively stable prior to 2019. However, recent data points to a troubling increase in the remand population in England and Wales, beginning at the start of COVID-19 pandemic. Between 2019 and 2020, the remand population grew to 14 per cent of the total prison population, up from 11 percent over the previous four years (see Figure 1.6, Table 1.3). In 2021, the remand population increased again to 16 per cent of the total population in prisons, where it remained stable in 2022. Table 1.3 shows that the increase in the total remand population is reflective of growth across both unconvicted and unsentenced remand prisoners.

Figure 1.6: Total remand population in custody on the 30th June in England and Wales, 2000 to 2022



Sources: (Ministry of Justice, 2007, 2008, 2017, 2021e, 2021f, 2022)

Table 1.3: Population in custody in England and Wales as of 30th of June, 2000-2022

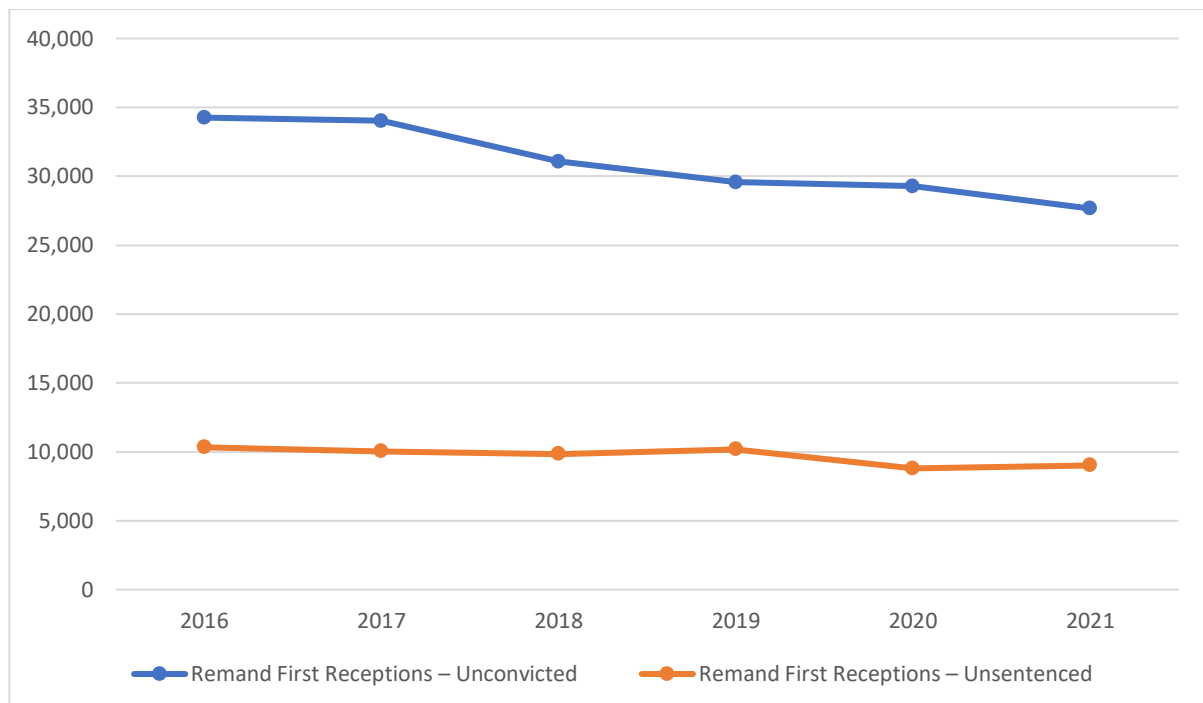
	Remand Population			Total prison population	% of Prison Population on Remand
	Unconvicted	Unsentenced	Total Remand population		
2000	7,219	4,214	11,433	65,194	18%
2001	6,801	4,260	11,061	66,403	17%
2002	7,877	5,204	13,081	71,218	18%
2003	7,896	5,177	13,073	73,657	18%
2004	7,716	4,779	12,495	74,488	17%
2005	8,084	4,780	12,864	76,190	17%
2006	8,064	5,003	13,067	77,982	17%
2007	8,387	4,457	12,844	79,734	16%
2008	8,750	4,690	13,440	83,194	16%
2009	8,933	4,523	13,456	83,454	16%
2010	8,487	4,517	13,004	85,002	15%
2011	8,299	4,165	12,464	85,374	14%
2012	7,993	3,756	11,324	86,048	13%
2013	7,755	3,231	10,986	83,842	13%
2014	8,618	3,579	12,197	85,509	14%
2015	8,271	3,514	11,785	86,193	14%
2016	6,278	3,010	9,288	85,134	11%
2017	6,601	3,037	9,638	85,863	11%
2018	6,307	2,978	9,285	82,773	11%

2019	5,996	3,149	9,145	82,710	11%
2020	7,956	3,432	11,388	79,514	14%
2021	8,441	4,286	12,262	78,324	16%
2022	8,140	4,607	12,747	79,773	16%

Sources: (Ministry of Justice, 2007, 2008, 2017, 2021f, 2021e, 2022)

The increased number of adults in remand custody has garnered media attention in England and Wales (Dimsdale & Saunders, 2022; Siddique, 2021, 2022) as well as elicited concerns from national voluntary organizations involved in the criminal justice system (Fair Trials, 2021) and the UK House of Commons Justice Select Committee which, as mentioned earlier, is undertaking a study on the issue of remand (House of Commons, 2022a). The growth in the remand population is owed primarily to court delays which resulted in remand prisoners serving longer periods of time in custody before their trial or sentencing date. In other words, the data demonstrates that the growth in the remand population during the pandemic is owed not to new admissions to custody, but to the length of time individuals were waiting for their trial or sentencing date. As Figure 1.7 shows, new admissions to remand custody during the pandemic remained relatively stable.

Figure 1.7: Remand First Receptions, Unconvicted & Unsented Prisoners, 2016-2021



Sources: (Ministry of Justice, 2021e, 2021f, 2022)

As the number of COVID cases and associated deaths rose, the UK government introduced public health restrictions. To comply with UK government restrictions and to protect the health of court users, courts in England and Wales scaled back on regular court business. In March 2020, at the start of the pandemic, jury trials were suspended for two months (House of Lords, 2021). As a result of shuttered courtrooms, the existing backlog of criminal cases worsened. At the end of 2021, there were approximately 61,000 cases received and not yet completed in the Crown Court, and more than 364,000 in magistrates' courts (National Audit Office, 2021). As explained earlier, a backlog of cases influences the remand population by interrupting the regular churn of individuals moving from remand custody to sentenced custody or transitioning out of custody in cases where a defendant is found not guilty or sentenced to a non-custodial sanction (Ministry of Justice, 2021d). The longer it takes to bring a criminal case to completion, the longer a person remains detained in prison on remand.

The effect of court delays is visible in Table 1.4 and Figures 1.8 and 1.9, which outline the percentage of cases appearing in courts where the defendant was remanded to custody and the case processing times in the Crown Court and magistrates' courts. In magistrates' courts, the average number of days from offence to case completion increased from 180 days (25.7 weeks) in 2019 to 217 days (31 weeks) in 2020, but decreased again in 2021 after courts began resuming normal operations (see Figure 1.8).⁴ While case processing times increased every year over the last decade, they increased exponentially in 2020, when courts were unable to carry on business as usual due to health and safety concerns resulting from the global pandemic (see Figure 1.8). In the Crown Court, wait times increased following the closure of courts across England and Wales. In 2020, wait times for indictable cases reached nearly 16 weeks, increasing again in 2021 to 18 weeks. The wait time for triable-either-way cases also increased in 2020 and again in 2021 from just under 13 weeks to 17 weeks (see generally Figure 1.9).

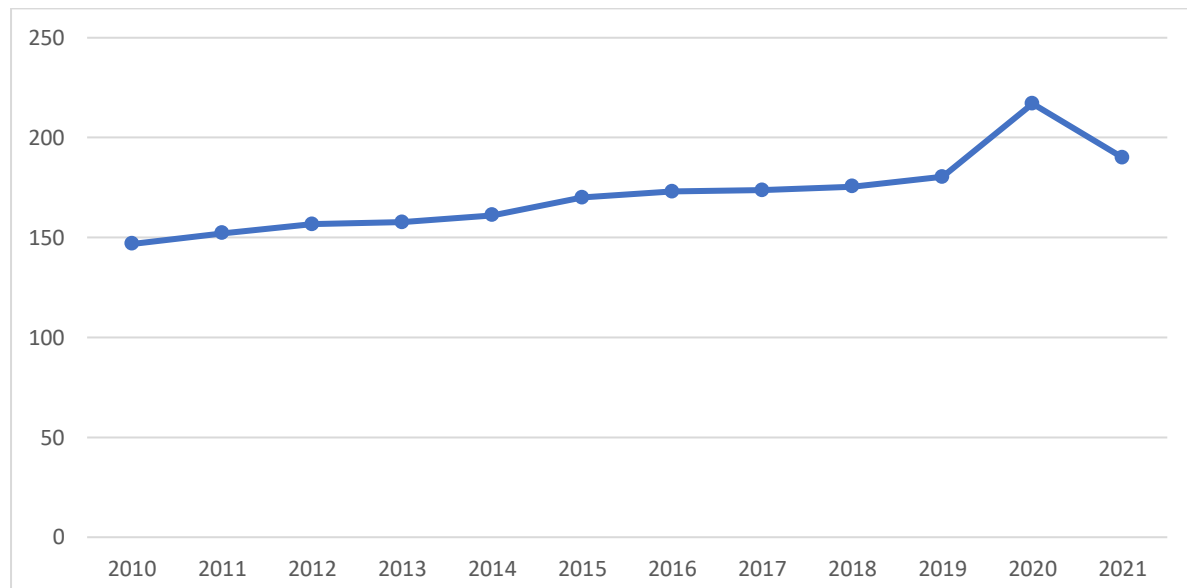
⁴ As explained earlier, this figure represents all cases appearing before magistrates' courts and does not represent the average wait time for those who have been detained pending trial or sentencing.

Table 1.4: Defendants’ remand status with police, at magistrates’ courts, and at the Crown Court, 2005 to 2021 (all raw figures rounded to the nearest thousand)

	Police (thousands)	Magistrates’ Court (thousands)	Crown Court (thousands)
2005	6.6% (N = 135,000)	2.9% (N = 59)	40.7% (N = 39)
2006	6.4% (N = 123,000)	2.9% (N = 55)	36.6% (N = 36)
2007	5.9% (N = 110,000)	2.8% (N = 52)	35.7% (N = 37)
2008	7.5% (N = 131,000)	4.0% (N = 70,000)	35.7% (N = 39,000)
2009	10.0% (N = 179,000)	3.4% (N = 61,000)	34.2% (N = 40,000)
2010	11.2% (N = 194,000)	3.5% (N = 60,000)	33.5% (N = 43,000)
2011	11.6% (N = 201,000)	3.3% (N = 56,000)	34.7% (N = 44,000)
2012	11.5% (N = 184,000)	4.1% (N = 66,000)	33.9% (N = 37,000)
2013	11.7% (N = 175,000)	4.7% (N = 71,000)	35.3% (N = 37,000)
2014	11.1% (N = 170,000)	4.5% (N = 68,000)	36.9% (N = 39,000)
2015	10.2% (N = 159,000)	4.1% (N = 63,000)	36.3% (N = 39,000)
2016	10.1% (N = 154,000)	3.8% (N = 57,000)	34.6% (N = 35,000)
2017	9.6% (N = 141,000)	3.9% (N = 57,000)	35.1% (N = 33,000)
2018	9.0% (N = 131,000)	3.7% (N = 53,000)	36.4% (N = 31,000)
2019	8.4% (N = 121,000)	3.5% (N = 51,000)	37.1% (N = 32,000)
2020	11.1% (N = 112,000)	4.8% (N = 49,000)	39.7% (N = 28,000)
2021	9.4% (N = 109,000)	3.7% (N = 43,000)	37.2% (N = 33,000)

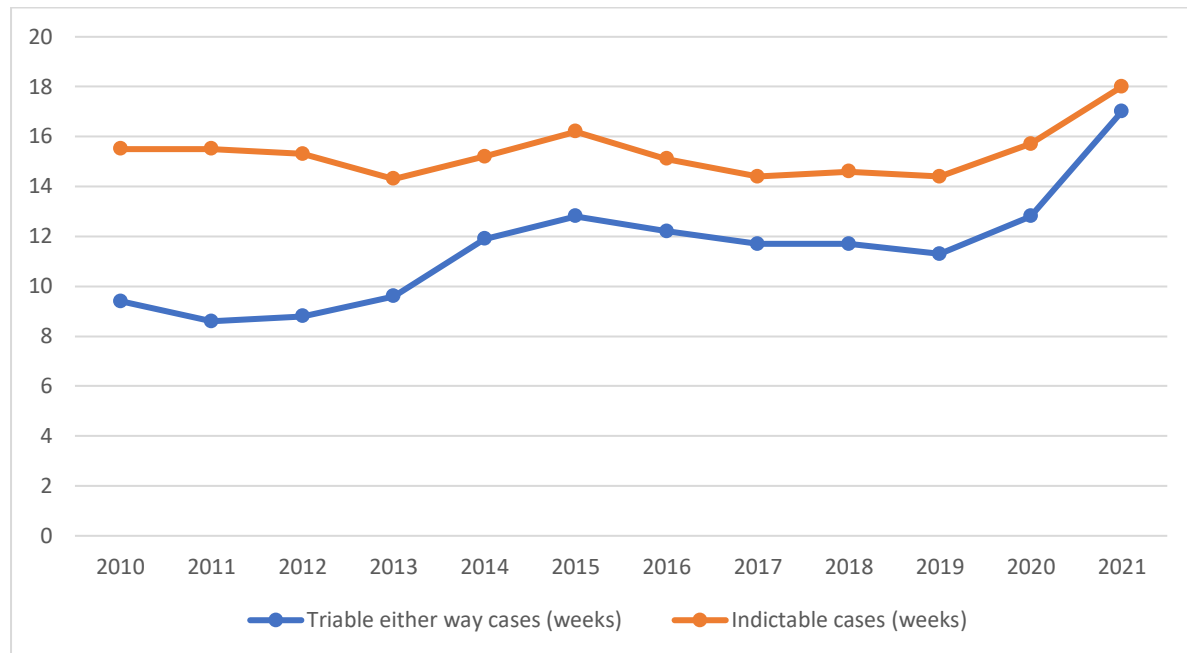
Sources: (Ministry of Justice, 2014, 2021b, 2021c, 2021d, 2021g)

Figure 1.8: Average Number of Days Taken from Offence to Completion for all Criminal Cases in Magistrates’ Courts in England and Wales, 2010 to 2021



Source: (Ministry of Justice, 2014, 2021b, 2021c, 2021d, 2021g)

Figure 1.9: Wait times in the Crown Court (weeks) for defendants remanded to custody, 2010 to 2021



Sources: (Ministry of Justice, 2014, 2021b, 2021c, 2021d, 2021g)

In response to delays in court operations, the UK government amended the custody time limit (CTL) for remand. Introduced in 1987, CTLs were intended to protect criminal defendants from ‘undue punishment before trial’ (House of Lords, 2021: 41) and to motivate actors in the criminal process to expeditiously progress criminal cases. Before the COVID-19 pandemic, the time limit for keeping a person detained on remand while awaiting trial for a summary offence was 56 days, while the limit for offences awaiting trial on indictment was 182 days (Explanatory Memorandum, 2020). In September 2020, six months following the start of the COVID-19 pandemic, the UK government amended regulations to temporarily extend CTLs for cases appearing in the Crown Court from 182 days to 238 days (Explanatory Memorandum, 2020). The UK government explained this amendment as follows:

This change recognises the delays caused to the listing of trials due to the current circumstances and provides more certainty for victims and the public in cases where there is a risk that defendants may abscond or commit offences if released back into the community on bail (Explanatory Memorandum, 2020: 1).

The regulatory amendments to CTLs were in force between September 2020 and June 2021. No amendments were made to CTLs for magistrates’ courts. It is not possible to exclusively

attribute the increased remand population between 2020 and 2021 to the extended CTL for defendants appearing before Crown Court. However, delays caused by the closure and slow resumption of court operations, coupled with permission to extend the CTL to 238 days, likely played a role in increasing the length of time individuals spent in prison on remand.

Delaying the disposal of justice has been equated to the denial of justice (House of Lords, 2021; *R v. Jordan*, 2016; Senate Canada, 2016). Precluding timely justice maintains defendants in a state of uncertainty, denies potential closure to victims and/or victims' families, and frustrates the public's confidence in the administration of justice (House of Lords, 2021; *R v. Jordan*, 2016; Senate Canada, 2016). Following their review of the impact of COVID-19 on court operations, the House of Lords Select Committee on the Constitution (2021: 37) wrote, 'The swift administration of justice is a vital public service which underpins the rule of law. It is a familiar aphorism, often attributed to Gladstone, that "justice delayed is justice denied"'. Delays in case processing times keep individuals in prison on remand for increased periods of time. The longer remand prisoners wait for their trial or sentencing date, the more the remand population grows, as new admissions to custody continue to filter into the system with fewer unconvicted and unsentenced prisoners transitioning out of remand (e.g., to either sentenced custody or a non-custodial sentence).

4. Rules on the treatment of individuals detained in custody before trial or sentencing

The decision to remand a person to custody restricts their freedom, prevents them from engaging freely with family and community networks of support, and erects a barrier between the person and his or her legal counsel. For unconvicted prisoners, legal protections are in place to attempt to reduce the burdens resulting from living life inside a prison. Guidance on their treatment in prison was first specified by the United Nations (UN) in 1955, when the General Assembly adopted the Standard Minimum Rules for the Treatment of Prisoners, known today as the Mandela Rules. Serving as a 'global floor for prisoner conditions' (Clifford, 1972: 232), the Mandela Rules identify 'untried prisoners' as a distinct category of detainees (UN General Assembly, 2016). In the context of the UN document, this special group is defined as 'persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried *and* sentenced' (UN General Assembly, 2016, emphasis added). The use of 'and' within the definition, rather than 'or', provides a legislative cover for unconvicted prisoners, but excludes those who are in

custody as unsentenced persons. For the presumptively innocent, the UN guidelines provide specific entitlements:

1. Untried prisoners must be detained in a separate location than that of convicted prisoners (Mandela Rules, r. 112).
2. Untried prisoners must have a cell to themselves (Mandela Rules, r. 113).
3. Untried prisoners may purchase their own food at their own expense (Mandela Rules, r. 114).
4. Untried prisoners are allowed to wear their own clothing (Mandela Rules, r. 115).
5. Untried prisoners must have the opportunity to be employed, but must not be forced to work. If an untried prisoner decides to work, he must be paid (Mandela Rules, r. 116).
6. Untried prisoners must be able to buy materials to keep them busy, such as books, newspapers, and writing materials (Mandela Rules, r. 117).
7. Untried prisoners must have access to their own doctor or dentist (Mandela Rules, r. 118).
8. Untried prisoners must be immediately informed of the reason(s) for their detention (Mandela Rules, r. 119(1)).
9. Untried prisoners must have access to apply for legal aid and to receive said aid (Mandela Rules, r. 119(2)).

These guiding principles have been adapted and applied by regional governing bodies across the world. In 2006, the Council of Europe revised and adopted the European Prison Rules. First enacted in 1973, and based on the UN guidelines, the European Prison Rules provide legally non-binding protections for ‘untried prisoners’ (Council of Europe, 2006). Members of the Council of Europe have a duty to provide special care for untried prisoners, which are defined as individuals detained before trial, conviction, *or* sentence (Council of Europe, 2006). The variation in wording between the European Prison Rules and the Mandela Rules result in a significant difference in meaning. The definition of ‘untried prisoners’ in the European context captures both groups of remand prisoners: the unconvicted and the unsentenced. Under the European Prison Rules, unsentenced prisoners retain entitlements to special accommodation and personal clothing, privileges precluded by the language in the UN guidelines.

In England and Wales, the Prison Rules 1999 offer protections to unconvicted prisoners. Once convicted, the special rules cease to apply (HMPPS, 2022). In other words, like the UN guidelines, the Prison Rules 1999 exclude unsentenced prisoners. The re-drafting of the Prison Rules in 1999 removed certain outdated references, such as the special accommodation for unconvicted prisoners who could opt to pay, out of pocket, for specially fitted accommodation with private furniture, utensils, and valet (Prison Reform Trust, 2000). The Prison Rules 1999 provide the following:

1. Unconvicted prisoners will be kept out of contact with convicted prisoners, subject to their separation being feasible in the view of the prison governor. Unconvicted prisoners may consent to share accommodation and participate in activities alongside convicted prisoners. However, under no circumstances will an unconvicted prisoner be required to share a cell with a convicted prisoner (Prison Rules 1999, r. 7(2)).
2. In cases where an unconvicted prisoner is willing to pay to see a registered medical practitioner or dentist, the governor may, in consultation with the medical officer, allow the visit (Prison Rules 1999, r. 20(5)).
3. An unconvicted prisoner may wear their own clothing and will be allowed to arrange for the supply of additional clothing from outside the prison. That said, the clothing must be clean and tidy and the unconvicted prisoner must not present a serious risk of escape. If the unconvicted prisoner is highly dangerous, he/she may be required to wear clothing issued by the prison (Prison Rules 1999, r. 23(1)).
4. An unconvicted prisoner will be permitted to work. The choice to work will be left to the unconvicted prisoner (Prison Rules 1999, r. 31(5)).
5. An unconvicted prisoner may send and receive as many letters and may receive as many visits from relatives and friends as he/she wishes, subject to limits and conditions prescribed by the Secretary of State (Prison Rules 1999, r. 35(1)).
6. An unconvicted prisoner may have supplied to him/her, at his/her expense, books, newspaper, writing materials and other means of occupation, subject to any directions by the Secretary of State (Prison Rules 1999, r. 43(1)).

*In addition to these rules, the Representation of the Peoples Act 1983 stipulates that unconvicted *and* unsentenced prisoners retain their right to vote while in custody on remand (HMPPS 2022).

The legally binding provisions in the Prison Rules 1999 grant considerable discretion to prison governors and the Secretary of State in operationalizing requirements for unconvicted prisoners. While the rules place a duty on HMPPS to keep unconvicted prisoners separate from the general population and to facilitate access to personal clothing, books, writing materials and visits from family and friends, each clause includes a caveat granting HMPPS blanket authority on its operation or outlining when the rule may be overwritten. Detailed guidance on the application of these rules is stipulated across several internal policies, which further expound that an unconvicted prisoner loses all special privileges on the date of conviction (HMPPS, 2022).

Little attention has been given to exploring potential gaps between correctional policies and practices as they apply to unconvicted prisoners in England and Wales or, in the case of voting rights, unconvicted and unsentenced prisoners. In its last, and most recent, thematic review on the treatment of remand prisoners, His Majesty's Inspectorate of Prisons (HM Inspectorate of Prisons) conducted a survey across 33 local prisons with unconvicted and unsentenced prisoners (HM Inspectorate of Prisons, 2012). The results, published in 2012, found there were discrepancies between legislative protections and internal HMPPS policy and practice (HM Inspectorate of Prisons, 2012). As an example, HM Inspectorate of Prisons pointed to the standard practice within prisons of co-locating unconvicted prisoners with sentenced prisoners, noting that unconvicted prisoners could not recollect being asked for consent to share a cell with a sentenced prisoner (HM Inspectorate of Prisons, 2012). In addition to accommodation, the report revealed that prison staff were frequently unfamiliar with certain entitlements owed to unconvicted prisoners, such as their right to access their own doctor or dentist (HM Inspectorate of Prisons, 2012). Unconvicted prisoners reported delays to being able to wear their own clothing and difficulties accessing a prison job (HM Inspectorate of Prisons, 2012). In the introduction to the report (2012: 8), the Chief Inspector of Prisons wrote that, 'remand prisoners have a distinct set of needs and receive poorer provisions than sentenced prisoners'. Despite the troublesome findings of the report, no known action was taken to ameliorate conditions for unconvicted prisoners. The study conducted by HM Inspectorate of Prisons is the only known study in recent years exploring the relationship between operational policy and practice in the context of remand.

5. Conclusion

This chapter offered an overview of the concept and practice of remand, setting a backdrop against which to contextualize forthcoming chapters. To begin, this chapter explained the legal context of remand, highlighting that remand is inextricably linked to bail. To prevent the obstruction of justice or the commission of future crime, an individual may be remanded to custody pending their trial and/or sentencing. The criteria for detention were enshrined in law in the 1970s, a time when emphasis was placed on the presumptive right to bail. However, times changed, attitudes shifted, and, slowly, the presumptive right to bail has been eroded by the introduction of punitive legislative and regulatory policies. In spite of these changes, the remand population remained relatively stable in England and Wales. While there may have been a slight increase in certain years, the remand population, until the COVID-19 pandemic, was fairly level. That changed in 2020. At the start of the global pandemic, courts in England and Wales halted operations for public health and safety reasons. With fewer criminal cases being processed by courts, the remand population began growing, drawing the attention of both the media and parliamentarians. Whether this public and political focus will translate into any meaningful changes is yet to be determined.

In discussions on trends and policies, it can be easy to forget that, behind these numbers and these words, stands a person. A person denied their liberty in absence of a conviction and/or the imposition of a formal punishment. A person who, after their bail hearing, will be escorted to a transportation van and driven off to a prison. Remand forces a person to live within the confines of a prison, some with privileges and some without, where they wait indefinitely for their trial or sentencing date. The most recent, though dated, review of the treatment of these individuals (see HM Inspectorate of Prisons, 2012) revealed that significant reforms were needed to protect remand prisoners' wellbeing within the custodial estate in England and Wales; reforms which were, at best, acknowledged by the UK Government, and, at worst, ignored altogether. Despite efforts 10 years ago to sound the alarm on the treatment of remand prisoners, experiences of pre-trial and pre-sentence custody remain under-explored.

Chapter Two: The Pains of Remand

1. Introduction

The use of remand has primarily attracted the attention of policymakers and scholars focused on identifying factors contributing to its increased use over the last two decades (Doob & Webster, 2013; Institute of Crime and Justice Policy Research, 2020; Player et al., 2010; Webster & Doob, 2007; Weinrath, 2009) or, conversely, the ability of some states, such as England and Wales, to maintain a stable remand population (Hucklesby, 2009; Smith, 2021). Less studied, however, has been the effect(s) of pre-trial and pre-sentence custody on the individual. To date, the impact of remand has been ‘obscured’ (Pelvin, 2019: 69) by research on the pains of imprisonment (see Crewe, 2009, 2011, 2015; Goffman, 1961; Jewkes, 2002, 2013; Liebling, 1999; Liebling & Maruna, 2005; Sykes, 1958; Warr, 2016). Despite its serious human costs, the pains associated with the deprivation of liberty of unconvicted and unsentenced prisoners remain under-explored and under-conceptualised. In contrast to the literature exploring the ‘penal painscape’ (Skinns & Wooff, 2020: 2), which has developed and applied a conceptual framework to explore experiences of sentenced persons (Crewe, 2009, 2011, 2015), immigration detainees (Ugelvik & Damsa, 2018) and those in police custody (Skinns & Wooff, 2020), the literature on remand is fragmented. The small body of research with remand prisoners makes little reference to the wider pains of punishment literature or to existing research on remand. To explore the pains of remand, this chapter considers, and is structured by, four themes which emerged during a review of the literature on remand, namely its effect on perceptions of self; its cross-institutional nature; the proximity between the remand prison and the community; and the uncertainty faced by those waiting for their trial or sentencing. By exploring these themes, this chapter reveals gaps in the existing literature, such as limited qualitative research investigating remand prisoners’ mental health and an incomplete account of access to justice issues amongst this sub-population within prisons. It further highlights the opportunity to advance the discourse on the pains of remand by applying or developing a conceptual framework to the experiences of those detained pending trial or sentencing.

2. Conditions, power, and perception of self

Several studies have shown that entry into custody on remand is a period of disruption; a time when a person's life begins to unravel (Casale, 1989; Gibbs, 1982; Irwin, 1985; Marchetti, 2002). For individuals detained on remand, prison environments generate a sense of fear for personal safety and high levels of anxiety (Elger, 2009; Freeman & Seymour, 2010; Gibbs, 1982), emotions commonly identified amongst sentenced prisoners in their early days in custody (Jones & Schmid, 1989; Liebling, 1999; Souza & Dhimi, 2010). In the context of remand, these emotions have been linked to the 'sudden and dramatic change in status that accompanies going to jail' (Klofas, 1990: 74). While their sentenced counterparts may have been afforded the opportunity to voluntarily surrender or prepare themselves for the possibility of custody while on bail, persons denied bail transition from the status of free person to remand prisoner in the span of a day (Gibbs, 1982). Compounding the initial shock of their sudden removal from society is the expectation of conformity to, and compliance with, the prison regime. In spite of their presumptive innocence or the absence of a formal sanction, remand prisoners are assimilated into a system manifestly designed to punish. The prison regime imposes a host of restrictions and expectations on remand prisoners through the implementation of rules and routines (King & Morgan, 1976). The literature on remand is replete with accounts of restrictive prison regimes (Casale, 1989; Elger, 2009; Freeman & Seymour, 2010; Pelvin, 2019; Weinrath, 2009). Remand prisoners are described as living in overcrowded facilities where they are often accommodated in double or triple-occupancy cells (Freeman & Seymour, 2010; Pelvin, 2019). Violence and institutional lockdowns are common features, as is the lack of access to vocational programmes and recreational activities (Casale, 1989; Elger, 2009; Freeman & Seymour, 2010; Pelvin, 2019). In her study of two prisons in Ontario, Canada, Pelvin (2019: 77) describes remand conditions as follows,

Prisoners were secured in their cells by a large steel door that had a small window and a metal food slot. In general, individuals on remand spent roughly 17 hours a day inside these cells, where they ate all their meals. Prisoners were entitled to 20 minutes a day of "yard" time. These yards are small concrete enclosures located just outside of the living units, topped with razor wire and a half-roof that obscures much of the sunlight.

Comparable accounts of conditions of confinement have been made in other jurisdictions, including England and Wales (Casale, 1989), Ireland (Freeman & Seymour, 2010) and Switzerland (Elger, 2009). These conditions and metrics of imprisonment have been used to justify branding the experience of remand as ‘harsh’ or ‘difficult’ (Pelvin, 2019: 69). Rarely seen in the literature on remand, however, is a ‘characterisation of penal cultures that moves beyond reductive conceptions of penal “harshness” or “mildness”’ (Crewe, 2015: 60). Little is known about unconvicted and unsentenced prisoners’ experiences living under difficult or harsh conditions and, more specifically, the features of imprisonment which may affect their physical and psychological well-being. To date, research findings have conveyed the poor conditions of confinement for remand prisoners but have yet to fully explore how these conditions are experienced by this group of prisoners.

Prisons are ‘total institutions’; that is, they are places of ‘residence and work where a large number of like-situated individuals cut off from the wider society for an appreciable period of time together lead an enclosed formally administered round of life’ (Goffman, 1961: 11). Amongst the aims of the ‘total institution’ is its members’ subordination, achieved through the use of stringent rules and regulations as well as penalties for non-cooperation (Goffman, 1961). Irwin (1985) applied Goffman’s concept of the ‘total institution’ to jails in the U.S., which house remand prisoners. Describing jail as a ‘degrading’ experience, Irwin (1985: 87) found that prisoners are rendered subservient to their jailers through dehumanizing institutional procedures and processes, beginning with the replacement of civilian clothing with prison uniforms. Through the enforcement of rules, and the power exercised by penal authorities, prisoners begin to lose their sense of self (Irwin, 1985). Drawing on his own experience of jail, as well as interviews with over 100 pre-trial detainees in various locations in California, Irwin (1985) argued that jails were a self-fulfilling prophecy. As jailers believed in the disreputable nature of the population they maintained, prisoners were stripped of their own identities, eventually succumbing to, and appropriating, the perception of themselves reflected in the eyes of their keepers (Irwin, 1985). While Irwin’s (1985) research is now somewhat dated, more recent research has found a similar correlation between power relations and their effect on identity. Ugelvik (2013) explored two remand wings in a Norwegian prison accommodating a total of 50 prisoners. Relying on observational and interview data collected over a period of a year, Ugelvik (2013) put the experiences of remand prisoners centre stage. During his research, remand prisoners described detention as an experience which ‘could have been different if it didn’t “mess with your head”’ and if prison staff had followed the rules of the institution

(Ugelvik, 2013: 157). Remand prisoners perceived themselves to be the ‘immoral’ outsiders as this was how they were viewed and treated by prison officials (Ugelvik, 2013). Ugelvik (2013: 170) writes that ‘many prisoners experience this ascribed group affiliation as an attack on their self-image’. Although their research was conducted in separate countries and decades apart, both Irwin (1985) and Ugelvik (2013) found that the power exercised by those charged with the care and custody of remand prisoners, and the way in which this power was wielded through daily interactions between staff and prisoner and the rigid enforcement of institutional rules, affected identity and self-image.

In contrast to Irwin (1985), whose analysis centred on the aim of the carceral state to manage society’s underclass, Ugelvik (2013: 170) framed the ‘attack on self-image’ as one of Sykes’ (1958) pains of imprisonment. Ugelvik (2013) makes a single, passing reference to Sykes (1958), who characterized the deprivations of incarceration as the losses of liberty, desirable goods and services, heterosexual relationships, autonomy, and security. Ugelvik’s (2013) analysis is striking in that it is one of the few, if not only, remand studies which refers to the pains of imprisonment research. Sykes’ (1958) five pains, and the conceptual framework of dimensional metaphors subsequently developed by Crewe (2011) to explore the pains and burdens of modern imprisonment, have been adapted to explore experiences of immigration detention (Ugelvik & Damsa, 2018) and police custody (Skinns & Wooff, 2020). However, experiences of remand have yet to be investigated through the lens of a conceptual framework. At present, research on remand offers little to no exploration of how the pains experienced by remand prisoners intersect with or diverge from other research on remand and the wider pains of punishment. Experiences of remand have been described as an uncertain time under harsh prison conditions, but the features which render the experience as painful remain lamentably under-conceptualised. Despite existing research on remand and the growth of remand populations in many western democratic societies (Institute for Crime and Justice Policy Research, 2020; Smith, 2021), research findings remain siloed and without an analytical vocabulary to convey the pains, harms, and other potential consequences caused by pre-trial and pre-sentence custody. In his research with sentenced persons, Crewe (2011: 520) writes that ‘it is important to find descriptors which allow us to characterize the different components of the prison experience’. This gap in the pains of remand research provides an opportunity for future research to investigate remand prisoners’ experiences with a view to moving away from labels such as ‘harsh’ or ‘difficult’ (Pelvin, 2019: 69) and towards a framework comprised of

descriptors which would allow a more detailed understanding of remand prisoners' experiences, including potential similarities or differences across legal status.

3. The cross-institutional nature of remand

Remand prisoners manage—or are subjected to—engagements with multiple institutions across the criminal justice system, from police investigations and court hearings to interactions with defence counsel (Pelvin, 2019; Ugelvik, 2013). For remand prisoners, there are forces exterior to the prison which shape their experience of detention (Pelvin, 2019; Ugelvik, 2013; Weinrath, 2009). Rather than focusing exclusively on the prison, Ugelvik (2013) investigated remand prisoners' relationship with, and perception of, all the criminal justice institutions and actors surrounding them (Ugelvik, 2013). The study revealed that remand prisoners struggled to manoeuvre through the criminal process without regular access to legal counsel and faced difficulties associated with their repeated interactions with police and the court system (Ugelvik, 2013). Ugelvik (2013: 170) suggests that,

...remand prisoners experience the added pain of being under continuous scrutiny and investigation by a powerful and resourceful adversary actively working against them. In their accounts, the system is out there, all the time, methodically working to get them convicted.

Based on observational and interview data, Ugelvik (2013) found that remand prisoners most frequently discussed their experience as the subject of a police investigation. Police were viewed as capable of manipulating the system to their advantage given their access to unlimited resources (Ugelvik, 2013). The imbalance of power between remand prisoners and police left the former with a view that the criminal process was an 'us versus them' system (Ugelvik, 2013). In her research in prisons in Ontario, Canada, Pelvin (2019: 68) also explored the effect of police and courts on remand prisoners' detention, noting that 'apart from the effects of case outcomes, little is known about the costs of engagement with the court process for the detainee'. Pelvin (2019) conducted interviews with 60 men and 60 women remanded to custody across four prison establishments. In contrast to Ugelvik (2013), Pelvin (2019) retrospectively investigated police treatment, inquiring into remand prisoners' experience of arrest. While Pelvin (2019) notes the added contribution to the 'pains of policing' (Harkin, 2015; Skinns et al., 2017; Wooff & Skinns, 2017) literature, she neglects to explore police investigations. As

such, her findings provide no detail on the role of police or police investigations on remand prisoners' experience of custody. However, Pelvin (2019) does offer a detailed account of remand prisoners' experiences of engaging in the court process. For those appearing in person, the process of travelling to and from court means repeated trips through the admission and discharge process of prison, which includes the dehumanizing experience of strip searches (Pelvin, 2019). Pelvin (2019: 75) describes remand prisoners being 'paraded' into courthouses, handcuffed and often chained to at least one other prisoner. Following her interviews with remand prisoners, Pelvin (2019: 75) concluded that their experiences of travelling to, appearing before, and returning from court was one of 'the most visceral experiences of humiliation, degradation, and pain on remand'. Together, the studies conducted by Pelvin (2019) and Ugelvik (2013) point to the importance of considering experiences beyond the prison when conducting research with remand prisoners to illustrate the totality of pains felt by this sub-population within prisons.

Ugelvik (2013) and Pelvin (2019) are amongst the few who have considered police and courts in their studies with remand prisoners. In both studies, the authors focus on, what Pelvin terms, the 'cross-institutional nature of remand' (Pelvin, 2019: 68). Pelvin (2019) uses this term to capture all the institutions and actors bearing down on individuals detained in custody pre-trial or pre-sentencing—police, courts, and the correctional system. Drawing on Feeley (1979a), Pelvin describes the experience of remand as one in which 'the process is the punishment' (Feeley, 1979a). Although Feeley (1979a) made the argument in relation to the experiences of criminal defendants in lower courts, Pelvin (2019) applies the concept to the entire remand population. Further, while Feeley (1979a) was referring primarily to the court process, Pelvin (2019: 80) asserts that prison and treatment in police custody are experiences which 'constitute punishments in and of themselves – punishments that occur before and sometimes in place of a legal conviction'. Pelvin (2019) attempts to broaden the parameters around what constitutes punishment to include remand by illustrating the breadth of control and pain inflicted by the State prior to conviction via its multiple criminal justice institutions. Although Pelvin (2019) is able to identify the pain experienced by remand prisoners, there is no engagement in her analysis with the extensive literature on punishment theory, which holds that punishment may only be imposed on the finding of guilt (Husak, 2011; Kolber, 2013; Lippke, 2014; Robinson, 2001; Slobogin, 2003). As explored earlier in this chapter, the connection between how, when and to what extent what feels punishing may constitute punishment is not considered in Pelvin's (2019) research.

4. The proximity between the prison (jail) and the community

While remand prisoners grapple with interactions with multiple criminal justice institutions, they face the additional hardship of separation from family and community networks of support (Casale, 1989; Freeman & Seymour, 2010; Pelvin, 2019). Similar to findings in the pains of imprisonment literature (see, for example, Crewe, 2011; Sykes, 1958), remand prisoners have described the isolating experience of prison (Casale, 1989; Davies, 1971; Freeman & Seymour, 2010; Gibbs, 1982). Given their abrupt removal from society, individuals detained on remand must rely on family or friends to resolve their immediate needs and responsibilities, which can range from accessing their prescription medication to showing up for work (Brookman et al., 2001; Casale, 1989; Pelvin, 2019). Casale (1989) found that many remand prisoners in England were unable to telephone family or friends to inform them of their detention and to make arrangements for dependants. Individuals remanded to custody are swept up into a system where their needs are secondary to the enforcement of policies and procedures of the prison establishment (Casale, 1989; Pelvin, 2019). Following interviews with remand prisoners, Pelvin (2019) and Casale (1989) pointed to this prison sub-population coping, or attempting to cope, with crises related to their unknown location to family and friends (Casale, 1989; Pelvin, 2019). Unable to call and notify their family of the court's decision to deny bail, remand prisoners were left to worry about their absence from home, the angst it would cause their family, and the effect it would have on their families' day-to-day lives (Casale, 1989; Pelvin, 2019).

Prior to 1990, several studies in the U.S. posited that jails were more closely linked to the community than prisons (Gibbs, 1982; Irwin, 1985; Klofas, 1990). Klofas (1990: 74) concludes that, 'unlike the stresses of prison, which are linked to isolation and distance from the street, the stresses associated with being in jail often are linked to the inmate's temporal, physical, and psychological proximity to the street'. This analysis was based on experiences in the U.S., where jails house transient populations, such as remand prisoners and individuals who violate probation, and where prisons are reserved for the sentenced. In other words, rather than the structure itself, it is the population held within which dictates proximity to the community. More recent research demonstrates that, regardless of whether they are imprisoned in jails or prisons, remand prisoners report anxiety over the management of the mundane details of everyday life (Casale, 1989; Pelvin, 2019; Reed 2011). Reed's (2011) fieldwork in Papua New Guinea highlights remand prisoners' continued focus on life at home, manifested by both the

possibility that they may not receive a custodial sentence, and therefore would be free to resume their life at home, and by their frequent trips outside the prison to the courthouse, where they escape the conditions of confinement and can interact with family and friends. Remand prisoners are described as maintaining ‘one [foot] inside the gaol and one outside it’ (Reed, 2011: 534). Remand prisoners’ attention to their everyday lives is an added dimension to one of Sykes’ (1958) pains of imprisonment. Sykes (1958: 66) found that community relationships deteriorated after ‘months and years’. However, for those coming into custody on remand, the question of relationship stability may have yet to cross their mind. In contrast to sentenced persons, who have had their ties to the community formally severed through the imposition of a sentence of imprisonment, remand prisoners remain in limbo. Rather than fixating on the potential weakening of family relationships, remand prisoners are focused on their absence from home and family (Casale, 1989; Pelvin, 2019; Reed, 2011). These findings correlate with recent research on police detention (Skinns & Wooff, 2020). Based on observations and interviews across custody areas in four English police forces, Skinns and Wooff (2020) explored the pains experienced by individuals detained in police custody. While detainees voiced their concern over the potential impact their detention may have on relationships with family, they also expressed more urgent anxieties over daily routines (Skinns & Wooff, 2020). Police detainees were worried about the impact of their arrest on ‘everyday routines such as collecting children from school or collecting medication for family members’ (Skinns & Wooff, 2020: 6). Skinns and Wooff (2020: 6) describe this reality as ‘the fear of being cut off’ from the community. Given the research pointing to the proximity of remand prisoners to the community, it is worth investigating whether there are varying degrees to the pains of separation from family and community, particularly amongst a group of unconvicted or unsentenced prisoners with an uncertain future.

4.1. Adapting to prison

Prisoners who have little contact with their family and communities are at a higher risk of self-harming and suicidal behaviour (Denov & Campbell, 2004; Liebling, 1999); a risk which escalates further for prisoners unable to participate in pro-social activities, such as vocational programmes and leisure activities (Gibbs, 1982; Liebling & Maruna, 2005). Liebling and Maruna (2005: 11) suggest that imprisonment is ‘far more difficult for those prisoners who were not able to find their way into jobs, activities, and social networks in prison’. Adapting to the conditions of a prison environment and its culture, as well as adjusting to separation from

social networks of support, is made more difficult by the absence of purposeful activities (Freeman & Seymour 2010; Liebling & Maruna 2005). Accounts of daily schedules for remand prisoners point to attempts to manage significant periods of idle time (Casale, 1989; Elger, 2009; Freeman & Seymour, 2010; Pelvin, 2019). In his study of remand prisoners detained in Switzerland, Elger (2009: 78) reports that activities ‘were limited to watching television, playing games, reading or lying in bed and doing nothing’. Studies with remand prisoners in England and Wales (Casale, 1989; King & Morgan, 1976), Ireland (Freeman & Seymour, 2010), Switzerland (Elger, 2009), and Canada (Pelvin, 2019) found vocational programmes in prisons were reserved for sentenced prisoners, leaving the remand population to fill their own time. In their study of young adults detained on remand in Ireland, Freeman and Seymour (2010) found that this sub-population within prison was motivated to participate in employment programmes and leisure activities, but had little opportunity to do so. Without access to productive distractions, remand prisoners are left without any ‘legitimate means for releasing frustration and anxiety’ (Freeman & Seymour, 2010: 127). The lack of stimuli for remand prisoners is one contributing factor to their difficulty adapting to and coping with life in prison (Elger, 2009) and has been flagged as a possible reason for the high prevalence of self-harming and suicidal behaviour amongst this group of prisoners (Liebling, 1999).

In the absence of social support, and with limited opportunity to distract themselves meaningfully in prison, remand prisoners struggle to adapt to prison life (Birmingham et al., 1996; Davoren et al., 2015; Humber et al., 2013; Liebling, 1999). While there is limited research in the field of prison sociology on the effects of remand, the fields of psychiatry and psychology have explored the mental health of remand prisoners using quantitative methods, such as surveys (Birmingham et al., 1996; Davoren et al., 2015; Fazel & Danesh, 2002; Parsons et al., 2001). In 2015, researchers in England found older remand prisoners ‘had high rates of psychotic illnesses and deliberate self-harm, comparable to younger remand prisoners’ (Davoren et al., 2015: 753). High rates of mental health issues have also been identified amongst male remand prisoners (Fazel & Danesh, 2002) and women detained pending trial or sentencing (Parsons et al., 2001). While quantitative studies identify mental health issues amongst remand prisoners and point to policy and operational challenges inhibiting early detection of mental health issues, there is a lack of qualitative data which would allow researchers to explore the relationship between remand prisoners’ mental health and the conditions and culture within prisons. Absent from the literature is the role of the prison and the remand process, such as interactions with courts, on remand prisoners’ mental health.

Liebling (1999) briefly explored factors which may contribute to the disproportionately high rate of suicide amongst remand prisoners. As part of her research on suicide in prisons, Liebling (1999: 298) highlights the risk factors exclusive to remand prisoners, such as the ‘tension and uncertainty of the pre-trial phase, [and] the proximity of the offence’. Beyond Liebling’s (1999) short analysis, however, there has been little research into remand prisoners’ mental health from the field of prison sociology and ethnography, save to say there is a problem (Pelvin, 2019). Existing studies on remand within these fields of study point to mental health issues amongst remand prisoners, but do not explore the effects of prison life or culture on this prison sub-population. Over two decades ago, Liebling (1999: 340) commented on the ‘neglect of prison suicide in sociological studies of prison’, which still rings true for studies exploring the experiences of those detained pending trial or sentencing.

5. An experience defined by uncertainty

Following their abrupt removal from society, remand prisoners face uncertainty about the outcome of their case and their future. While they wait in prison for news of their criminal case, remand prisoners are left to worry about the actors in the criminal justice system who will influence or shape their future, such as police conducting the investigation and decisions by the CPS on charges (Klofas, 1990). By virtue of their confinement, remand prisoners must rely on others to gain information about the progress of their case and their future (Brookman et al., 2001; Casale, 1989; Ericson & Baranek, 1982; Pelvin, 2019). Casale (1989) describes her sample of female remand prisoners at HMP Holloway as being desperate to understand the criminal process, but unable to communicate effectively with counsel due to both the unavailability of telephone calls and the geographical distance between the prison and their solicitor. Instead, women depended on each other to understand the criminal justice system, sharing personal stories as advice on effective means of navigating the criminal process (Casale, 1989). Given their struggle to maintain communication with the outside world, a remand prisoner effectively becomes a ‘dependant rather than a defendant in the criminal process’ (Ericson & Baranek, 1982: 24).

Consistent across the limited literature on remand prisoners is the difficulty managing criminal cases from the confines of a prison (Brookman et al., 2001; Casale, 1989; Ericson & Baranek, 1982; Freeman & Seymour, 2010; Pelvin, 2019; Vacheret & Brassard, 2015). Following interviews with 18 prisoners on remand in England and Wales, Brookman et al. (2001: 198)

found that ‘one of the most persistent difficulties reported by men in custody awaiting trial was access to their legal representative’. Barriers to communication between client and counsel range from defence counsel facing difficulties with scheduling prison trips into their busy daily dairies (Pelvin 2019) to rigid and inflexible prison routines (Brookman et al., 2001) and outdated telecommunications systems that prevent effective contact with counsel (Pelvin, 2019). Thirty years ago, Casale (1989) described a lack of access to writing materials for women detained on remand. Despite the passage of three decades and the introduction of telephones inside prisons, remand prisoners continue to struggle to make and maintain contact with counsel (Pelvin, 2019). In Toronto, Canada, Pelvin (2019: 78) found that:

...to contact their lawyers, [remand prisoners] must reach them at a land line number answered by a live attendant. If an automated system picks up the call, the phone will disconnect. If a live attendant does answer the phone, the call cannot be transferred or it will be disconnected. As a consequence, many are unable to contact their lawyers through the regular phone system.

Prisons have largely failed to keep pace with technological advancements in the community, the effect of which has been to stymie remand prisoners’ efforts to engage with counsel. In response to these challenges, defence counsel report a need for remand prisoners to be ‘more proactive’ than other clients (Canadian Civil Liberties Association, 2014: 12), as prison regimes obstruct face-to-face meetings between counsel and client (Brookman et al., 2001). Defence counsel describe time spent with remand prisoners as ‘constrained due to the prison routine, fixed meal times and the availability of staff to escort prisoners to interviews with solicitors’ (Brookman et al., 2001: 199). In Canada, Vacheret and Brassard (2015) found defence counsel reported difficulties communicating with remand prisoners due to factors such as long wait times and insufficient locations to hold confidential meetings inside prisons. In these accounts, the prison is depicted as a two-way barrier to communication between counsel and client. Prisoners are unable to reach out, while their legal representatives are unable to reach in. In the absence of information about their case, remand prisoners are left uncertain about their legal options, the progress and status of their criminal case, and its potential outcome (Casale, 1989; Pelvin, 2019). These accounts, however, provide only one side of the story. While research points to a myriad of obstacles faced by remand prisoners to engage with counsel, little is known about remand prisoners who navigate the criminal process unrepresented. Wider and more systemic access to justice issues are overlooked in the literature on remand. At present, there is

little information on remand prisoners' experiences applying for and relying on legal aid, approaches they apply to retain counsel from within prison, and the factors influencing their decision on whether or not to hire legal representation. In light of sustained cuts to legal aid funding in many western democratic societies (Flynn & Hodgson, 2017; Preloznjak, 2017), as well as the growth in the number of unrepresented defendants in criminal courts (Gibbs, 2016), these issues merit investigation and would offer a more complete account of remand prisoners' experiences accessing justice.

5.1. Unknown length of detention

Remand prisoners' uncertainty over their criminal case is further exacerbated by the unknown length of their detention. This prison sub-population is powerless against the institutions working behind the scenes on issues of liberty interests (Ericson & Baranek, 1982; Kellough & Wortley, 2002; Ugelvik, 2013; Vacheret & Brassard, 2015). Ugelvik (2013) describes remand prisoners' relationship with the criminal justice system as one of exclusion. Remand prisoners 'wait to hear from one of [the criminal justice system's] messengers about where they are in the system or where they will be, hopefully, in the near future.' (Ugelvik, 2013: 158). From their physical detention to the unfolding of their criminal case in court, remand prisoners are surrounded by institutions and actors controlling their behaviour as well as the processes and decisions impacting their future (Ugelvik, 2013). Remand prisoners report feeling that they have little to no control over the management of their criminal case or their future (Ugelvik, 2013). The feelings of powerlessness experienced by remand prisoners effectively work as a strategic tool by the state to pressure criminal defendants to plead guilty (Kellough & Wortley, 2002: 187):

...the detention of accused persons appears to be a rather important resource that the prosecution uses to encourage (or coerce) guilty pleas, subsequently reducing both the number of criminal trials and the number of cases that get filtered out of the criminal justice funnel.

By seeking additional time for police investigations or delaying court proceedings, the State uses remand prisoners' time against them, creating an incentive for detained defendants to enter into negotiations for a plea bargain in the name of closure (Euvrard & Leclerc, 2017; Kellough & Wortley, 2002; Vacheret & Brassard, 2015). For decades, quantitative research on bail and

lower court decisions have suggested that pre-trial custody increases the likelihood a defendant will plead guilty (Ericson & Baranek, 1982; Feeley, 1979b; Friedland, 1965). More recently, studies have shown that remand prisoners enter a guilty plea in higher proportion to their bailed counterparts (Heaton et al., 2017; Kellough & Wortley, 2002; Sacks & Ackerman, 2012). In their review of 634 felony cases in New Jersey, Sacks and Ackerman (2012) found that cases with defendants detained on remand reached a speedier disposition than those defendants released on bail, as remand prisoners tended to plead guilty more frequently. However, a swift disposition amongst remand prisoners is not exclusive to those charged with serious offences, such as felonies. Time spent detained on remand has also been found to encourage guilty pleas in less serious cases, too. In their review of 380,689 misdemeanour cases in one Texas county, Heaton et al. (2010) found that remand prisoners were 25 per cent more likely to plead guilty than similarly situated persons released to the community on bail. While quantitative studies point to a troubling trend, far less is known about the factors which influence decisions by remand prisoners on whether or not to enter a guilty plea.

Amongst the qualitative and mixed methods studies conducted with remand prisoners, a small subset focuses on the plea entered by this group of defendants in court (Euvrard & Leclerc, 2017; Kellough & Wortley, 2002; Vacheret & Brassard, 2015). These studies have shown that the detention of the presumptively innocent ‘can constitute structural coercion, putting pressure on the accused and inducing them to plead guilty’ (Euvrard & Leclerc, 2017: 526). In their mixed methods study in Toronto, Canada, Kellough and Wortley (2002) reviewed 1,800 criminal cases across two courts and supplemented their analysis with interviews with remand prisoners, finding that lengthier periods of time in pre-trial detention increased the likelihood a criminal defendant would plead guilty. Several reasons were provided by participants for their decision to plead guilty, including escaping conditions of confinement in remand facilities and feeling hopeless about the outcome of their case (Kellough & Wortley, 2002). Following interviews with 23 convicted individuals who had experience of being detained on remand in Montréal, Canada, Euvrard and Leclerc (2017: 532) found that the conditions of remand and the feelings of ‘stress, anxiety and uncertainty associated with remand led the accused to feel that they had no choice but to plead guilty in order to escape a difficult situation’. For certain remand prisoners, the deprivation of liberty and its associated pains was enough to pressure them to plead guilty in order to end the uncertainty associated with both their criminal case and their future. However, Euvrard and Leclerc (2017) also found that, for a small group of remand prisoners, pre-trial detention was not a coercive experience. Accused persons with previous

experience in and of the justice system viewed remand as a tool which could be used in their favour. For instance, by drawing out their time on remand, and thereby lengthening legal proceedings, these remand prisoners believed they could get a better deal from the Crown, usually in the form of a lesser sentence, in exchange for a guilty plea. However, only four of their participants reported this sort of behaviour, and all four of them ended up pleading guilty. Further study is required to investigate not only the conditions and features of remand which incentivize (or coerce) remand prisoners to plead guilty, but also those which influence remand prisoners' decisions to maintain a plea of not guilty.

5.2. *Remand as a liminal space*

Scholars exploring the practice of remand apply descriptions of 'liminality' to illustrate time spent in pre-trial detention. Gibbs (1982: 35) and Neustatter (2002: 52) described jail as a 'limbo', with Gibbs describing prisoners in jail as being 'between worlds' (Gibbs, 1982: 35). In prisons in France, Marchetti (2002: 423) described time as remand as 'stagnant, sterile... (temps mort, 'dead time')'. Courts, too, employ the use of 'dead time' to characterize periods of time spent on remand (*R v. Wust*, 2000). These terms capture the unavoidable dichotomy of pre-trial and pre-sentence custody. It is the deprivation of liberty in the absence of a finding of guilt or the imposition of a formal sanction. Officially, it is neither punishment nor censure as courts have yet to determine culpability or craft a fit sanction (Husak, 2011; Kolber, 2013; Lippke, 2016; Robinson, 2001; Slobogin, 2003). Unconvicted and unsentenced prisoners live in a space used to punish the guilty, and sometimes literally in the same building – on the threshold of censure and penalization.

The term 'liminality' originates from anthropology. First employed in 1909 (van Gennep, 1909), liminality was developed as a term to describe the space between transitions in life, such as birth, death or marriage, or 'the specific spaces of betweenness, where a metaphorical crossing of some spatial and/or temporal threshold takes place' (Moran, 2013: 342). The concept suggests ritual transitions are marked by three phases: separation from the old self, liminal, and reintegration back into the social structure (Turner, 1967; van Gennep, 1909). As an individual moves into the second, liminal phase, his/her characteristics are ambiguous (Turner, 1967). Research by van Gennep (1909) and later by Turner (1967) characterized the liminal space as 'no-man's-land' between distinct identities (Chamberlain & Johnson, 2013: 1249). This anthropological concept of liminality is applicable to political, social and cultural

situations where states, institutions or individuals find themselves in ritual transitions, such as the process of restructuring probation services (Robinson et al., 2016), and subjects' experience of police custody (Skinns & Wooff, 2020), immigration detention (Ugelvik & Damsa, 2018), and prison visiting rooms (Comfort, 2003; Moran, 2013). It has also been applied in the context of pre-trial detention to describe the uncertain position of this group of prisoners, given that the unconvicted person is legally innocent, but subject to treatment reserved for the guilty (Fishwick & Wearing, 2016).

On admission to custody, remand prisoners undergo a shift from a person without limitations on their individual rights and freedoms to a person subject to the consequences associated with incarceration. This detachment from their former selves includes the loss of identity and an 'attack on self-image' (Ugelvik, 2013: 170). During their detention, which could be characterized as the liminal phase, remand prisoners struggle to adapt to prison life and express concern about the daily needs of their friends and family (Casale, 1989; Irwin, 1985; Pelvin, 2019; Ugelvik, 2013). It is a time marred by uncertainty over the life left behind in the community and the life awaiting them at the end of the criminal process. The final stage of the concept of liminality is reintegration, which marks the end of the transition (Turner, 1967; van Gennep, 1909). However, the lasting impact of remand on its subjects, if any, is unknown. There is no known study exploring experiences of remand prisoners who were either unconvicted for their alleged offence or who were convicted but did not receive a custodial sentence. Neither was any research identified with sentenced persons, who were detained in custody before sentence, investigating the long-term impact of remand. While current studies with remand prisoners can be used to illustrate the first and second phase of liminality, there is no research examining how a person transitions out of remand and who they find themselves to be on the other side.

6. Conclusion: An incomplete picture of remand

The experience of remand has been called 'one of the most taxing and unstable prison experiences' (Freeman & Seymour, 2010: 138). This group of prisoners, whose rights have been limited by the State, face living in conditions of confinement, separated from family and friends, with little information about their criminal case. While research points to the difficulties of being incapacitated before trial or sentencing, much remains to be explored about remand prisoners' experiences. To date, research on remand remains polarized, exploring

either experiences of prison, police and courts or the effects of remand on the outcome of a criminal case (Casale, 1989; Pelvin, 2019; Ugelvik, 2013). However, these experiences and effects are not mutually exclusive. Research has shown that prison conditions and the court process lead to feelings of hopelessness, which in turn impact the decision on which plea to enter in court (Euvrard & Leclerc, 2017; Kellough & Wortley, 2002; Vacheret & Brassard, 2015). Each study tells a part of the story, but none has yet to marry these lines of inquiry together to paint a more complete picture of the experience of being remanded to custody pending trial or sentencing. Further, current studies fall short of adding depth to the adjectives applied to describe pre-trial and pre-sentence custody. Few, if any, studies move beyond providing an account of poor conditions of confinement to explore how prison life, from its static features to its culture, impact the individual detained on remand. Applying or developing a conceptual framework to experiences of remand may find similarities with pains identified amongst sentenced persons (Crewe, 2015), immigration detainees (Griffiths, 2013; Hasselberg, 2016; Turnbull, 2016; Ugelvik & Damsa, 2018) and those in police custody (Skinns & Wooff, 2020), but it may also shed light on pains which are unique to those individuals whose rights have been restricted before trial or sentencing.

Chapter Three: Remand as a Quasi-Penal Measure

'The bail/custody decision raises some of the most acute conflicts in the whole criminal process' (Campbell 2019: 236).

1. Introduction

Policies and practices designed to reduce or contain risk are increasingly common within (and beyond) the criminal justice system (Ashworth, 2006; Ashworth et al., 2013; Lomell, 2012; Slobogin, 2003; Robinson, 2001; Zedner, 2007, 2012, 2016). Over the last two decades, 'criminal law or criminal law-like tools' (Ashworth et al., 2013: 1) have been implemented to detain individuals presenting a risk of committing future harms (Lomell, 2012; Robinson, 2001; Slobogin, 2003; Zedner, 2007, 2012, 2016). These measures, however, have been sidelined to the borders of punishment, with scholars suggesting a temporal distinction between punishing past wrongs and preventing future crimes (Roberts, 2005; Robinson, 2001; Slobogin, 2003). A general consensus has emerged in the penal-theoretical literature that 'pre-trial detention is not (formally) punishment' (Duff, 2013: 119). Instead, it sits at the periphery, accompanied by other forms of preventive detention (e.g., the post-sentence incapacitation of sexual offenders). Though it may look like punishment, even feel like punishment, pre-trial detention is excluded from the punishment club. It has been described as a 'quasi-penal method' (Zedner, 2016: 8), a State intervention 'perilously close to punishment' (Lippke, 2014: 116), and a 'punishment look-alike' (Kolber, 2013: 1142). This indecisive language captures the difficulty of conceptualizing remand. It is a practice full of contradictions. Its outcomes mirror those of formal punishment, specifically imprisonment, yet its purpose is aligned with prevention. Though not (purportedly) intended as punishment at the time the decision is made to deny bail, time spent in pre-trial and pre-sentence detention is recharacterized as punishment at sentencing, when a term of imprisonment is reduced to take account of time already served. These, and other, contradictions raise pertinent questions as to the relationship between punishment and the practice of confining the (legally innocent) unconvicted and the (legally guilty) unsentenced, as well as the credibility of the claim that remand imprisonment does not 'count' as punishment.

This chapter examines the theories underpinning detention before trial and sentencing with a view to theorizing remand. It begins by examining the purposes of pre-trial and pre-sentence detention, and scholarly arguments about its legitimacy as a practice imposed by the State

against its citizens. The chapter then investigates the concept of dangerousness and its centrality to decisions to deny bail and remand a person to custody, paying particular attention to the question of whether determinations of dangerousness violate moral autonomy. Next, it explores the compatibility between the foundational principle of the presumption of innocence in modern criminal justice systems and the practice of detention pre-conviction, before moving into a closer examination of the intent of pre-trial detention and the harms it inflicts. While most of the chapter focusses on pre-trial custody, the last section examines pre-sentence detention. Pre-trial and pre-sentence custody have been separated in this manner because of the distinction in legal status between the unconvicted and the unsentenced. Questioning the practice of detaining a person post-conviction but pre-sentencing raises fewer moral dilemmas resulting from the finding of guilt, and therefore requires exploring a different set of questions to properly theorize remand in its entirety.

2. Purposes

As highlighted in Chapter One, pre-trial detention was originally conceptualized as a means of guaranteeing a defendant's participation in criminal proceedings (Manson, 2004; Trotter, 1999). Defendants believed to present a risk of absconding could be remanded to custody to ensure they appeared before the courts to be judged (Manson, 2004; Trotter, 1999). In the first half of the 20th century, courts began expanding the use of pre-trial (and pre-sentence) detention to confine individuals considered a risk to public safety (Manson, 2004; Trotter, 1999). In the 1970s, when bail laws were codified in many western jurisdictions, three grounds were prescribed in legislation (Trotter, 1999). A criminal defendant in England and Wales may be denied bail if the court is satisfied that, if released to the community on bail, the person would:

- a) Fail to surrender to custody;
- b) Commit an offence while on bail; or
- c) Interfere with witnesses or otherwise obstruct the course of justice (Bail Act 1976 s.4, Sch. 1 Pt. 1, paras 2-6).

The legislative aims of pre-trial (and pre-sentence) custody seek to achieve a future good, namely the prevention of some type of future harm. Within the extant literature, the justification for these grounds is explored by dividing the three purposes into two categories. The first category examines pre-trial detention as a means of preventing the commission of future crimes

(i.e., criterion (b) above: Duff, 2013; Miller & Guggenheim, 1990; Tribe, 1970), while the second explores pre-trial detention for the purpose of administering justice (i.e., grounds (a) and (c): Husak, 2013; Kitai-Sangero, 2009; Miller & Guggenheim 1990; Tribe, 1970). Scholars parse out the criteria for denying bail to demonstrate that certain aims, such as securing a fair trial, can be appropriately pursued by the State, even where it involves restraining presumptively innocent people (Duff, 2013; Husak, 2011, 2013; Lippke, 2014, 2016; Miller & Guggenheim, 1990; Tribe, 1970).

The State has a duty to administer a fair trial and, as such, it requires measures it can rely on to meet its obligation, including mechanisms to ensure a criminal defendant stands before the court and faces allegations of criminal wrongdoing (Duff, 2013; Miller & Guggenheim, 1990; Tribe, 1970). In their analysis of whether pre-trial detention constitutes punishment, Miller and Guggenheim (1990: 364) write that, ‘Upon a proper showing that release of the accused would endanger the validity of the trial process, a court may detain him or her without bail. Such detention does not constitute punishment’. The presence of a clear, non-punitive purpose for detention purportedly provides a defensible ground to detain a person before trial (Duff, 2013; Miller & Guggenheim, 1990; Tribe, 1970). Detention for purposes related to the administration of justice cannot be considered punishment, as the intent of the State is neither to incapacitate nor censure, but to meet broader objectives of the criminal justice system (Duff, 2013; Miller & Guggenheim, 1990). In evaluating the justifications for pre-trial custody, Tribe (1970: 377) makes the argument that the detention of a person for the purpose of prosecution is the ‘antithesis’ to the confinement of a person in the name of preventing future crimes. Under grounds (a) and (c) of the Bail Act 1976 (see above), a person is not being preventively detained to stop future crimes (Miller & Guggenheim, 1990; Tribe, 1970). Instead, the person is confined to permit the State to adjudicate charges (Miller & Guggenheim, 1990; Tribe, 1970). Pre-trial detention for purposes related to the criminal trial contribute to wider aims of the criminal justice system, including general deterrence (Tribe, 1970). If the State were unable to impose punishments, resulting from a person fleeing the country before trial or tampering with witnesses, the deterrent effect of the criminal law would be lost (Tribe, 1970). In essence, purposes unrelated to the individual detained, such as the trial or the general deterrent effect of the criminal law, justify the use of detention against the presumptively innocent as something other than punishment (Miller & Guggenheim, 1990; Tribe, 1970).

In contrast, the justifiability of pre-trial detention on the sole ground of preventing a person from committing offences while on bail is questionable (Duff, 2013; Husak, 2013; Kitai-Sangero, 2009; Lippke, 2016; Miller & Guggenheim, 1990; Tribe, 1970). Inhibiting liberty interests in the name of stopping future crimes is problematic insofar as it is a form of State intervention initiated against a person in absence of an illegal act committed by that individual (Duff, 2013; Kitai-Sangero, 2009; Lippke, 2014, 2016; Miller & Guggenheim, 1990). The purpose is punitive as it seeks only to incapacitate a person, thereby offering an insufficient distinction from legal punishment (Duff, 2013; Husak, 2013; Kitai-Sangero, 2009; Lippke, 2014, 2016; Miller & Guggenheim, 1990). During a review of the grounds for pre-trial detention, Duff (2013: 128) focusses on the lack of connection between a criminal defendant and crimes unrelated to the obstruction of justice, explaining, ‘since facing trial does not create an extra incentive to commit offences unconnected to the trial, we have no reason to think her [the criminal defendant] more likely than other citizens to commit other offences’. Without a clear, non-punitive purpose, the use of pre-trial detention to prevent any future crime unreasonably interferes with the presumption of innocence (Duff, 2013; Husak, 2013; Kitai-Sangero, 2009; Miller & Guggenheim, 1990). Unless the prevention of harm can be tied to the aims of the State with regard to the administration of justice, pre-trial detention on the ground of preventing *any* crime is unjustified as it too closely resembles punishment (Duff, 2013; Husak, 2013; Kitai-Sangero, 2009; Miller & Guggenheim, 1990; Tribe, 1970). However, the use of pre-trial custody to prevent the commission of offences should not be so quickly dismissed (Duff, 2013). There may be occasions where the suspension of individual liberty interests is required to achieve wider State objectives, such as the safety of the public. Some latitude is needed to respond to potentially complex bail cases where, for example, serial offenders with a history of violent behaviour and offences committed on bail may require detention before trial in the interest of public protection (Duff, 2013; Lippke, 2014). Flexibility in the use of so-called ‘quasi-penal method[s]’ (Zedner, 2016: 8) allows the State to respond to the risk presented by a criminal defendant (Duff, 2013; Lippke, 2014). In the absence of ground (b) in the Bail Act 1976 (see above), the State would be left without any recourse to protect the public in cases where a defendant presents a risk of committing a criminal offence, if released to the community on bail.

The delineation between grounds for denying bail and remanding a person to custody before trial is puzzling (Kitai-Sangero, 2009; Lippke, 2014, 2016). The purportedly appropriate use of custody to secure a trial by preventing a person from obstructing justice and its improper

use to prevent harms unrelated to the trial *both* involve the incapacitation of the presumptively innocent to prevent some form of future wrongdoing (Kitai-Sangero, 2009; Lippke, 2014). Suggesting that pre-trial detention is a defensible intervention to secure justice ignores the fact that maintaining the integrity of the trial process includes an element of prevention; the same element present in decisions to deny bail for fear a bailee will commit offences on release (Kitai-Sangero, 2009; Lippke, 2014, 2016). Pre-trial prisoners are treated like conduits; as a means to an end. Through their detention, the State is able to achieve objectives beyond the context of the specific individual confined. By incapacitating a person before their trial, the State can guarantee that justice will be delivered and that society will be protected from potential future harms. From this lens, the three separate criteria on which to deny bail are not as juxtaposed as the literature suggests (Martufi & Peristeridou, 2020; Smith, 2021). On closer review, the three grounds ultimately ‘seek to pre-empt unlawful behaviour by the denial of liberty’ (Smith, 2021: 52) and, in doing so, create a State regime rooted in prevention.

Part of the difficulty with theorizing remand is the lack of recognition ‘that existing legal categories are dissolving and new categorizations are needed’ (Zedner, 2007: 188). Asserting that certain purposes of pre-trial detention are unjustified due to their proximity to punishment does not preclude their justified use under another category. As highlighted in Chapter One (see Section 2), criminal justice rhetoric over the past four decades has resulted in the increased use of control measures by the State; measures which focus on preventing harm rather than punishing wrongdoing (Ashworth, 2006; Ashworth et al., 2013; Lomell, 2012; Robinson, 2001; Slobogin, 2003; Zedner, 2007, 2012, 2016). Although the history of pre-trial detention predates the preventive turn in criminal justice, its use has proliferated across many Western jurisdictions (Doob & Webster, 2013; Hucklesby, 2009; Player et al., 2010). This reliance on pre-trial (and pre-sentence) incarceration has garnered little scholarly attention, save to criticize the practice for its punishment-like outcomes (e.g., incapacitation). At issue, however, is whether these criticisms would hold if pre-trial detention was classified as a preventive measure. It is not clear that concerns over the purposes of pre-trial detention would persist if the practice was viewed as something other than a form of punishment. As the scope of the criminal justice system expands to include the prevention of future harm, new categorizations are needed to reflect this shift (Zedner, 2007). Required is an acceptance of the change in the ‘main paradigm of crime control’ (Lomell, 2012: 84) from punishing wrongs to preventing future crimes (Lomell, 2012; Robinson, 2001; Slobogin, 2003; Zedner, 2007, 2012, 2016). Such a recognition would create space to engage with important questions about the ways in

which the preventive turn has been operationalized, such as exploring the evidence used to support a decision to deprive a person of their liberty in advance of a finding of guilt, and examining whether or to what extent procedural safeguards are in place to temper the potentially overzealous use of preventive practices (Zedner, 2007). While prevention, in and of itself, may not be a problematic aim of the State, the manner in which it is carried out must be closely scrutinized to prevent a regime which permits the incapacitation of *any* individual deemed to pose a risk to society (Corrado, 1996; Duff, 2013; Lippke, 2014; Morris, 1974).

3. Dangerousness v. Desert

The criminal law acts as a vehicle for the State's demonstration of respect for the rights, liberty, and moral autonomy of its citizens, listing the circumstances justifying interventions and ultimately limiting intrusions into private lives unless those circumstances present themselves (Ashworth, 2006; Ashworth & Zedner, 2014; Ferzan, 2011; Schoeman, 1979). Autonomous individuals who intentionally interfere with others' ability to live freely demonstrate an incapacity or an unwillingness to exist harmoniously with others or, equally, without the need for State intervention (Ashworth & Zedner, 2014; Duff, 2001; Schoeman, 1979). Retributive theories of punishment justify State intervention by reasoning that 'not to punish a morally responsible offender would constitute a failure to acknowledge that individual as an autonomous agent' (Zedner, 2016: 6). The punitive response by the State against a private citizen is justified by the offender's wrongdoing (Ashworth & Zedner, 2014; Duff, 2001; Ferzan, 2011). Unlike punishment for past wrongs, however, preventive detention focuses on future crimes and, in practice, on measures to incapacitate persons whose blameworthiness has yet to be—and may never be—established (Corrado, 1996; Kitai-Sangero, 2009; Robinson, 2001; Slobogin, 2003; Zedner, 2007). The temporal distinction between past and (potential) future wrongs serves as a basis for distinguishing pre-trial custody from punishment and pushing it toward a form of preventive detention. In the absence of a conviction, pre-trial detainees are not criminal wrongdoers (Kolber, 2013; Roberts, 2005; Robinson, 2001; Slobogin, 2003). They have not been convicted of a crime and are therefore not being punished (Kolber, 2013; Roberts, 2005; Robinson, 2001; Slobogin, 2003). Instead, their confinement is justified over concerns for their potential dangerousness—not for something they have done, but for something they *may* do (Husak, 2013; Slobogin, 2003). Pre-trial detention is therefore not exclusively a response to a criminal act already committed (Husak, 2013; Robinson, 2001; Slobogin, 2003).

To apply the legislative criteria for bail, judicial office-holders consider whether, based on character and previous acts, the individual standing before the court presents a serious enough danger to society to warrant remanding the person to custody (Zimring & Hawkins, 1986). An early and continued criticism of decision-making frameworks for bail (and remand) centred on the vagueness of the concept of dangerousness (Appleman, 2012; Ervin, 1983; Morse, 1996; von Hirsch, 1972). In contrast to the distribution of formal punishment, which is rooted in blameworthiness, bail decisions required courts to predict the prospective level of risk or dangerousness a person presents to the community (Ashworth, 1995). Historically, bail provisions stipulated the criteria for detention, but provided no guidance to judicial office-holders on factors to consider when deciding whether the person presented too high a risk to release on bail and, importantly, a framework for assessing when a person passes the threshold from manageable to unmanageable risk (Ervin, 1983; Morse, 1996; von Hirsch, 1972). Significant discretion was bestowed on judicial office-holders to interpret broad legislative parameters for the use of bail, such as determining what evidence satisfied the court in its assessment that the person would, if released on bail, commit an offence (see Chapter One, Section 2; see also Dhimi, 2010; Ervin, 1983). Though guidelines were eventually developed in several countries, including England and Wales (Dhimi, 2010; Smith, 2021), the concept of dangerousness is still substantially ambiguous in practice (Appleman, 2012; Tonry, 2019). Highlighting the lack of scrutiny on practices leading to pre-trial detention, Appleman (2012: 1340) writes that, ‘the idea of determining dangerousness to the community is an incredibly broad concept, which could encompass almost anything, from physical danger to conspiracy.’ Courts are left with the task of making predictions of dangerousness; predictions which carry substantial burdens on those declared too great a risk to release on bail. Based on past evidence, courts are charged with determining whether a person will, at some future point in time, commit some type of unknown harm (Appleman, 2012; Dhimi, 2010).

Predictions of dangerousness, however, are problematic for reasons beyond ambiguity. While decades of research point to predictions of dangerousness being wrong more often than right (see, for example, Morris, 1974; Tonry, 2019; Yang et al., 2010), legal scholars suggest that predictions of human behaviour violate respect for moral autonomy (Ashworth, 2014; Corrado, 1996; Ferzan, 2011; Schoeman, 1979). Ashworth and Zedner (2014: 150) explain that ‘the judgement that an individual poses a significant risk of serious harm rests on the claim that he does not have the capacity to choose to do right, for if he did, logically, the prediction could not be accurate.’ The decision to interfere in the lives of the presumptively innocent is to

conclude that an individual does not stand a good enough chance of making the ‘right’ decision to risk release on bail (Corrado, 1996; Ferzan, 2011; Schoeman, 1979; Smilansky, 1994; von Hirsch, 2017). Decisions to deny bail deprive a criminal defendant of fundamental rights based on a probabilistic judgment; a judgment based on necessarily incomplete data about the defendant and their situation (Ashworth & Zedner, 2014; Corrado, 1996; Smilansky, 1994). During a review of the merits of incapacitating dangerous individuals in the name of social protection, Schoeman (1979: 32) explains that ‘to interfere preventively [...] is to diminish the respect accorded to each individual’s legitimate choices, to diminish one’s sense of control over his own fate, and to impoverish the feeling for individual dignity’. Respect for the moral autonomy and human dignity of pre-trial detainees is sacrificed in the name of the social good (Corrado, 1996; Morris, 1974; Schoeman, 1979; von Hirsch, 2017). Through the application of the loose concept of dangerousness, the State demonstrates the malleable limitations on the exercise of its coercive powers.

3.1. Desert through the back door?

The role of past evidence in preventive detention cases suggests a potential means of limiting the concerns highlighted above (Hickey, 1969; Husak, 2013; Lomell, 2012; Zedner, 2016). Based on past evidence, a court determines whether a criminal defendant poses a serious enough risk to either public safety or the administration of justice to warrant their committal to custody (Dhami, 2010; Smith, 2021). Therefore, while pre-trial detention may be preventive (and therefore has forward-looking goals), the requirements necessary to demonstrate the need for the intervention look backward (Hickey, 1969; Husak, 2013; Lomell, 2012; Zedner, 2016). Though pre-trial custody is not grounded in culpability for the offence for which the person has been charged, the individual has displayed, at least historically, a questionable ability or willingness to exercise their freedom in a way that respects the similar freedoms of fellow-citizens (Husak, 2013). The role of past evidence in preventive detention cases, including pre-trial custody, appear to suggest that there may be *something* in the past justifying the State to preventively detain its citizens, despite their presumed innocence for the crime with which they have been charged (Hickey, 1969; Husak, 2013; Lomell, 2012; Zedner, 2016).

In the context of preventive detention, scholars have explored whether past conduct alone can warrant State intervention (Hickey, 1969; Husak, 2013; Lomell, 2012; Zedner, 2016). Husak (2013) argues that incorporating predictors of future dangerousness into penal law would

legitimize the State's intervention by anchoring it to the individual's legally disallowed characteristics. In the absence of guilt for the commission of a criminal offence, forms of preventive detention could be justified by attributing dangerousness to certain personality traits, making a person's dangerousness attributable to them (Husak, 2013). These proposals, while exploratory in nature, are doubtful because of their potential to blur the line between dangerousness and desert (Appleman, 2012; Zimring & Hawkins, 1986). Retributivists hold that a person cannot be deserving of punishment in the absence of criminal wrongdoing (Appleman, 2012; Lomell, 2012; Morris, 1974; Robinson, 2001; Zimring & Hawkins, 1986). As pre-trial detention involves no conviction, thereby eliminating the potential for desert, scholars have looked elsewhere for potential grounds to justify the deprivations the State imposes on the individual (Husak, 2013).

A critical analysis of the notion of punishing dangerousness leads back to the unacceptable practice of denying a responsible person the opportunity to decide to refrain from committing criminal acts (Morris, 1974; Smilansky, 1994; Zimring & Hawkins, 1986). Whether assigning dangerousness as a personal characteristic or assessing its application on a case-by-case basis, as is done today, the concept severely infringes respect for moral autonomy (Ashworth & Zedner, 2014; Corrado, 1996; Ferzan, 2011; Schoeman, 1979; Smilansky, 1994; von Hirsch, 2017). It is frequently within these debates over the morally questionable practice of preventive detention, including pre-trial custody, that scholars have begun applying the word 'pre-punishment' (Tomlin, 2015). The term locates the confinement of the dangerous or those not yet deserving of punishment in an in-between place: they are neither free, nor are they being punished (Tomlin, 2015; Tonry, 2019). It is punishment in its infancy. The intervention looks and feels like punishment, but is denied entry into the punishment club due to the absence of conviction. The reliance on the ill-defined concept of dangerousness and the imposition of an intervention in the absence of desert result in the largely unfettered State practice of incapacitating the presumptively innocent before trial. Save for the requirement that a person commit an alleged criminal offence leading to a bail hearing, pre-trial detention has few restraints. In the name of protecting society from unknown threats of future harm, the State tramples on moral autonomy and human dignity, sacrificing the rights of an ever-growing few for the safety and/or reassurance of the many (Brown, 2013; Goldstein, 2004).

4. The presumption of innocence

One of the core principles of modern criminal justice is the presumption of innocence (PoI: Ashworth, 2006; Campbell, 2019; Ferzan, 2014; Myers, 2017; Tomlin, 2013). A pillar in human rights law, the PoI is represented in domestic legislation in England and Wales (Ashworth, 2006; Myers, 2017; Tomlin, 2013) and rooted in the belief that accused persons should not be denied their liberty until a formal determination of guilt has been made by a court of law (Ashworth, 2006; Hickey, 1969; Lippke, 2016; Stumer, 2010; Tadros & Tierney, 2004; Tomlin, 2013). The principle is a buffer, protecting accused persons from the potential oppressive use of power by the State as they navigate the criminal process (Ashworth, 2006; Campbell, 2019; Ferzan, 2014; Owusu-Bempah, 2016; Stumer, 2010). In recent decades, however, the presumption of innocence has been under threat (Ashworth, 2006; Duff, 2013; Lippke, 2016). The expansion of control measures enacted by the State to limit or reduce the propensity of criminal behaviour, and to appease the public's appetite for safety, have weakened the role of the PoI in the criminal justice system (Ashworth, 2006; Ferzan, 2014).

The conflict between pre-trial detention and the PoI operates on two levels. The first clash results from the decision to deny bail and the processes involved at this decision-making point in the criminal process. The second conflict surrounds the outcome of this decision and, specifically, the ease with which the State is able to maintain a presumptively innocent person in custody. Restrictions on fundamental freedoms, like the right to liberty, must be accompanied by fair procedures (Ashworth, 2006; Trotter, 1999). Procedural safeguards, such as the prosecutorial burden of proving guilt beyond a reasonable doubt at trial, are necessary to prevent imposing punishments on innocent people (Ashworth, 2006; Dhami, 2010; Trotter, 1999). In early stages of the criminal process, however, the burdens required to impose State interventions are less robust. In bail decision-making, the burden of proof is lower than the one required at trial (CPS, 2022). To deny bail, the State need only demonstrate 'substantial grounds' that the accused, if released on bail, would commit offences or interfere with the course of justice (CPS, 2022; Dhami, 2010; Smith, 2021). The outcome of both the bail and trial processes may be the removal of fundamental rights through the imposition of coercive State measures, such as incapacitation. Yet the bail process carries significantly less demanding justifications, despite similar consequences to that of the trial. A reduced commitment to the PoI is further evidenced by legislative amendments, introduced in several jurisdictions, removing the presumptive right to bail for all persons (see Chapter One, Section 2) and

requiring the legally innocent, rather than the State (Crown), to justify to the court why they should be released on bail (Trotter, 2010; Webster et al., 2009). Provisions instituting ‘reverse onus’ clauses absolve the State of having to justify its intrusion into citizens’ private lives, and demonstrate a process which increasingly appears rooted in the presumption of guilt (Campbell, 2019; Myers, 2017). Together, a lower burden of proof, the dissolution of the presumptive right to bail, and ‘reverse onus’ clauses chip away at procedural safeguards in bail decision-making, resulting in a process where violations of individual freedoms can be more easily justified, and where foundational principles of justice come second to interventions purporting to protect the public.

Once a person’s liberty has been restricted before trial, there are limited safety valves available in criminal procedure to protect the individual whose presumptive innocence has been violated. As explored in Chapter One (see Subsection 3.2), England and Wales imposed a threshold on the number of days a person could be detained in custody before trial (i.e., Custody Time Limit: House of Lords, 2021). However, CTLs were designed with loopholes. Within the existing framework, the State can bypass its own time limits with permission from the court (House of Lords, 2021). The process to extend the number of days a person may be detained in custody is informal, and courts have ruled that the State need not comply with formal rules of evidence to prolong the limit on a person’s detention in advance of trial (see *Wildman v Director of Public Prosecutions*). Despite a purported commitment to the PoI, processes have been streamlined to make it easier for the State to detain people in advance of a trial and, once in custody, to maintain them there. Being detained in prison is painful (see Chapter Two), and these pains should be lessened for those who are not morally blameworthy. The presumptively innocent are meant to be shielded from oppressive forms of State power (Campbell, 2019; Myers, 2017). Yet, the contemporary use of pre-trial detention demonstrates a waning commitment to foundational principles of justice and to protections for the legally innocent (Campbell, 2019; Owusu-Bempah, 2016; Stumer, 2010). State efforts to prevent obstructions of justice or harms to society have resulted in the erosion of procedural safeguards and an abasement of the principle that the State use the least restrictive measures consistent with the protection of society against individuals charged with a criminal offence. The ramifications of this ‘procedural side-stepping’ (Zedner, 2016: 9) is a largely unimpeded form of State power which exposes the presumptively innocent to punishment-like outcomes (see Chapter Two).

The presumption of innocence, however, is not a trump card. It may, in certain circumstances, be appropriately interfered with to meet broader State objectives, such as the administration of justice and/or public safety (Ashworth, 2006; Myers, 2017). In other words, the PoI is not a blanket protection under human rights frameworks which precludes any State intervention into the lives of its citizens (Ashworth, 2006; Myers, 2017). If it were, the State would be restricted from justly arresting individuals thought to have committed a criminal offence, or compelling a person to stand trial. Conversely, the State cannot altogether disregard the right to be presumed innocent. A careful balance must be struck between measures to contribute to public safety and respect towards human rights protections afforded to citizens (Myers, 2017; Zedner, 2007). At present, the balance is skewed in favour of State objectives to protect society. The process of denying a person bail involves a lack of robust procedures, demonstrated by the ease with which the state can deprive a person of their liberty and, once that person is in custody, maintain them there. Moreover, the way in which the denial of liberty is operationalized following a decision to deny bail is problematic, mainly due to the reliance on carceral environments as places of confinement for the unconvicted. Would there be fewer concerns around the operational value of the PoI if the denial of liberty for the presumptively innocent looked less like punishment; if their detention required more demanding justifications by the State? These are difficult questions to grapple with in the existing system, where State obligations towards a safe society are pitted against procedural safeguards and human rights, and where the burdensome outcomes of this flawed balancing act fall on a group of individuals charged with a criminal offence.

5. Pain is part of the package

It is rare to find arguments suggesting that pre-trial detention does not inflict some form of hardship on those denied bail (see Chapter Two). In fact, the deprivations associated with pre-trial detention are frequently the justification for defining the practice as ‘punishment in advance’ (Geeraets, 2018: 31). As a result of the harms inflicted on pre-trial detainees, the practice of detention before trial is *almost* punishment (Duff, 2013; Geeraets, 2018; Husak, 2011; Lippke, 2014; Zedner, 2016). Prisoners are deprived of their liberty, removed from their networks of support in the community, and subjected to the pains associated with living in a prison (Casale, 1989; Pelvin, 2019; Ugelvik, 2014). Moreover, this group of prisoners suffers burdens related to the management of their criminal case, including the pressure to plead guilty to bring an end to their suffering (Euvrard & Leclerc, 2016; Kellough & Wortley, 2002;

Vacheret & Brassard, 2015). The experience of individuals in pre-trial detention can generally be considered painful given their similarities to the treatment imposed on sentenced prisoners (Appleman, 2012; Husak, 2013; Lippke, 2014, 2016). Despite their presumed innocence, pre-trial detainees are incorporated into the State's formal system of punishment, presenting a challenge to legal scholars attempting to justify pre-trial detention in its existing form (Appleman, 2012; Husak, 2013; Lippke, 2014, 2016).

However, several scholars argue that the practice of pre-trial detention, despite its outcomes, cannot be considered punishment (Kolber, 2013; Roberts, 2005; Robinson, 2001; Slobogin, 2003). Although pre-trial detention may *feel* punishing, hard treatment is not its intended outcome (Hanna, 2009; Kolber, 2013; Roberts, 2005; Robinson, 2001). Instead, the suffering experienced by pre-trial detainees is a mere by-product of the decision to detain a person before trial (Hanna, 2009; Kolber, 2013; Roberts, 2005; Robinson, 2001). Pre-trial detention is pushed to the margins of punishment based on the purported lack of intent by the State to subject pre-trial detainees to hard treatment. Orthodox definitions of punishment, developed more than a half-century ago, require hard treatment to be deliberately doled out by authorized agents of the State (Feinberg, 1965; Flew, 1954; Hart, 1960). However, there is a growing body of theoretical and empirical research questioning the centrality of State intent to definitions of punishment and the absence of subjective pains from punishment and sentencing theory (Geeraets, 2018; Gray, 2010; Hayes, 2016, 2018; Kerr, 2019; Kolber, 2009, 2013; Sexton, 2015). Hayes (2018: 237) argues that penal objectivism masks variations in experiences of punishment, suggesting that 'by focussing entirely upon what the State wants to do, rather than what it does, we implicitly focus the State's normative obligations to justify its pain delivery on the aims of State actors, rather than on the consequences for individuals and for society'. In contrast, penal subjectivists propose incorporating individuals' negative experiences of punishment into measurements of penal severity (Gray, 2010; Hayes, 2016, 2018; Kerr, 2019; Kolber, 2009, 2013; Sexton, 2015). A few theoretical frameworks have been developed in response to concerns that punishment largely ignores its own experiences (Kerr, 2019). Following a study with prisoners in the U.S., Sexton (2015) conceptualizes punishment as that which is experienced by the person subjected to it, rather than as that which is intended and/or recognized as punishment in law. Sexton (2015: 132) expands the net to include immigration detainees and pre-trial prisoners who 'can still very much experience punishment' based on their subjective experiences of State interventions and despite the lack of State intent to expose them to hard treatment. Hayes (2018), however, is not so quick to altogether remove the

element of intent, proposing a model for measuring the severity of punishment where pains are calibrated in terms of their proximity to State action. Under the proximity model (Hayes, 2018: 249), sentencing authorities could consider ‘as wide a range of pains as possible’ when determining severity. The proximity model develops a typology of pains, beginning with deprivations commonly associated with punishment, such as the loss of liberty, and rippling outward to new categories, such as oblique pains (Hayes, 2018), a concept which borrows from the English law doctrine of oblique intention, defined as knowledge that a consequence is ‘virtually certain’ to follow a decision by the State (or traditionally a person: Hayes, 2016; Williams, 1987). In explaining the legal meaning, Williams (1987: 421) writes,

Oblique intention is something you see clearly, but out of the corner of your eye. The consequence is (figuratively speaking) not in the straight line of your purpose, but a side-effect that you accept as an inevitable or “certain” accompaniment of your direct intent.

Under the proximity model, oblique pains are divided into two categories: general and specific (Hayes, 2018). General oblique pains include harms not directly intended by the sentencing authority, but which may be expected to follow on from conviction, such as the potential struggle to find employment with a criminal record. Conversely, specific oblique pains refer to those which, though not intended directly by the State, are foreseen as almost guaranteed to result from the decision to impose punishment in this particular case (Hayes, 2018). The proximity model begins to bridge the gap between orthodox definitions of punishment, which exclude any peripheral view of the consequences of punishment, and the ever-growing body of empirical research highlighting the pains inflicted by punishment, including subjective experiences.

The proximity model explores the extent to which penal severity could be calibrated to take subjective experiences of morally blameworthy individuals into account (Hayes, 2018). In other words, it applies to sentencing. However, the prospective measurement of severity, through the application of oblique intention, may also be relevant to pre-trial detention. At present, pre-trial detention is excluded from the category of punishment because it does not intend to impose hard treatment on detainees, despite studies pointing to the suffering resulting from confinement before trial (see Chapter Two). However, at the time a decision is made to deny bail and remand a person to custody, the decision-making authority can foresee that the person will be subjected to many of the same pains that are associated with formal punishment

(i.e., imprisonment). While these pains may not be the desired intent of pre-trial custody, prison is not without its well-documented negative experiences (see Chapter Two; Crewe, 2009, 2011; Jewkes, 2002, 2005; Liebling, 1999; Sykes, 1958; Warr, 2016). The individual subjected to pre-trial detention suffers, and their suffering is a foreseeable consequence of the decision by a judicial office-holder to deny them bail and remand them to a prison. Though the extent of the suffering remains unknown at the time a decision is made to deny bail, the deprivation of liberty by confinement to a prison indicate that the person will, in the immediate future, face certain losses (e.g., liberty, family contact, material goods). Applying the concept of (general) oblique intention to decisions on bail would open the door to the possibility of accepting that, though not the desired intent of pre-trial detention, it is foreseeable that incapacitating a person before trial inflicts pain intentionally, and for which the State is therefore responsible.

5.1. Credit for time served

Acknowledging that pre-trial custody inflicts harm at the front-end of the process may help justify its retroactive recharacterization as a form of punishment at the time of sentencing. Though pre-trial detention (purportedly) does not intend to inflict pain, the State acknowledges that those confined before sentencing have undergone some form of punishment (Manson, 2004; Roberts, 2005; Trotter, 1999). To account for this punishment, the State ‘retroactively recharacterize[s]’ (Kolber, 2013: 1142) pre-trial detention as punishment by crediting periods of time spent in custody before conviction and sentencing. As explained in Chapter One (see Section 2), the practice of crediting time towards a sentence has been codified in criminal law in several jurisdictions since the 1960s (Manson, 2004; Roberts, 2005). The rationale is rooted in common law. As there is no power for courts to commence a sentence on the date the accused was remanded to custody, credit schemes were introduced into legislation to prescribe some reduction of a sentence of imprisonment by time already served (Manson, 2004; Roberts, 2005).⁵ The codification acknowledges that an offender has ‘already discharged part of his or her debt to society incurred as a result of their offending’ (Roberts, 2005: 197). Countries have adopted various approaches to awarding credit for time served in pre-trial (and pre-sentence) detention. In England and Wales, credit is an administrative function carried out by HMPPS, who reduce an offender’s term of imprisonment at a ratio of one day for each day spent detained

⁵ There is no power for courts to ante-date a sentence (i.e., no power for courts to begin a sentence on a date in the past, such as on the date the offender was remanded to custody) (Manson 2001; Manson 2004; Trotter 1999). For a complete account of the common-law history on the commencement of a sentence, see Manson 2004.

before sentencing (i.e., 1:1). In contrast, other commonwealth jurisdictions, such as Canada and New Zealand, allow sentencing judges to award credit at their discretion. In Canada, sentencing judges commonly apply credit at a ratio higher than 1:1 in recognition of the subjective experience of pre-trial (and pre-sentence) detention (Bourgon & Grech, 2010; Manson, 2004). Despite separate approaches to crediting periods of time in pre-trial and pre-sentence custody, credit schemes acknowledge that these State measures are experienced as punitive (Manson, 2004; Roberts, 2005).

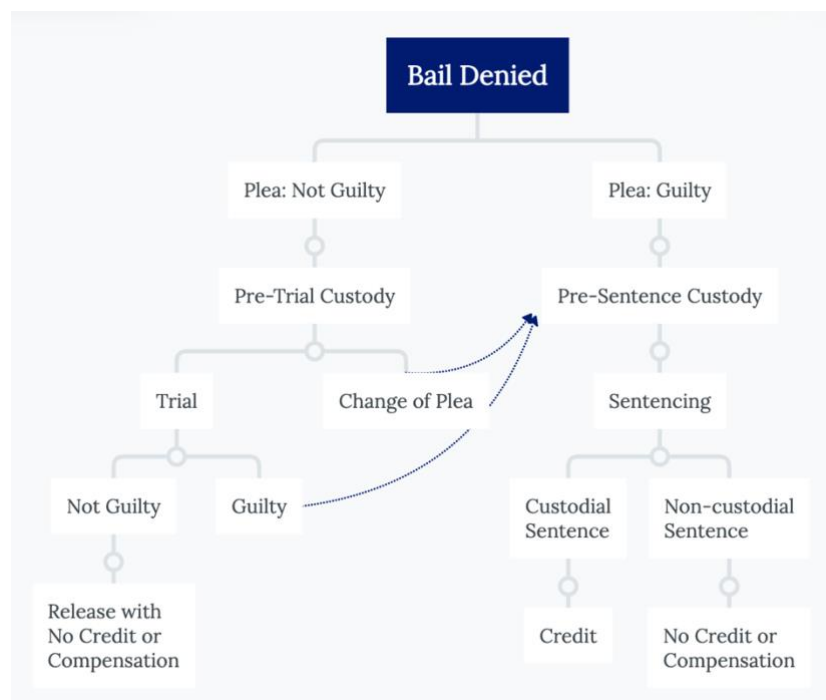
Credit schemes are perplexing for a few reasons. First, the justification for recharacterizing pre-trial detention as punishment is unclear as, at the time the decision was made to deny bail, it was not intended as punishment (Husak, 2013; Kitai-Sangero, 2009; Kolber, 2013; Lippke, 2014; Roberts, 2005). As explained above, the literature is replete with justifications for separating pre-trial detention from punishment, including for its (purported) lack of intent to inflict hard treatment and the absence of moral blameworthiness (see Robinson, 2001; Slobogin, 2003). To justify changing the nature of pre-trial custody as punishment at the time of sentencing would require expanding the limits of punishment theory. In particular, it would necessitate re-conceptualizing intent and hard treatment as criteria for punishment (Kolber, 2013). To legitimize credit schemes, Kolber (2013: 1150) writes that,

...we would have to change the requirement that punishment should be 'intended to be burdensome or painful' to say something very unnatural like 'punishment either is or subsequently was intended to be burdensome or painful'.

Kolber (2013) attempts to find a means of validating the shift from pre-trial custody as preventive detention before sentencing to pre-trial detention as punishment *at* sentencing by adapting the definition of what constitutes punishment. However, altering the criteria for distinguishing punishment from non-punishment is only one of the hurdles presented by credit for time served. Another is the role of pre-trial custody in the measurement and allocation of proportional punishments. One of the central tenets of current (retributive) sentencing theory is that the severity of a punishment should be commensurate with the seriousness of the offence and the offender's blameworthiness for it (Ashworth, 1995; Duff, 2001; Kolber, 2013; von Hirsch, 1972, 2017). While acknowledging that penal severity has typically been measured by duration (i.e., the length of a custodial sentence), Roberts (2005) argues that it would be a mistake for sentencing courts to ignore the pains experienced by offenders during their

detention in pre-trial custody. In light of research demonstrating the pains experienced in pre-trial detention, Roberts (2005: 198) suggests that ‘a proportionality analysis requires that this more punitive experience be reflected by the means of enhanced credit’. Overlooking pre-trial custody in the determination of fit sanction would be unfair (Roberts, 2005). The now-offender has been exposed to a punitive experience which should be incorporated into the prospective punishment to ensure the sanction is proportionate (Manson, 2004; Roberts, 2005; Trotter, 1999). A complication with this purported justification is that it ignores the disparate application of credit for time served. Not all periods of time in pre-trial custody are treated equally (see Figure 3.1). Non-custodial sanctions do not trigger credit for time served, and no compensation—credit, monetary or otherwise—is granted to pre-trial detainees found not guilty. Validating the practice of retroactively recharacterizing pre-trial detention by pointing to the principle of proportionality is insufficient, as it only accounts for one type of punishment, and therefore treats like cases unequally.

Figure 3.1: Pathways following the denial of bail



There has been little exploration of the appropriateness of incorporating periods of time in custody before conviction into the allocation of proportional punishments (Kolber, 2013). Recalling the view that, at the time it was imposed, pre-trial detention was not punishment, Kolber (2013: 1141) asserts that ‘giving credit for time served leads us to systematically

underpunish detainees by reducing their punishment by time spent unpunished'. Simply put, a proportionate sentence should not consider time served, as pre-trial detention is not a form of punishment (Kolber, 2013). In fact, crediting periods of time in pre-trial custody (i.e., unpunished time) may generate disproportionate punishments (Kolber, 2013). While it may be defensible to credit time spent in pre-*sentence* custody (i.e., periods of time a *convicted* but unsentenced person spends detained), the justifications for awarding credit for time served in pre-trial custody, in a system of punishment relying on orthodox definitions of punishment and the principle of proportionality, is logically unsound. The argument presented by Kolber (2013) is not solely a criticism of crediting time served, but of the wider role of proportionality in sentencing. Kolber (2013) uses the credit scheme to illustrate that proportionality, in its current construct, is unable to realize everything it sets out to achieve in the calibration of punishment severity. This sentiment is shared by scholars skeptical about the practical relevance of proportionality in sentencing (see Cahill, 2007; Kolber, 2019; Lippke, 2009; Matravers, 2019; Ryberg, 2021; Tonry, 2018). While proportionality, and retributivism more broadly, offer a justification for punishment, these ideas tend to stumble when moving from theory into practice, as demonstrated by approaches to crediting time served (Cahill, 2007; Kolber, 2013; Lippke, 2009; Matravers, 2019). Some scholars argue, to varying degrees, that 'some proportionality [can be sacrificed] if doing so would lessen the destructive impact of penal sanctions on offenders' (Lippke, 2009: 378). The problem, however, is identifying which parts of proportionality to sacrifice and, if sacrificed, identifying and gaining consensus on theories to fill the gap.

There are significant discrepancies between punishment and sentencing theory and credit for time served, and left unanswered is the question of whether 'unpunished' time in pre-trial custody can be satisfactorily incorporated into punishment proper. The definition of punishment could, as Kolber (2013) suggests, be expanded to acknowledge that pre-trial custody is punishment at the time it is imposed, which would then allow sentencing authorities to incorporate periods of time in pre-trial detention into punishment. However, amending the definition may resolve the issue surrounding intentionality, but remains problematic for reasons of moral blameworthiness (i.e., the person was, at the time pre-trial detention was imposed, legally innocent and therefore undeserving of punishment). Alternatively, pre-trial detention could be acknowledged as a utilitarian form of punishment, not an enormous stretch given the goals of incapacitation and deterrence explored above (see Section 2). Either option, however, would require relinquishing a fundamental pillar of punishment theory, namely that

punishment is only applied to morally blameworthy individuals. As another option, the State could opt out of granting credit for time served. This would recognize that, not only is pre-trial detention not punishment, but that a proportional punishment cannot account for periods of unpunished time (i.e., time a person spends in custody before trial: Kolber, 2013).

None of these options is ideal, some for justificatory reasons surrounding the imposition of punishment and others for a sense of injustice towards those who suffer harms in State custody. Each option above, however, serves a useful purpose in demonstrating the complexity of trying to establish a link between the pains of pre-trial detention and punishment. The recharacterization of a coercive State measure should give pause, as it raises significant questions as to the legitimacy of the measure at the time it was imposed, and the practical constraints presented by retributivism and proportionality in responding to time already served (Cahill, 2007; Kolber, 2013, 2019). A better option would be to acknowledge that existing policies and practices grounded in proportionality are ‘unprecedentedly rigid and severe’ (Tonry, 2018: 119). An unyielding commitment to proportionality in its strictest interpretation—that is, the severity of a punishment reflect the gravity of the offence and degree of responsibility of the offender—leaves no room for consideration of other values in the distribution of punishment (Christie, 1981; Lappi-Seppälä, 2019; Tonry, 2018). Sentencing frameworks ought to incorporate values outside of proportionality, such as compassion, humanity, and mercy (Christie, 1981; Lappi-Seppälä, 2019; Tonry, 2018). These values can complement proportionality and reflect that its current interpretation fails to ‘take into account extraordinary and unexpected circumstances not accounted for in [the] formulation of rules’ (Lappi-Seppälä, 2019: 216; see also Christie, 1981). Incorporating the values of compassion, humanity, and mercy into the measurement of penal severity, and moving away from an exclusively desert- and responsibility-focused proportionality, may allow for the consideration of pains, particularly those evidenced by experiences which have already taken place, into formal punishment (Berger, 2020; Lappi-Seppälä, 2019). Expanding a proportionality analysis to incorporate these values may shift attitudes and responses towards the treatment of those subjected to oppressive forms of State power; to those whose rights are sacrificed for the alleged greater good; and towards a recognition of the harms inflicted in the name of prevention. As further explored in the final chapter, a conception of proportionality beyond its current strict interpretation may establish permissibility for judicial office-holders to deliberate on subjective pains resulting from State acts or omissions, including remand, in the assessment of penal severity.

6. Pre-sentence custody (the convicted, unsentenced prisoner)

Pre-trial detention presents a number of dilemmas, yet it is only one of two parts of remand detention. Prison also holds another group of detainees: those convicted of a crime but waiting to be sentenced (see Figure 3.1). A person could find themselves in the category of ‘unsentenced prisoner’ by pleading guilty to the charges against them or following a guilty verdict at trial. After conviction, the person transitions from pre-trial to pre-sentence custody (see Figure 3.1), where they wait for a formal punishment. A sentencing hearing may be adjourned to a later date to provide time for the offender to collect character references, to allow the State to prepare a pre-sentence report, and/or to permit victims to draft victim impact statements (Legal Aid Ontario, 2022). This interval between the determination of guilt and the imposition of a sanction receives little scholarly attention, which may be due to the shift in legal status from a presumptively innocent person to convicted one. Many of the problematic features of pre-trial detention (discussed above) are no longer an issue with pre-sentence custody. The unsentenced prisoner is guilty and, therefore, deserving of punishment. The interim period between conviction and sentencing therefore invites the question of whether pre-sentence custody crosses the threshold from prevention to punishment. The distinction between measures to punish past wrongs and prevent future harms is consistent in punishment theory. Robinson (2001: 1438) argues that, ‘Dangerousness and desert are distinct criteria that commonly diverge. Desert arises from past wrong, whereas dangerousness arises from the prediction of a future wrong. A person may be dangerous but not blameworthy, or vice versa.’ However, left unanswered is what happens when these concepts intersect; when a person is both blameworthy *and* presumed dangerous, but not yet formally punished. Assertions that punishment can only be imposed on the morally blameworthy suggest that pre-sentence detention is more closely aligned with punishment (desert) than preventive detention (dangerousness). However, the purposes for the detention, namely prevention of some type of future harm, point to a hybrid State measure.

On the basis of moral blameworthiness, pre-sentence custody is punishment as the now-offender has been formally declared deserving of reprobation for their criminal behaviour. However, categorizing the detention of unsentenced prisoners under the umbrella of punishment is not as simple as proclaiming that it is justified by the offender’s proven desert. A first challenge is that it is unclear whether detention post-conviction serves the purpose of punishing blameworthiness (desert), preventing some type of potentially harmful future

behaviour (e.g., absconding, committing an offence on bail), or a combination of the two. For those already in custody, the shift to pre-sentence detention occurs naturally without any review of the original justification for infringing the person's right to liberty (Dhami, 2010). At the time of the conviction, there is no re-consideration of whether the now-offender continues to meet the criteria enumerated in the Bail Act 1976 (see above, Section 2). An assumption is made that the original grounds for detention, and their applicability to the individual detained, are static, remaining unchanged throughout the period of detention pre- and post-conviction. However, the justifications for denying bail at earlier stages of the criminal process 'tend to fade with the passing of time' (Martufi & Peristeridou, 2020: 161), and may have changed substantially from the point of first detention, depending on the length of time in custody. Criminal procedure is not structured to compel judicial office-holders to reflect on earlier bail decisions, unless the detainee files an appeal (Dhami, 2010). In the absence of revisiting the validity of the justifications for detention once a determination of guilt has been made, the question is: on what basis is post-conviction detention defensible? It is presumed that (continued) confinement is necessary following conviction, but it is not established whether the detention is justified to prevent future harms or punish past wrongs.

Before settling on whether pre-sentence custody is justified based on forward- or backward-looking objectives, there are other factors to consider in exploring its use, including whether the pains imposed on unsentenced persons are intentionally inflicted by the State. As explored above, one of the arguments for keeping pre-trial custody out of the punishment club results from the view that the harms inflicted by the detention are not intentional. The hard treatment is (purportedly) not the aim of the measure (although see above, Section 5). However, pre-sentence custody is different. Not all unsentenced prisoners are guaranteed the same protections or services as unconvicted prisoners (see Chapter One, Section 4). In some jurisdictions, like England and Wales, a change in legal status prompts the losses of protections such as unlimited family visits, separate accommodation from sentenced prisoners, and access to personal clothing, to name a few. For the unsentenced, the judicial determination of guilt revokes policies and practices limiting the pains resulting from the deprivation of liberty. In the eyes of the State, unsentenced persons do not deserve protection against the pains of remand. Instead, they are introduced to the full spectrum of harms resulting from incapacitation. The policy choice to preclude this group of prisoners from special privileges is tantamount to oblique intent, if not direct intent. Given the legislative provisions removing

privileges for unsentenced prisoners, the State can foresee that these individuals will be subjected to the pains similar or equal to those of imprisonment.

The now-offender's moral blameworthiness, coupled with the intentional removal of policies protecting the individual against the oppressive qualities of prison life, point to punishment. However, the objectives of the detention are unclear, leaving open the possibility that pre-sentence detention is a State measure amounting to punishment, where a person is morally blameworthy and therefore deserving of punishment, but incapacitated for preventive reasons until the formally deserved punishment can be imposed. These competing interests render pre-sentence custody anomalous. It is punishment, but punishment in advance of a formal sanction. Similarly to pre-trial custody, pre-sentence detention may be termed 'pre-punishment' (Tomlin, 2015). However, unlike pre-trial custody, the use of the term is applicable not because of a lack of moral blameworthiness, but rather due to the formal punishment having yet to be declared by the court.

7. Conclusion: Where do we go from here?

Framing remand within debates on punishment and preventive detention reveals why scholars have resorted to describing remand, and in particular pre-trial detention, as a 'punishment look-alike' (Kolber, 2013: 1142). Attempting to theorize remand is tricky. It presents several difficult contradictions: it involves the deprivation of liberty of persons not guilty of committing a crime; the experience is painful (see Chapter Two), yet the pain is (purportedly) not intentionally inflicted; and it is a potentially preventive measure applied against the morally blameworthy in advance of their formal punishment. These are difficult inconsistencies to reconcile with binary notions of what constitutes punishment. The first step to theorizing the practice involves acknowledging its two moving parts: pre-trial and pre-sentence detention, each of which carries its own set of moral and practical dilemmas. Teasing out the two legal statuses from under the umbrella of remand unearths troublesome practices employed by the State in advance of conviction and (formal) punishment, and raises important questions as to the appropriateness of continuing to claim these two forms of detention fall under one name. Pre-trial and pre-sentence custody are not two sides of the same coin, largely as a result of the distinction in legal status brought about by the conviction. Positioning pre-trial and pre-sentence custody under the term 'remand' masks important differences; differences relevant to

establishing whether these forms of detention can be justified as punishment or as something other than punishment.

A decision by the State to detain a person in advance of a conviction fails to respect a person's moral autonomy by presuming the person is incapable or insufficiently likely to refrain from some future course of harmful behaviour. The State flexes its coercive power over the presumptively innocent for what they *may* do, not for what they have done. In doing so, the State subjects this group of individuals to pain; to deprivations ranging from the loss of liberty to separation from networks of support in the community (see Chapter Two). Given that the person detained has not been found morally blameworthy, there is no way to square pre-trial detention as a form of punishment. Seeking to justify pre-trial detention as punishment by asserting that it relies on past evidence (see above; Husak, 2013) also falls short. The purpose of pre-trial custody is to pre-empt some form of potentially problematic behaviour at some future point in time. By confining accused persons to prison before their trial, the State can demonstrate its ability to bring a person to justice and to limit future social harms. Its objectives reveal that this measure is a form of preventive detention (Kolber, 2013). Although pre-sentence custody has fewer moral objections, given that the person is morally blameworthy, it is not without its own set of dilemmas. Pre-sentence custody lacks clarity in purpose, making it difficult to ascertain whether the convicted, unsentenced person is held for preventive or punishment purposes, or both.

Despite conceptual and theoretical difficulties, remand remains a common practice around the world, and forms part of a wider range of quasi-penal measures increasingly being used in Western jurisdictions (Ashworth & Zedner, 2014; Zedner, 2016). Detention on remand began as a measure to ensure defendants appeared in court to face justice (see Chapter One, Section 2), but has evolved and expanded beyond its initial conception to become a regular tool on which the State can rely to achieve objectives related to public safety and the administration of justice. While its purposes may not be as problematic under the umbrella of prevention, there is a justifiable basis for scepticism over the processes in place which allow the State to exercise this form power. Remand suspends liberty interests and subjects pre-trial and pre-sentence detainees to restrictive, punitive environments (Roberts, 2005). These forms of detention are imposed on individuals in absence of many of the procedural safeguards which protect citizens from coercive State measures (Campbell, 2019; Myers, 2017). Pre-trial and pre-sentence custody require less demanding justifications by the State to deprive a person of their liberty

and to extend that deprivation to suit the needs of agencies operating within the criminal justice system. While protocols have been developed to purportedly provide a check on the State's power to detain a person before trial or sentencing (e.g., Custody Time Limit), these policies, in practice, largely appear to pay lip service to due process. The State has a laudable claim to enact measures to protect the public, but it also has a duty towards respecting citizens' moral autonomy and human dignity as well as promoting and upholding human rights protected under domestic legislation and international guidelines. Though pre-trial and pre-sentence detention offer the State the opportunity to demonstrate its goal to maintain a peaceful and safe society, these aims frequently come at the cost of other important State responsibilities towards its citizens.

While pre-trial and pre-sentence custody may, in practice, look like punishment, they do not meet the threshold of being classified as punishment. However, the classification of these practices as something other than punishment, namely as quasi-penal measures, is not a justification for absolving the State of responding to the pain these forms of detention inflict on individuals. Given the punitive tendencies associated with time in pre-trial and pre-sentence detention, it is imperative for the State to recognize and make amends for experiences endured by those denied bail. As explored above, one method is the application of credit for time served, a tool the State can use to compensate detainees for the harms inflicted on them during their time in custody before a conviction or a formal punishment. However, to properly respond to time served on remand requires an understanding of the features of pre-trial and pre-sentence detention which feel punitive. While there are studies which have explored remand (see Chapter Two), further investigation is needed to explore pre-trial and pre-sentence experiences of custody.

Chapter Four: Learning to Adapt (Conducting Research during a Global Pandemic)

1. Introduction

Remand is a puzzle, and it is one I sought to explore both conceptually and empirically. This chapter examines the methodology applied in this empirical study. As this research was conducted during a global pandemic, it required significant adaptation to accommodate new realities. In the end, this study was successful in conducting interviews with adult men residing in the community who had previous experience of being remanded to custody in England and Wales. However, it was not without struggle. This chapter opens with the initial aims and objectives of the research, including the research questions I explored. Here, I lay out the three different iterations of the research design, as shaped by the COVID-19 pandemic. I explore the research design prior to the pandemic and the ways in which the design of this study was influenced by external factors. After outlining the research questions, the chapter describes the sample of this study, including the multiple recruitment strategies employed to find participants. After reviewing the sample, the chapter examines the interviews, all of which were conducted remotely due to both health restrictions stemming from the COVID-19 pandemic and my location in Canada. I explore the benefits and challenges of conducting telephone interviews and interviews using VoIP technology. After reflecting on the interviews, this chapter outlines ethical considerations, such as the process of acquiring consent, protection participants' anonymity, and offering compensation to participants. The chapter concludes with a description of the approach applied to analyse the data, as well as personal reflections on the research process.

2. Research design

The global COVID-19 pandemic significantly altered the design of this study. To appreciate the extent to which this study was adapted, and to reflect on the shifting realities of trying to conduct empirical research during an unprecedented time, this section explores the differing iterations of the research design: a) pre-pandemic plans; and b) accepting the pandemic and adapting accordingly. Each section provides an overview of the steps taken to modify the research design to fit the context of that specific period. Gradually, the steps lead to an examination of the current study.

2.1. Pre-pandemic plans: Initial aims and objectives

I began my PhD studies in the autumn of 2019, six months prior to the declaration of the COVID-19 pandemic by the World Health Organization (WHO). This study originally aimed to explore and compare the experience of remand and its role in sentencing in Canada and in England and Wales. Specifically, the research had the following objectives:

Research Question (RQ) 1: How is remand experienced in Canada and in England and Wales?

RQ 2: To what extent do sentencing judges engage with remand prisoners' experiences of pre-trial and pre-sentence custody?

RQ 3: How, in sentencing schemes grounded in the principle of proportionality, should sentencing judges engage with remand?

The two jurisdictions for the study, Canada and England and Wales, were considered appropriate for conducting comparative analyses as the legal system in Canada has its foundation in the English common law system. While the two countries have similar legislative frameworks for detaining an individual before trial or sentencing, there are differences in their use of remand (Grech, 2015; Hucklesby, 2018) and approach to crediting time spent on remand. While England and Wales automatically award credit for time served at a ratio of one day for each day spent on remand (see Chapter One, Subsection 2.1), sentencing judges in Canada have discretion to grant credit for pre-trial and/or pre-sentence custody (see Chapter Three, Section 5). In addition, while the remand population remained relatively stable in England and Wales, at least prior to COVID-19 (see Chapter One, Section 3), it increased exponentially in provinces and territories across Canada during the 1990s and into the 21st century (Bourgon & Grech, 2010; Grech, 2015; Statistics Canada, 2020).

A mixed methods approach using an exploratory sequential design was originally proposed. I planned to first gather data from remand prisoners to address RQ1 and to inform the development of a survey with sentencing judges to address RQ2. An exploratory sequential design would have allowed me to divide the study into two phases. In the first phase, semi-structured interviews would have been conducted with remand prisoners, which would then have been analyzed and used to develop a survey for judicial office-holders to explore whether and/or how the pains of punishment impact penal severity (Phase Two). Given the limited

empirical research exploring the role of remand in sentencing, interview findings were expected to add depth to the quantitative portion of the research. While the implementation of this research design would have been labour intensive, the sequential design model would have allowed me to focus on each phase separately, leading to a more manageable study overall (Creswell & Plano, 2007).

Phase One: Exploring the pains of remand

Semi-structured interviews with remand prisoners were proposed to explore the pains of remand. The target population was male adults in one prison in England and Wales and one provincial prison in British Columbia (BC), Canada. A more specific location was identified for the portion of the study in Canada as the country has a total of 14 prison services (one in each province/territory and one at the federal level⁶). Interviews were to be conducted on a voluntary and one-to-one basis and were planned to last approximately 60 minutes. Interview questions were developed by exploring existing research on remand (see Chapter Two) and the wider pains of punishment literature. The questions focused on the prisoner's experience of remand, including the prison itself, relationships within and outside the prison, and the impact of remand on the criminal case (see Appendix A).

Phase Two: Designing the survey and exploring penal severity

I intended to develop a survey for judicial office-holders based on the existing literature on the pains of remand and potential themes identified in the qualitative data from Phase One. The regions selected for the quantitative portion of the study were to mirror the locations where interviews were conducted with remand prisoners. This approach was considered appropriate as it would have allowed judicial office-holders to be surveyed on the conditions and experiences of confinement within their region. This was particularly important in the Canadian context as provinces and territories manage their own correctional and judicial system. As such, mirroring locations for Phase One and Phase Two would permit sentencing judges in BC to be surveyed on data collected from their province, as opposed to asking sentencing judges to speak to potentially irrelevant correctional practices from another province or territory.

⁶ The federal system does not manage remand prisoners.

The purpose of the survey was to explore the extent to which (if any) remand, and the subjective experience of remand, influenced the severity of the punishment imposed by the court. The design of the survey was cross-sectional. Given the large and geographically dispersed sample, an internet survey was the preferred method of data collection.

2.2. Accepting the pandemic and adapting accordingly

As mentioned above, the COVID-19 pandemic was declared halfway through my first year of study. Each ‘wave’ of the pandemic brought with it a new challenge in terms of research access and, in particular, the feasibility of conducting face-to-face interviews. On several occasions, I was confronted with new realities of life under COVID-19. As a result of the unpredictability of conducting research in a global pandemic, the following steps were taken.

Step One: Wait and see

Phase One of my research was to conduct face-to-face interviews with remand prisoners in BC and in England and Wales. At the start of 2020, I submitted my application for research access to gatekeepers in BC. By early March of the same year, I had completed the necessary paperwork for HMPPS. A few days after completing the required forms for HMPPS, the WHO declared a global pandemic. On March 20, 2020, BC Corrections wrote me to advise that all in-person data collection had been suspended until further notice. Given the high rate of transmission of COVID-19, BC Corrections closed all prisons to external visitors for the safety and health of its staff and prisoners with no timeframe for re-opening to the general public, including to external researchers. The same decision was made by HMPPS in March 2020, which resulted in my decision to postpone applying to HMPPS for research access.

Following the WHO declaration of a pandemic on March 11, 2020, I opted to wait three months to see whether the pandemic would be short-lived. In hindsight, the decision may have been grounded in my denial over the magnitude of the global pandemic, but I was not yet willing to abandon the original research plan. However, news of the ‘second wave’ of COVID-19 in the summer of 2020, and the subsequent discovery of new variants, indicated there may be prolonged public health restrictions which would influence research access. As the pandemic wore on, the possibility of conducting interviews in prisons became less and less likely. My

second step in trying to reconcile the completion of the original research plan within the context of a global pandemic was to revise the chronology of the research design.

Step Two: Flip the chronology

As a first step toward adapting the research design, I chose to develop the survey for judicial office-holders prior to pursuing interviews with remand prisoners, given the improbability of being granted permission to conduct interviews in prisons during successive COVID-19 waves. As prisons were closed for health and safety reasons, it seemed sensible to proceed with the survey, as this phase of the research required no face-to-face contact. The revised chronology allowed me to progress with the study while simultaneously permitting me to observe whether the pandemic would be short-lived and, if so, whether my plans to collect data in a carceral environment could still be pursued.

A survey was developed based on the extensive literature on the pains of imprisonment, the small body of research on the pains of remand, as well as empirical research on mitigating factors in sentencing. The survey was piloted with two sentencing judges in Canada and two English sentencing experts. After piloting the survey, amendments were made to reflect comments received during the piloting stage. The survey for judicial office-holders in England and Wales was amended to include a specific question on whether conditions and experiences of remand factored into decision-making, which eliminated an assumption identified in the piloting stage (i.e., judicial office-holders consider the qualitative experience of remand). Amendments to the wording in the survey for sentencing judges in BC were also made to change the word ‘defendant’ to ‘offender’, as the person standing before the court for sentencing had been convicted of a criminal offence. Although there were two versions of the survey, each survey was structured into three sections and relied on the same response scales:

- Section One: Information provided to the court. This section explored the information provided by defence counsel to the court as well as general questions on in-court practices in cases involving an individual who had been remanded to custody prior to sentencing.
- Section Two: Remand and the determination of the appropriate sentence. This section focused on the role of remand in the sentencing process and the extent to which, if any,

the conditions, features, and personal experiences of remand factor into sentencers' decision-making.

- Section Three: Background details. This section asked respondents about the number of years in their current position as either a judge or magistrate, general information on remand prisons, and demographic data.

Once the surveys were finalized, research applications were submitted to relevant gatekeepers in BC and in England and Wales. A research application was made to the BC Provincial Court on October 19, 2020. Acknowledgement of the application was received one month later via a general inbox reply from the BC Provincial Court. No contact information was provided in the acknowledgment letter, though I did make several attempts to establish whether my application had been reviewed and when a decision might be expected. As of the date of submission, no further correspondence has been received from the BC Provincial Court.

I submitted my application for research access to the Judicial Office in England and Wales on November 25, 2020. The application was acknowledged the next day and initial comments and questions from the Judicial Office were received the following month. The Judicial Office sought clarification on sampling and recruitment (i.e., whether I intended to focus exclusively on adults) and the structure of two survey questions. After speaking directly with the Assistant Private Secretary by videocall, I made final edits to the application and re-submitted the materials to the Judicial Office on December 22, 2020. I followed up with the Judicial Office on the status of my application on March 18, May 11, and August 9, 2021. My request for research access was denied on August 17, 2021. The Judicial Office cited 'a number of reasons for this' decision, including the relevance of pre-trial or pre-sentence conditions to sentencing decisions in England and Wales.

The response from the Judicial Office was disappointing, particularly as discussions had occurred prior to the denial of the research access request, during which no concerns were raised with the proposed research agenda. At the outset of my study, I had read about the difficulties of gaining access to judicial office-holders for reasons including the judiciary's professional remoteness, concerns over confidentiality and anonymity, and judicial office-holders' limited availability given existing occupational pressures (Blix & Wettergen, 2014; Gatowski et al., 2001). These factors were considered in the design of this study, in the development of the survey, as well as in the research application submitted to the Judicial

Office. Detailed information was provided to the Judicial Office about the proposed methodology; the draft survey, including a copy of the draft survey; the estimated length of time it would take judicial office-holders to complete the survey; the data analysis process; the storage, retention, and disposal plan for survey responses; ethical considerations; the lack of research on this topic in the public domain; and the benefits of the research to the judiciary. Despite my targeted attempts to reduce any potential hesitancy by the judiciary to engage in this research, my request for access was denied.

Step Three: Interview a new population

After submitting my research access applications to the BC Provincial Court and the Judicial Office toward the end of 2020, I became focused on finding a way to collect data to answer RQ 1 (i.e., exploring the experience of remand). As I worked on drafting the judicial surveys, it became clear that conducting research within a prison environment would likely remain unfeasible for the foreseeable future. By the end of 2020, there had been multiples ‘waves’ of COVID-19 in Canada and in England and Wales, and both countries had imposed a range of ‘lockdown’ measures to try to stem the transmission of COVID-19. Across both jurisdictions, no external visitors were entering prisons. In response, I decided to pursue the original research question, but with a new sample. After receiving ethical approval from the University of Sheffield (see below, Subsection 3.4), I proceeded with efforts to recruit and interview adult men in the community who had experience of pre-trial and pre-sentence custody. Given government restrictions in both jurisdictions, I opted to rely on telephone interviews and interviews using VoIP technology, such as Zoom. These methods of collecting data reflected life in a global pandemic; a time when the majority of individuals living in Canada and in England and Wales were unable to associate with anyone outside their immediate household. Details on the outcome of these efforts are explored later in this chapter.

Step Four: Scale down

At the start of my third year, the study was in a state of flux. Although I had conducted several interviews with adult men in England and Wales, the following elements were outstanding:

- No decision had been received from the BC Provincial Court on whether I could conduct a survey with sentencing judges;

- I had been denied access to conduct research with judicial office-holders in England and Wales; and
- I was still trying to recruit research participants in BC.

In light of the timeframe for this study and the decision by the Judicial Office in England and Wales, I decided to scale back the research plans. Firstly, I opted to forego conducting surveys with judicial office-holders in both jurisdictions. Even if the BC Provincial Court were to allow me to conduct a survey with sentencing judges, it would have been problematic to proceed with surveys from only one of the two jurisdictions as this would have prohibited a comparative analysis. To pursue an answer to RQ 2 (i.e., the extent to which judicial office-holders engage with remand prisoners' experiences of remand), I considered seeking ethical approval from the University of Sheffield to conduct interviews with criminal defence lawyers as an alternative to judicial office-holders. However, time constraints resulted in the decision to eliminate surveys from this study. With one year left of funding to complete the research, I chose to focus exclusively on adult men's experiences of pre-trial and pre-sentence detention.

After deciding to eliminate surveys, I faced another hurdle, namely recruiting adult men with prior experience of remand custody in BC. Over the course of my second year, I had been speaking with several individuals in BC who worked with adult men on probation or parole. I had contacted managers of community correctional facilities across the province. In Canada, these facilities, colloquially referred to as 'halfway houses', are managed by third sector organizations, such as the John Howard Society and the St. Leonard's Society. These independent organizations support offender reintegration in a myriad of ways, but primarily through the provision of supervised housing as they transition back to the community from prison. In early 2021, I gained permission to conduct interviews with 20 adult men residing in a halfway house in North Vancouver, BC. At the time, I was told by the manager of the halfway house that residents were keen to participate, and that the manager would act as an intermediary. I attempted to schedule interviews with the halfway house residents on several occasions, but never received a response from the manager. Over the course of five months, I was unsuccessful in scheduling interviews with halfway house residents in North Vancouver, despite receiving permission from the manager. On one occasion, the manager advised me that the halfway house had experienced a COVID-19 outbreak, but that he would be in touch again

to discuss scheduling interviews. I spoke with the manager once more via Zoom to discuss residents' participation, but then never heard from him again.

While waiting to schedule interviews with residents of the halfway house in North Vancouver, BC, I explored other options. I contacted the Executive Directors (EDs) of the St. Leonard's Society, the John Howard Society, and the National Associations Active in Criminal Justice. The EDs of these organizations are primarily responsible for public policy and research, such as advocacy efforts with provincial/territorial and federal parliaments. Although they have no authority over service delivery, they have an extensive network of contacts in community corrections (i.e., halfway houses). Despite follow-ups, two of the EDs never responded to my emails. However, the ED of the St. Leonard's Society advised me that she had forwarded my research request and contact information to 40 colleagues who worked directly with adult men with a history of being in contact with the criminal justice system. In spite of this effort, I never received any inquiries about my research. As I was not privy to the names or contact information of these individuals, I was unable to follow-up directly with those who received information about my study. I also reached out to former offenders I had worked with during my tenure with Public Safety Canada. As a former public servant, I had worked on federal legislation involving corrections and criminal justice issues. During this time, I had met and consulted with former offenders to learn about their perspectives on proposed legislative changes. As I was still in contact with some of these individuals⁷, I wrote to them to see whether they had contacts who might be able to assist with recruitment. Although these individuals were helpful in trying to recruit participants, I received no expressions of interest. Despite my determination to find participants in BC, I came up short. As I started my third year, I made the decision to further narrow the parameters of this study. Going forward, the study would only focus on experiences of those who had been detained on remand in England and Wales.

Step Five: Keep calm and carry on with two research questions

The original aims and objectives of this research were ambitious. My research was spread across two jurisdictions and, within each country, attempted to recruit two separate

⁷ After leaving the public service, I remained in contact with my former manager, who is now retired. In her retirement, she advocates for progressive reforms to the Canadian correctional system. On a monthly basis, she sends legislative updates to former employees, leaders of community organizations involved in the criminal justice system, and former offenders who have expressed an interest in advocating for change. It is an informal network through which I was able to reach out to former offenders for possible assistance with my recruitment efforts.

populations. This study endeavoured to recruit four groups spread across two countries: 1) sentencing judges in BC; 2) judicial office-holders in England and Wales; 3) remand prisoners in BC; and 4) remand prisoners in England and Wales. In the end, however, COVID-19 and the decision by the Judicial Office prevented such a wide-ranging analysis.

The original research questions were influenced by my decision to scale back the study. One of the original three research questions was removed, specifically:

RQ 2: To what extent do sentencing judges engage with remand prisoners' experiences of pre-trial and pre-sentence custody?

RQ 2 was eliminated as it was not possible to explore the question without empirical data. As mentioned, I considered an alternate sample, but the timeframe for this study precluded such a significant change.

Ultimately, the study had the following objectives:

RQ 1: How is remand experienced in England and Wales?

RQ 2: How, in sentencing schemes grounded in the principle of proportionality, should judicial office-holders engage with remand?

As highlighted above, I adapted the study to explore experiences of remand in England and Wales by interviewing adult men in the community who had previously been detained in pre-trial or pre-sentence custody.

3. Research process

This section begins with an overview of the sample, explaining the recruitment strategy applied in England and Wales to explore RQ1. After outlining the recruitment strategy and information concerning participants who self-selected to participate in this study, this section investigates the interviews themselves, detailing the use of VoIP technology and describing the benefits and challenges of developing rapport over the telephone or via computer screen. This chapter then discusses ethical considerations, including navigating emotional distress in long-distance

interviews, and compensation for participants. It concludes with an outline of the approach applied to analyzing the interview data as well as personal reflections on the research process.

3.1. The sample

The study sought to explore experiences across both categories of remand (i.e., pre-trial and pre-sentence) to explore potential differences stemming from factors such as the unknown outcome of the case (for unconvicted prisoners), the unique set of prison policies applied to unconvicted prisoners (see Chapter One, Section 4), or other unknown or unexamined factors. The criteria for exclusion was two-fold:

1. Men unable to participate in an interview conducted in English; and/or
2. Men unable to receive compensation for their participation (e.g., no bank account).

Research demonstrates that former prisoners can struggle to set up a bank account, as they are often unable to meet the minimum requirements, such as providing government-issued identification and a permanent address (Prison Reform Trust, 2010). I adopted the second criterion to eliminate potential logistical challenges associated with individuals who do not have a bank account or who lack the necessary government identification to set up a bank account. In the event a participant did not have access to a bank account, it would not have been possible to set up a remote payment. For this reason, I made the decision to exclude individuals who were unable to receive compensation. However, I did not encounter a participant who was unable to receive a payment. Unwilling, yes, but unable, no.

To recruit participants, I relied on assistance from Unlock, an independent charity dedicated to supporting individuals stigmatized by virtue of a criminal record. On its website, Unlock provides information about the support it is capable of offering to researchers, including the necessary materials it requires to consider a research application (Unlock, 2020). As per instructions, I developed a research proposal for Unlock which outlined the benefits of this study, the timetable for the study, my expectations of how Unlock could support the study, and how I would support potential participants. Several weeks after submitting my application, Unlock allowed me to purchase an advert which it would send electronically to its mailing list. This list included individual members and criminal justice charities. In my first advertisement

with Unlock, I paid £160 for a mail out (Appendix B). The advert was sent out in February 2021 and resulted in 17 emails from Unlock members. Of these:

- Three individuals were found not to have been remanded to custody pending their trial or sentencing date. One individual had been in police custody following his arrest, but was thereafter released on bail; another was remanded on bail; and the third had not been held on remand before his sentencing. In each case, there appeared to be confusion over the meaning of ‘remanded to custody’;
- Two emails were received from staff at charities operating in England who had clients that met the criteria for the study. They sought clarification on a few details of the study (e.g., was there a deadline for participation?). One of the individuals referred me directly to her client, who ended up participating in the study.
- Two individuals contacted me to participate in the study, as both had experience of being detained on remand before trial or sentencing. I scheduled three Zoom calls with one individual who missed each of the pre-arranged calls. After the third missed Zoom call, I emailed the person to thank them for their interest but informed them I would be ceasing correspondence as I did not want to presume their ongoing interest in participating in the research. I never heard from the person again. The second individual expressed an interest in participating and asked me to send him possible dates/times to meet via Zoom. I sent him a list of potential times to meet. After no response from the individual, I followed-up to see if he was still interested, but never received a response.

A total of 10 interviews resulted from the first mail out. I placed a second advert with Unlock in June 2021 (Appendix C). On this occasion, the fee was £185. During the second round of recruitment, 10 individuals replied to the advert to ask if they could participate in the study. All 10 individuals met the eligibility criteria and participated in an interview.

In addition to Unlock, I explored other opportunities for recruitment. I posted an advert on Twitter in March 2021 and, the following month, placed an advert in the Facebook group in the UK titled, ‘Prisoners, ex-prisoners, wives & family support & legal advise [sic]’, a private group of 5,300 Facebook users. No expressions of interest were received via social media. I also spoke with the ED of the Criminal Justice Alliance (CJA), a charity based in London, England. The CJA hosts a Remand Expert Group, of which I am a member. The Remand Expert

Group comprises a number of criminal justice charities across England and Wales and meets a few times a year to discuss current issues related to remand. I contacted the ED to ask whether I could share details of my study with the Remand Expert Group, which I did in early 2021. No interest was expressed in support of my recruitment for participants in England and Wales.

It proved challenging to recruit a cohort of individuals with experience of being detained on remand. Difficulties with recruitment may be owed to a number of factors, including a desire on the part of individuals who have served time in prison on remand to remain hidden or anonymous. There is limited research with persons in the community with previous experience of being detained pre-trial or pre-sentencing. As such, it is difficult to surmise whether researchers have encountered similar recruitment challenges with this population and, if so, the specific aspects which complicated recruitment. However, research within the criminal justice sector and beyond has identified a preference amongst stigmatized and/or marginalized groups to remain anonymous, such as individuals who committed a sexual offence (Burchfield & Mingus, 2008; Hudson, 2005) or persons using illicit drugs (Duncan et al., 2003). These populations have been described as ‘hard to reach’ (Shaghghi et al., 2011: 86) and ‘hidden’ (Duncan et al., 2003: 208) for reasons owed to their fear of engagement with criminal justice authorities. While it is not known whether fear or other factors played a role in recruitment for the present study, locating individuals who met the research criteria proved to be a significant hurdle.

In spite of the challenges, I was able to interview 20 adult men with experience of being detained on remand either before trial or sentencing. One participant was detained on remand in Wales, the others in England. The longest stay on remand was a period of one year, whereas the shortest was a few days. The majority of participants described the experience of remand as their first time being detained in custody by the State. The majority of participants first entered custody as unconvicted prisoners ($N = 14$). Additional data on participants is provided in Table 4.1. To note, this study makes no claim that the sample is representative. The sample represents the outcome of purposive sampling techniques (Bryman, 2016) which, as outlined above, were necessary to recruit participants.

Table 4.1: Data on participants

Pseudonym	Unconvicted or unsentenced on entry	Year of detention on remand	First time in custody	Length of time on remand
Steve	Unconvicted	2008	Yes	3 months
Beau	Unconvicted	2012	Yes	6 months
Armit	Unconvicted	2013	Yes	5 months
Luke	Unsentenced	2012	Yes	3 months
Kevin	Unsentenced	2016	Yes	3 months
Jason	Unconvicted	2017	Yes	9 months
Ethan	Unconvicted	2003	Yes	7 weeks
Charles	Unconvicted	2017	Yes	11 months
George	Unconvicted	1978	Yes	3 months
Henry	Unsentenced	2017	Yes	9 weeks
Dan	Unconvicted	Undisclosed	No	2 weeks
Frank	Unconvicted	1990s	No	6 months the first time; 1 year the second
Kurt	Unsentenced	2002	Yes	2-3 months
Craig	Varied (experience of both forms of remand imprisonment)	1980s	No	2-4 months each time
Adrian	Unconvicted	2020	Yes	6 months
Jamieson	Unconvicted	2005	Yes	4-5 days
Tony	Unsentenced	1991	Yes	4 weeks
Gabe	Unconvicted	2018	Yes	1 year
Barry	Unconvicted	2016	Yes	40 days
Scott	Unconvicted	2016	Yes	4 months

The majority of adult men detained on remand in England and Wales are white (approximately 70 per cent), although recent data points to an increase in the proportion of minority ethnic men remanded to custody (Ministry of Justice, 2021h). In this study, most participants were white. Two interviewees identified as ethnic minority men (over the telephone). One participant was from the Traveller community. Participants were not asked about their age at the time of the interview and therefore it is not possible to provide an exact age for each participant. That said, most participants who were interviewed via Zoom ($N = 13$) appeared to be either middle aged or older. This was an observation I made based on their appearance, but their age range was cemented by the timeframes of their remand detention coupled with their life histories. During Zoom interviews, participants spoke of their decades of employment history; the impact of remand on their adult children or grandchildren; and/or life in retirement or upcoming retirement plans. Amongst the group interviewed by Zoom, two were in their “late 20s”, having

disclosed this information while speaking of their recent studies in higher education, and one was in their mid-30s. It was more difficult, and in some cases impossible, to determine an age range for participants who were interviewed by telephone ($N = 7$). Most participants interviewed by telephone shared life stories which pointed to an older population, such as decades of home ownership or adult children and grandchildren, but their age was not confirmed during the interview. In two cases, it was not possible to ascertain an age range for the participant. In both cases, the interview was short in duration, meaning less time to discuss life histories and, therefore, less opportunity to glean an age range for the participant.

Participants came from different social and economic backgrounds. A few participants spoke about the struggle of life before their arrest and the ongoing financial difficulties subsequent to their detention, resulting from trying to find gainful employment with a criminal record. This small group ($N = 4$) spoke about their youth, specifically the conflicts with parents and extended family, difficulty with education and, in two cases, repeated engagements with the criminal justice system during their adolescent years and early adulthood. These accounts, however, were not the norm amongst the sample. Prior to their detention on remand, the majority of participants worked in professional fields ranging from education, private business, medicine, and information technology services. Unsurprising given their employment history, participants were well educated, having attended college or university at some point in their lives (e.g., one participant attended university later in life). Save for three participants, interviewees had steadfast support from loved ones in the community, who remained supportive during and after their time on remand. In large part, the characteristics of this sample differ from existing data on remand populations, which reveals that remand prisoners tend to come from less privileged socio-economic backgrounds, struggling with gainful employment and with relationships with family (see, for example, Irwin 1985; Open Society Foundations 2011). Reflections on these differences are shared in a forthcoming chapter exploring the various limitations of this study (see Chapter Seven, Section 6).

Most individuals remanded to custody before their trial and/or sentencing are held for either violent or drug-related offences (Ministry of Justice, 2022). Although the interview questions in this study did not explicitly explore criminal history, most participants spoke about the specific circumstances which led to their arrest and subsequent detention on remand. Five participants were remanded to custody for charges related to sexual offences. Four were charged with drug offences, while the remainder were held in custody pending their trial or

sentencing for charges related to theft ($N = 1$), fraud ($N = 2$), or assault ($N = 3$). Some participants ($N = 5$) did not disclose the specific offence(s) or events which led to their time on remand, opting instead to focus exclusively on their experience of being detained in prison prior to trial and/or sentencing.

3.2. Interviews

Interviews were scheduled in advance at a date and time of participants' choosing. Most interviewees opted to speak with me in the late afternoon or evening. Interviews lasted between 25 minutes to 2 hours and 20 minutes. There was a difference in the length of interviews depending on the mode of communication. Interviews via Zoom ($N = 13$)⁸ lasted an average of 1 hour and 10 minutes, whereas interviews by telephone ($N = 7$) lasted approximately 55 minutes. The interview format was semi-structured. While the interview followed a schedule of questions (Appendix A), it was not constrained by them. Following a semi-structured format allowed for flexibility to jump between sections of the interview schedule (Appendix A), where appropriate, and to explore themes raised by the participant.

Zoom Interviews

The COVID-19 pandemic forced many individuals to familiarize themselves with technology to maintain contact with friends, family, employers, and colleagues. As such, the use of online interviews surfaced 'as a substitute to traditional "in-person" interviews as researchers and research participants adapt to the conditions of COVID-19' (Foley, 2021: 625). While VoIP technology is a less traditional form of collecting qualitative data (Allen, 2017; Archibald et al., 2019; Foley, 2021; Weller, 2017), early studies involving its use have shown it provides several benefits to researchers and research participants (Archibald et al., 2019; Foley, 2021; Lobe et al., 2020; Weller, 2017). Amongst its benefits are access, convenience, and cost-effectiveness (Archibald et al., 2019). Interviews using VoIP technology allow researchers to reach their target population, even when both parties are geographically dispersed (Archibald et al., 2019; Foley, 2021; Lobe et al., 2020; Weller, 2017). It further permits the researcher and the participant to decide on the physical location from which to interview and be interviewed.

⁸ Although two Zoom interviews and one telephone interview were not recorded due to participants' preference, the start and end time of these interviews were recorded in my notebook.

In studies exploring VoIP technologies, participants ‘identified time effectiveness [...] as a major advantage given their remote location, busy work schedule, and the likelihood of noisy or distracting work environments’ (Archibald et al., 2019: 4). Moreover, internet-based interviews offer a cost-effective way of reaching participants. During the COVID-19 pandemic, online interviews made it possible to interview participants without subjecting them to unnecessary health risks and without breaching government health protocols.

Several platforms are available to facilitate synchronous online interviews. For this study, I opted to rely on Zoom, a cloud-based, video communications platform which allows its users to set up video and audio meetings (Archibald et al., 2019). Several factors played a role in the selection of Zoom as the platform for supporting internet-based interviews. Chief among them was my familiarity and high level of confidence in using Zoom and explaining its functions to others; a skillset developed at the start of the pandemic. Additionally, Zoom does not require a user to download and instal an application to their computer. Rather, on receipt of a link to a Zoom meeting, a user can click the link and join a web-based version of the meeting. In other words, the platform does not require any heavy lifting by those invited to join a meeting, which was ideal in recruiting participants for this study. A further benefit was the option to record interviews on Zoom (for participants who consented to the recording). Zoom recordings are stored securely on the host’s computer and without reliance on third-party software (Archibald et al., 2019; Zoom, 2020).

In terms of security, Zoom’s recent history points to the potential for problems. In April 2020, Zoom came under fire for its multiple security breaches, which were eventually termed ‘Zoom bombing’. Meetings hosted over Zoom, which ranged from school classes to PhD *vivas*, were being interrupted by hackers (see, for example, Morris, 2020). In response to security issues, Zoom added a number of features to limit ‘Zoom bombing’. As part of this study, I applied the recommended security features to Zoom meetings to reduce the potential threat of ‘Zoom bombings’. For each meeting, I had a ‘waiting room’, which required participants to wait before being invited to join the ‘live’ meeting. This feature provides the host with control over who can enter their meeting. Further, once participants were in the ‘live’ meeting room, I locked the meeting, a feature which prevents uninvited individuals from joining the meeting. While there are still reports of ‘Zoom bombing’ following changes to Zoom’s security features, no security issues were encountered during this study.

Telephone Interviews

In common with interviews using VoIP technology, telephone interviews offer researchers the opportunity to collect data remotely and in a cost-effective manner (Block & Erskine, 2012; Drabble et al., 2016; Holt, 2010). Instead of incurring travel costs to interview locations, researchers can conduct interviews from the location of their choice. Likewise, interviews over the telephone provide participants with the choice of when and where to participate in a research interview (Holt, 2010; Stephens, 2007). In her research on the use of the telephone for conducting narrative interviews, Holt (2010: 116) found the telephone ‘enabled a far greater degree of control for the participants than a face-to-face interview may have’. To justify her supposition, Holt (2010) cites the relative ease of rescheduling a telephone interview if a participant finds themselves unable to make the scheduled appointment. Unlike face-to-face interviews, where travel is involved for one or both parties, rescheduling a telephone interview can be done with little inconvenience (Holt, 2010). This mode of interview also offers participants control over privacy, such as deciding where to answer the call and the freedom to move around if and/or when there is a lack of privacy (Holt, 2010; Stephens, 2007).

The factors above contributed to the inclusion of the telephone in this study. However, telephone interviews were also incorporated to offer participants a choice, recognizing that there may be participants unwilling or unable to be interviewed via Zoom. Adding the option of a telephone interview accounted for potential worries over privacy and anonymity. Research involving the use of telephone interviews demonstrate an increased sense of anonymity amongst participants (Drabble et al., 2016; Greenfield et al., 2000; Lechuga, 2012; Schwarz et al., 1991), and that this relative anonymity ‘promote[s] increased disclosure on the part of study participants’ (Lechuga, 2012: 253). Given the benefits of telephone interviews, in terms of convenience, cost-effectiveness, and an added sense of anonymity for participants, this method of data collection was included in the study. Telephone interviews were recorded where consent from the participant had been received to proceed with the recording.

3.3. Developing rapport

Viewed as an essential component to successful communication between researcher and participant, rapport has garnered significant attention in qualitative research (Prior, 2018; Weller, 2017). It has been described as a ‘pre-requisite for minimizing social distance and

establishing trust, and researcher efforts in this regard are important for candid disclosure and the richness of the stories' (Weller, 2017: 614). Although there are debates surrounding the conceptual and operational nature of rapport (Prior, 2018), the following have all been described as behaviours which can elicit rapport: 'eye contact, smiles, gestures, frequent responses, openness, trust, respect, synchrony, emotional connection, pleasantness, friendliness' (Prior, 2018: 490). There are a multitude of behaviours, attitudes and body language researchers can employ to ease the interaction between themselves and their participant and help them build rapport (Prior, 2018). These tools on building rapport, however, present challenges when researchers conduct online or telephone interviews. Rapport has featured prominently in the literature around telephone and online interviews, as each interview mode presents its own set of challenges in establishing rapport with participants (Chapple, 1999; Drabble et al., 2016; Irvine et al., 2013; Shuy, 2003). Telephone interviews preclude the ability for participant and researcher to see one another, which can 'restrict the development of rapport and a "natural" encounter, elements considered important to generate rich qualitative data' (Irvine et al., 2013: 89). By relying exclusively on aural communication, telephone interviews eliminate opportunities to witness symbolic exchanges between the researcher and the participant, making it difficult to build rapport and, potentially, impeding the collection of rich qualitative data (Chapple, 1999; Drabble et al., 2016; Irvine et al., 2013; Shuy, 2003). In contrast, online interviews introduce a visual component, which can allow the researcher and participant to pick up on social cues. However, developing rapport via a computer screen presents its own unique difficulties. The quality of interaction depends on the speed of the internet, the angle of the camera, and other external factors outside the control of the researcher. Despite these challenges, however, strong rapport between participant and researcher has been established during online interviews, thereby assisting researchers to collect rich qualitative data (Deakin & Wakefield, 2014).

Building rapport online

Before the first online interview, I worried about the effect technology might have on developing rapport with participants. Interviews via a computer screen lack certain social customs individuals may be familiar with when meeting someone for the first time, such as a handshake, a gesture and offer to sit down, or small talk about traffic or the weather. While I greeted each individual with a verbal salutation, the online nature of the interview required immediate attention to whether each of us could see and hear the other person clearly. Focus,

therefore, shifted from traditional forms of small talk to checking the functioning of audio-visual equipment. In her study exploring the use of internet video calls compared to face-to-face interviews, Weller (2017) notes that, compared to face-to-face interviews, remote interviews tended to lack pleasantries, small talk, and the exchange of hospitality. As I have yet to conduct face-to-face interviews for research, I have no basis for comparison. However, my experience was quite the opposite of Weller's (2017). Instead of allowing technology to detract from building rapport, I used it as an opportunity to engage in small talk by commenting on society's reliance on technology in the age of a global pandemic. Introducing the topic of the pandemic allowed the interviewee and I to relate to one another as, at the time of the interview, each of us was living under government restrictions and had a shared experience of life in a pandemic. Finding this common ground eased my anxieties and appeared to have a similar effect on the interviewee, as we both recounted a few stories about life under lockdown. While the pandemic had a host of consequences for this research, it provided the benefit of allowing the interviewee and I to relate to one another.

My location also proved to be a surprising element in building rapport. At the time of the interviews, I was living in Vancouver, Canada, which has an eight-hour time difference with England. Participants frequently opted to schedule interviews in the evening. As such, for all my online interviews, my home was flooded in daylight, while it was dark outdoors for participants in England. I was upfront with participants about being located in Canada, as I felt it was important to be transparent. I tried to put myself in my participants' shoes, thinking I would have been distracted wondering to myself where this person was located and where their accent might be from. I explained where I was in Canada and my motivations for conducting a research project outside my home country. Upon sharing information about myself, most participants chuckled and stated they had wondered where I called home. On discovering my connection to Canada, most interviewees shared stories of family trips to Canada, wishes to visit Canada, or asked if it really did get as cold as -30 degrees in winter (it gets even colder!).

Most interviewees who participated in online interviews via Zoom would agree that positive rapport was established during our interview. This was demonstrated in several ways. At the end of the interview, several participants described the personal benefits of participating in the study. During my interview with Luke, which lasted just over an hour and a half (1:35), he shared the following near the end of our conversation,

I don't do it very often [talk about remand]. I don't talk about it very often to people. I often think I should sometimes write it down. There's something in it. I'm quite glad I passed some of it on to someone else, so that it will be written down [...] This is quite cathartic in a way, really.

The space created for Luke during the interview appeared to offer him the safety that he needed to vocalize events he rarely talked about with others, but which he found beneficial to share. Participants also expressed satisfaction in participating in the interview by sharing their thoughts on the research project as a whole. At the end of my interview with Steve, he said,

I think it's wonderful what you're doing [...] I think this is good. I think this is going to contribute significantly to knowledge and understanding.

In another measure of building positive rapport, nearly all participants offered to speak with me again should I need further information or have follow-up questions. A few days after each of the interviews, I wrote a short email thanking the participant for their time and their contribution to the research project. In one of the responses I received, Jason wrote,

It was great chatting to you. I hope my contribution was helpful [...] Please feel free to keep in touch if there is anything else I can help you with.

Since their interview, other participants, such as Beau, Kevin, and James, have contacted me to share articles on issues related to remand or to ask questions about the research. These signs of continued interest, the positive feedback from participants on the importance of the study, and the generous offer to share more of their time if needed, demonstrate the respect and trust developed during online interviews.

Building rapport over the telephone

Early in my career, and prior to pursuing studies in higher education, I was an employee of the federal prison service in Canada. I held roles which required daily telephone communication with prisoners, their families, and front-line staff. Although the purpose of those telephone calls was not to conduct research, the experience of speaking with strangers by telephone, often on sensitive subjects, allowed me to gain some sense of ease in conversing with people by telephone. These experiences led me to believe I would have an easier time conducting

interviews by telephone than perhaps a PhD candidate with no prior experience of telephone interviews. I was wrong.

Before my first telephone interview, I had conducted six interviews via Zoom. One of the immediate differences in conducting a telephone interview was finding a natural transition between the initial greeting and the consent process. Unlike the online interviews, there was no need to check computer equipment, which meant no natural transition into discussing technology in a pandemic or our shared experiences of living under government restrictions. Further, the participant was unable to see that I was in another part of the world, eliminating another opportunity for small talk. The natural flow of conversation I had experienced during interviews via Zoom evaporated. Relying exclusively on aural communication meant working harder to engage in small talk, which was an observation I made following the end of my first telephone interview. In my notebook, I reflected on my struggle to find common ground. Absent the strategies I had for building rapport during online interviews, I felt lost at the start of the interview. I was fortunate, however, to have Ethan as my first telephone interviewee. He was friendly, open, and made jokes at the start of our call. I wondered whether he sensed I was uncertain how to lead and decided to take the reins and put me at ease. My reflections at the end of the interview with Ethan led me to write a script for future telephone interviews; a sort of cheat sheet with questions to ask participants if I felt myself stumbling at the start. It took practice to ease participants into conversation; to not jump suddenly from an initial greeting to the consent process to the interview questions, but to find words strung together into sentences that offered a more seamless, natural flow. It is not easily done. Building rapport over the telephone with an unknown person is challenging.

Given the advent of mobile phones, individuals can answer telephone calls anytime, anywhere. While useful in the unfolding of daily life, the use of mobile phones for research interviews can present a challenge for researchers. A few participants opted to multi-task during the telephone interview, which was an added complexity in trying to build rapport. Frank opted to speak with me from his office, a private space (closed office) but one which was frequented by employees. Twice during the interview, Frank had to pause our conversation to answer questions from employees. In one instance, Frank advised an employee that he would help them with their question shortly. Although Frank was able to pick up our conversation where it had left off, I was keenly aware that he was in his office, in a managerial role, and had other priorities that day. The distractions, though unrelated to the research or the interview, can add

a sense of urgency. I felt this acutely during my telephone interview with Dan. On the day of my scheduled interview with Dan, I telephoned him and, when he picked up, I realized he was walking outdoors. I could hear traffic noise, children playing, and conversations from passers-by. I asked Dan if this was a convenient time to speak about his experience of remand, noting we could reschedule to another date if I was catching him at a bad time. Dan said he was ready to speak with me, so I proceeded. The interview lasted 25 minutes. The length of the interview is likely owed, in large part, to the effect of my feeling flustered throughout. Despite trying to engage Dan in a ‘conversation with a purpose’ rather than an interview, I was pre-occupied with worry. From the start of the interview, I worried about asking Dan questions he might find sensitive to answer in a public area. I was hesitant to ask potentially sensitive questions, such as the details of a typical day in prison on remand, for fear of putting him in a position of answering the question in public. I was also anxious about time. I did not know where Dan was going, when he might arrive at his intended destination, and whether, when he did arrive to wherever he was going, it would mean the end of the interview. On reflection, my worries and distractions had an impact on building rapport, as I felt I was unable to create a space conducive for an informal conversation and, therefore, to candid disclosure. During the interview, Dan answered questions quickly and succinctly. The following are three excerpts from the interview with Dan:

I: [...] in terms of jobs, did remand affect how you make money? How you do your living? Did it have any effect on that?

D: Not really.

[...]

I: [...] one of the things that has interested me is whether you felt like you were being punished when you were on remand.

D: I honestly couldn't answer that.

[...]

I: [...] I've been asking people to use five words to describe the experience of remand. What words would you use to describe your experience?

D: I couldn't think of none.

In contrast to other interviews, there was a sense of urgency in moving from one question to the next, rather than allowing the conversation to ebb and flow. While Dan did share insights into his experience of remand, I wonder whether his responses were influenced by underdeveloped rapport, a lack of privacy given his location outside, or a combination of both. Research involving telephone interviews point to 'the potential for distraction of participants by activities in their environments' (Novick, 2008: 393). However, there is far less exploration into the effect(s) of environmental distractions on rapport and on approaches to apply as a researcher when confronted by participants who appear distracted.

While building rapport during telephone interviews was difficult, there were successes. Participants who spoke with me from the comfort of their home were often at ease and willing to share intimate details of their experiences of remand. In these interviews, the absence of visual cues or bodily movements rarely affected rapport. Instead, exclusive reliance on aural communication may have added to, rather than detracted from, building rapport and collecting rich data. As prior research has already pointed out, these participants may have felt comfortable disclosing personal histories precisely because of our inability to see one another (see Drabble et al., 2016; Greenfield et al., 2000; Lechuga, 2012; Schwarz et al., 1991). For some participants, there may have been comfort in remaining unobserved; of sharing a deeply personal experience without being under a stranger's watchful gaze. Positive rapport with telephone interviewees was measured by comments made by participants during the interview and offers to assist me with my research in future, if needed. At the end of my interview with Adrian, he said,

It does make a difference when somebody seems like they're interested in what you've got to say, which was very nice from my point of view. So, thank you.

Jamieson said the following near the end of his interview,

Yeah, like I said, you know, if there's anything else you need from me, give us a shout. But I think, from my side of things, I think I've said pretty much everything I wanted to say [...] Good to talk to you, Emma.

As with online interviews, some participants commented on the general enjoyment of the conversation. In a written exchange with Ethan after his interview, he wrote,

It was great to talk to you. I have great respect and admiration for anyone who is prepared to raise awareness, etc., so I wish you the best for that. As I said if you need anything else, please just ask.

The use of telephones for the collection of qualitative data ‘has generally been considered an inferior alternative to face-to-face interviews’ (Drabble et al., 2016: 119). Concerns over the use of telephone interviews centre on potential issues with building rapport and difficulty responding to verbal cues, and are rooted in the notion that the quality of data collected via telephone is less rich than data collected face to face (Drabble et al., 2016; Holt, 2010; Schwarz et al., 1991). As described above, there were benefits and drawbacks to telephone interviews. However, the challenges did not result from a lack of visual contact, but due to the possibility that participants can accept a call anytime, anywhere. For future research, it may be beneficial to convey to potential participants, either in an information sheet or in emails prior to the interview, an optimal location to conduct the interview, such as one with minimal distractions due the potential sensitive nature of the questions.

Interviewing during a global pandemic

Half of the research interviews took place in February and early March 2021. At the time, England had been in and out of lockdowns for nearly a year in an attempt to stem the rise of COVID-19 cases. Amongst the restrictions on the general public was a rule to stay home, save exceptional circumstances (e.g., employment), and a limit on contact with members outside your immediate household. For many people living in England, these restrictions resulted in an extended period of time spent alone at home. In certain interviews, I witnessed the isolation and loneliness experienced by individuals living alone during the pandemic. Two interviews in particular brought to bear the impact of social distancing. During my interview with George, he conveyed his isolation by comparing it to his experience of prison, noting that his current circumstances were worse than those in a carceral environment:

I mean, it’s funny ‘cause I said to someone about being in [COVID-19] lockdown that prison was actually easier, and she said, ‘Why’s that?’ and I said, ‘Well, you have mates’. I’m here on

me own. I'm in solitary confinement. Have been for a year. That's against the Geneva Convention, you know, 'cause it drives you mad.

Another interviewee shared a similar experience. During my interview with Kevin, he spoke of his depression and the difficulties of living in the community without support:

In prison, I could talk to people. Here, I don't see anybody. I live alone. I can't associate with anybody.

Kevin's experience of life under COVID-19 restrictions was compounded by his status as a sex offender. He described feeling ostracised and believing his life was over. At one point in the interview, Kevin said,

Yeah, once you're a sex offender, that's it. Your life's finished. Mine's finished. I have no purpose in life. Got nobody. You know, I cook and I eat. That's about it.

Comments from Kevin and George on life in lockdown in England prompted me to consider the ethics of care and the importance of 'attend[ing] to the human needs of the [research] participant' (deMarrais & Tisdale, 2002: 202). These considerations influenced the course of the interview. At the start of my interviews with Kevin and George it was difficult to discern their motives for participating in the research. Interviewees opt to participate in research for a host of reasons, including seeking help for themselves or the belief that sharing their experience will help others (Corbin & Morse, 2003). Corbin and Morse (2003: 342) write that, 'a conscientious researcher will try to discern what it is participants are seeking, then if possible provide that either during the interview or once it's over'. Both Kevin and George began the interview by answering questions openly, sharing their experiences of remand and engaging with me in conversation about the three areas of focus in the interview schedule (see Appendix A). However, as the conversation progressed, I started to ask myself whether these individuals were participating in the research due to a lack of human contact. At no time did it appear that the interview questions were causing Kevin or George harm or emotional distress. Rather, they began wandering to other subjects. Within approximately 50 minutes of each interview, George was recounting stories of international travels in his youth, while Kevin began sharing current hobbies and showing me his new sewing machine. On a few occasions, I tried to steer the conversation back to the subject of remand. However, the conversation eventually meandered

back to topics unrelated to the research. At the time of the interview, there was nothing beyond a ‘gut feeling’ that my interviews with George and Kevin should cease to be about the research. Both interviews concluded with approximately 30 minutes conversing about family, travel, and Brexit. I felt a responsibility to provide George and Kevin with what they appeared to be seeking: an opportunity to convey their experiences of remand, but also to enjoy a conversation with another person; to engage in human contact, if only by video.

Interviewing Kevin and George offered a front-row seat into the effects of lockdown on individuals living alone, who had minimal networks of support, or who struggled with life in the community under the label of ‘former offender’. They were lonely. There is an extensive literature exploring the causes and effects of loneliness (see for example Lauder et al., 1996; Ratcliffe et al., 2021), but fewer studies have investigated the implications of loneliness on the participant-researcher dynamic. As mentioned, following interviews, I wrote to participants to thank them for their participation. For most participants, there may have been one or two subsequent emails back and forth, but in Kevin’s case, the email exchange continued. In exploring this phenomenon, I stumbled on a study involving women with learning difficulties. Following the study, the researcher reflected on her experience of staying in touch with four of her research participants, writing ‘knowing how to respond [to continued contact] is a quandary for all social researchers unable to push aside people who are living desperate lives’ (Booth, 1998: 133). Living in the unprecedented time of a global pandemic, and engaging with a population frequently ostracized from mainstream society due to a criminal past, required particular attention to the human needs of participants. My approach was one that was led by values of compassion and care. Recognizing that I wanted to approach this kind of work ‘from a principled stance’ (Booth, 1998: 134) involved acknowledging a potentially longer-term commitment. Kevin’s participation in this study is invaluable, not solely for his contributions towards answering RQ 1, but because our interactions offered me an opportunity to reflect on what it means when the roles of researcher and human being intersect.

3.4. Ethical considerations

Ethical approval from the University of Sheffield’s School of Law was received prior to recruiting and interviewing adult men in the community with experience of remand. Once approved, this research was conducted in accordance with the University’s Good Research and Innovation Practices Policy. Prior to each interview, participants were sent an information sheet

(Appendix D) and consent form (Appendix E). The former document provided details of the study, including the general focus of the interview questions, while the latter outlined the manner in which participants' information would be used and protected. Participants were informed of the limits to their confidentiality, such that the disclosure of an intention to cause harm to oneself or others would be reported immediately. To protect participants' anonymity, pseudonyms, which were selected by participants at the end of the interview, have been used in place of real names, and any identifiable information (i.e., information which could be used to identify a participant) has been modified or removed. As the interviews were long-distance (see above), verbal consent to participate in the study was acquired from participants. Consent was sought after the research and research activities had been fully described to participants. Prior to being asked questions outlined in the interview schedule (Appendix A), participants were advised of the plan to record the consent process as well as the interview itself. Three participants did not consent to the recording of the interview. In these cases, notes were taken during the interview to record data. For those who consented to the interview being recorded, recordings were stored on a secure, password-protected personal computer. The digital materials were stored using an encryption programme. Handwritten notes were stored in a locked cabinet. Following the interview transcription process, the digital file was uploaded to the secure server at the University of Sheffield. A copy was also printed and securely stored in a locked cabinet.

Compensation for research participants

This study offered participants £10 in compensation for the interview, slightly above the UK living wage in 2021 (£9.30/hour). The decision to offer £10 was based on available research which suggests that 'minimum wage is a useful benchmark for monetary incentives' (Hanson et al., 2012: 1402) as it reduces the possibility of compelling or coercing vulnerable populations to participate in research. The decision to pay research participants in this study was grounded in the view that participants should be compensated for their time and effort (Roberts & Indermaur, 2008). Individuals 'who participate in research that benefits society, effectively on behalf of us all, should receive some form of financial "nuisance bonus" to compensate for the different forms of discomfort, burden and inconvenience associated with participation in research' (Norwegian National Research Ethics Committee, 2020). Participants were offered compensation for their time and contribution. Information on compensation was included in each Unlock advert (Appendices B and C) as well as the information sheet for participants

(Appendix E). On the date of the interview, during the consent process, I advised participants of the £10 compensation. Participants willing to accept compensation were sent £10 electronically at the end of the interview. Most participants, however, refused to accept compensation. Instead, they suggested I either keep the money or donate it to a charity, usually Unlock. In cases where a participant refused compensation, the £10 was donated to the charity of their choice.

Emotional distress

As the interviews were conducted remotely, there were limited concerns over personal safety. However, the research topic had the potential to raise distressing memories for participants given its sensitive nature. Sensitive research topics include ‘research that intrudes into a deeply personal experience’ or ‘research that is concerned with deviance and social control’ (Kavanaugh & Ayres, 1998: 92). Empirical studies point to the painful experience of remand and prison generally (for example see Crewe et al., 2017; Liebling, 1999; Pelvin, 2019; Sexton, 2015) and, as such, careful consideration was given to approaches to reduce participants’ potential emotional distress. As a first step, participants were advised in advance of the broad topics covered in the interview. The information sheet (Appendix E) was sent to participants describing the specific areas of focus and the potential discomfort they might experience speaking about their time on remand. This information was communicated again on the date of the interview. Each interview began with ‘warm up’ questions and concluded with a set of ‘warm down’ questions. In addition to these steps, information was on-hand to refer participants to relevant support services, if needed. However, as I was not privy to participants’ location in England or Wales, the sources of support were general in nature (e.g., Samaritans).

Planning for participants’ emotional distress and experiencing it first-hand are quite different. At times, it was difficult to witness interviewees disclose painful personal histories. In these moments of emotional distress, the distance and remoteness of online or telephone interviews is acutely felt. I experienced this in my interview with Steve; the first online interview I conducted for this study. Prior to the interview, I had exchanged several emails with Steve to discuss the research itself as well as schedule a date and time for the Zoom interview. In one written exchange, Steve informed me that recollecting the events which led to his detention on remand may be upsetting to him. He asked me to be patient with him. I replied to thank Steve for sharing this information with me. I let him know that the interview could be taken as slowly

as he needed or could be paused or stopped altogether at any point. I also shared that the research was focused on the experience of remand and that if he would prefer to avoid the subject of the events which led to his detention, he could forego disclosing those events. During the interview, Steve gradually explained, through tears, that, prior to his experience of remand, he had lost a loved one and had subsequently attempted to take his own life. Steve was visibly upset in describing the events which preceded his attempt to end his life. There were long pauses as he told his story, during which he wiped away tears or steadied his breathing. I interjected once during a long pause to ask if Steve wanted to take a break or stop the interview. He said he wished to continue. At the end of his story, Steve paused and, when ready, told me we could move on. I offered my sincere condolences for his loss and suggested we could take a break or a few deep breaths. Though I meant it sincerely, Steve chuckled at the idea of taking a few deep breaths together. I thanked Steve for sharing his story and, after a few more seconds, he told me he was ready to continue.

At no time did Steve appear in emotional distress beyond what someone would normally expect when another person is describing their experience of grief, nor did he seem in imminent danger to himself or others. Observing Steve tell his story brought to bear the distance between us, and the difficulty of navigating emotional distress in an online interview. Exploring the literature on studies relying on qualitative interviews conducted by telephone or online, and the vast literature on emotional distress in face-to-face interviews exploring measures to mitigate harm, offered little insight into strategies to respond to emotional distress from a distance. Literature on emotional distress during telephone interviews is generally limited to identifying sources of support in advance of the interview (Drabble et al., 2016; Taylor et al., 2011) or seeking support from senior researchers on the project (Drabble et al., 2016). In their research on emotional distress in face-to-face interviews, Kavanaugh and Ayres (1998) write about researcher-led strategies to employ when participants are in visible emotional pain, such as taking a break to look at photographs or making a cup of tea. While it is feasible to take a break during online interviews, it is trickier to implement relational strategies, such as making someone a cup of tea or browsing through a photo album. Being present in time, but absent in space, leaves limited tools at researchers' disposal. The best I felt I could offer Steve and other participants who experienced moments of emotional distress was my time. I followed the pace they set, conscious of not wanting to rush them, and concluded each interview with lengthy conversations unrelated to the research topic.

4. Analysis

The transcription process occurred shortly after each interview. Interviews were recorded verbatim, including pauses, laughter, and filler words such as ‘like’ or ‘you know’. The decision to keep these expressions within official transcripts was to give some depth to the person speaking at the time and to reflect the conversation occurring in that space and at that time. I transcribed each interview, which proved to be a time-consuming endeavour, but one which was essential to engaging with the data collected. It was beneficial to play the interviews, in the privacy of my own home, and be able to listen attentively to the conversation, without distraction of thinking where I might like to go next with a question or whether to offer a break to a participant. Transcribing the interviews also awakened me to the learning curve of conducting research. There were moments when, on listening to certain recordings, I wondered why I had not asked a certain follow-up question or probed further into the meaning of certain descriptors used by participants. Though frustrating at times, it was part of the learning process and provided considerations to take forward to future research.

Preparing to analyze the data required careful consideration of existing research on the pains of imprisonment (Crewe, 2009, 2011; Crewe et al., 2017; Goffman, 1961; Irwin, 1985; Liebling, 1999; Liebling & Maruna, 2005; Jewkes, 2005; Sykes, 1958; Warr, 2016), policing (Skinns, 2011; Skinns & Wooff, 2020), immigration detention (Bosworth, 2019; Hasselberg, 2016; Turnbull, 2016; Ugelvik & Damsa, 2018), the small body of research on remand (see Chapter Two), and the possibility of identifying new themes in the current study. There is a significant volume of qualitative, quantitative, and mixed methods research exploring the detention of individuals across the spectrum of criminal justice agencies. It was important to acknowledge and engage with this body of work in the analysis and interpretation of my own data, not solely to avoid the ill-fated practice of ‘parachuting in’, whereby existing evidence and research are overlooked, but to remain open to finding parallels between the pains of punishment and the pains of remand. To accommodate these considerations, the research followed Layder’s (1998) ‘adaptive’ theory; a flexible and hybrid approach of combining existing theory with the possibility of developing theory based on empirical data. In short, the data were analyzed both deductively and inductively. The exercise of ‘adaptive’ theory involved developing pre-coding categories taken from the extant literature on the pains of imprisonment (e.g., deprivations of liberty, security, goods and services, relationships and autonomy, the pains of indeterminacy and uncertainty as well as self-government, and others),

policing (e.g., insecurity, uncertainty), immigration detention (e.g., discrimination, long-distance relationships), and remand (e.g., cross-institutional nature, 'one foot in'). Qualitative data analysis software was not used. Instead, common themes were identified in the data through comprehensive and repeated readings of transcripts. Themes discussed in forthcoming chapters include similarities with the pains of imprisonment, policing, immigration detention, and remand, as well as new twists on old themes.

5. Reflections

Many of my reflections on this research are scattered throughout this chapter, but a few bear mentioning here. Bearing witness to personal struggles is challenging on a human level. As noted above, my priority was always to care, only later reflecting on my role as a researcher. Inhabiting the role of both me, the researcher, and me, the human being, was a new dichotomy. I was wholly uncertain that I had done a 'good job' as a researcher, but had no benchmark for identifying what makes a 'good' researcher. I was unsure whether I was qualified to be navigating these challenging, emotionally ridden conversations. I was worried about the impact the interview would have on the participant after hanging up the phone or logging off the computer. At the time of writing, the interviews occurred over a year ago. However, I still wonder about the abruptness with which the interviews ended. One minute, you, as a researcher, are listening to some of the most intimate details of a person's life, and within the next hour or two, you wish each other well and hang up the telephone.⁹ Having the privilege of listening to participants' stories, but feeling as though I had little to offer in return was one of the difficulties I encountered during this research. The researcher-participant relationship has been confounding from the perspective of reciprocity. In trying to grapple with this feeling, I stumbled on research investigating power dynamics between participants and researchers (for examples, see Harrison et al., 2001; Limerick et al., 1996; Vagle, 2009). Some authors depict an interview as a 'gift', writing that 'it is useful to conceptualize the interview as a gift of time, of text, and of understanding, that the interviewee gives to the interviewer' (Limerick et al., 1996: 458). On first read, I thought the notion of a 'gift' was patronizing, as it potentially minimized the participant and their contributions to empirical research; to the construction of knowledge. However, the concept of the 'gift' is meant to denote that the interviewee has a

⁹ Note, however, that all interviewees agreed to be contacted once this research was completed to learn about the findings.

choice on how much to give, or conversely how much to withhold, and that, on receipt of this gift, the researcher is entrusted with it. Interviews are a fragile exchange or, as framed by Wolcott (1995: 105), a ‘delicate art’. I am not convinced that framing interviews as a ‘gift’ is sufficient to overcome concerns with power dynamics (and nor do the authors make this claim). However, examining interviews from the lens of reciprocity revealed that, as a researcher, I may not be able to ‘rid [my] research of power or hope to create a static balance of power during interviews’ (Harrison et al., 2001: 338). Acknowledging this taught me to try to be attuned to power dynamics, to the imbalance of power, and to the needs of participants during interviews, but also to reflect on relationships with participants before, during and after interviews (e.g., maintaining relationships, such as my correspondence with Kevin). The moments of disquiet I experienced, where the voice inside my head asked me to think more critically about what I was doing and how I was doing it, were illuminating and offered insights beyond what I had hoped to learn, both about the topic of remand, ‘doing’ research, and myself. Conducting this research was a humbling experience.

One element yet to be addressed is the emotionally taxing nature of conducting interviews exploring the impact and collateral consequences of the deprivation of liberty. At the conclusion of many interviews, I felt spent. In the aftermath of these difficult interviews, I wrote in my notebook about my thoughts on how the interview had gone, but also relied on my parents. Despite my almost-middle-aged years, they remain pillars of support. They offered me a space to debrief on my struggle of learning to ‘do’ research and, given their experience in the fields of corrections, parole, and pastoral care, could empathize with the mental and emotional toll of managing conversations involving pain and suffering. Our conversations were invaluable to my own mental health as I navigated interviews and processed these experiences. In addition to my parents, my supervisors were sources of support throughout this study. Although living on separate continents for most of this research, my supervisors had an open-door policy. I could send them an email with questions or reflections, knowing that they would promptly respond with answers (usually within a few hours!) or, if needed, set-up a time to meet virtually. They listened patiently, offered advice and reassurance when needed, and helped me to critically evaluate the research I was conducting.

Managing this study was challenging and, in certain moments, disappointing. The decision to omit Canada from this study was difficult. Prior to beginning my PhD, I had spent a decade working in the Canadian criminal justice system, learning about its principles, its operations,

and its myriad challenges. It is where I first witnessed the suffering punishment can inflict on a person, observing it first-hand when working for the prison service. It is where my passion for—and commitment to—the humane treatment of prisoners was first instilled. It is also where I first started to question State reliance on imprisonment, and the use of prisons for the detention of the unconvicted and unsentenced. Removing the possibility of exploring the pains of remand in the Canadian context was disheartening. A part of me feels a sense of guilt at being unable to give voice to the experience of (former) remand prisoners in Canada; of somehow leaving them behind on this journey. It is of some consolation that I gave it my best effort to recruit participants in BC, and I remain hopeful that I will explore my research questions in Canada at some future point in time.

6. Conclusion

This study was full of twists and turns, requiring the ability to develop and adapt to new plans and to let go of old ones. This chapter explored the methods used to conduct this study. It detailed the research design and highlighted the complexities of pursuing research during a global pandemic. After outlining data on participants, this chapter discussed ethical considerations, laying out the thought and care put into establishing the principles that guided this study, including voluntary participation, informed consent, anonymity and confidentiality, and measures to reduce the potential for harm. Participants' well-being and protection were at the centre of the design and implementation of this research as well as in the process of analyzing the data and writing up the findings. In addition, this chapter detailed the benefits and challenges of using the telephone and VoIP technology to interview participants, and offered personal reflections on conducting long-distance interviews. There were challenges associated with meeting virtually with participants who were recollecting difficult experiences. Navigating emotional distress through a telephone or computer screen was a difficult learning experience, both as a researcher and a person. Despite the many challenges faced as a result of COVID-19, the design of this study was adapted to meet shifting realities which, ultimately, allowed this research to be completed. This study persevered in exploring adult men's experiences of being remanded to custody in England and Wales.

Chapter Five: Life on Remand

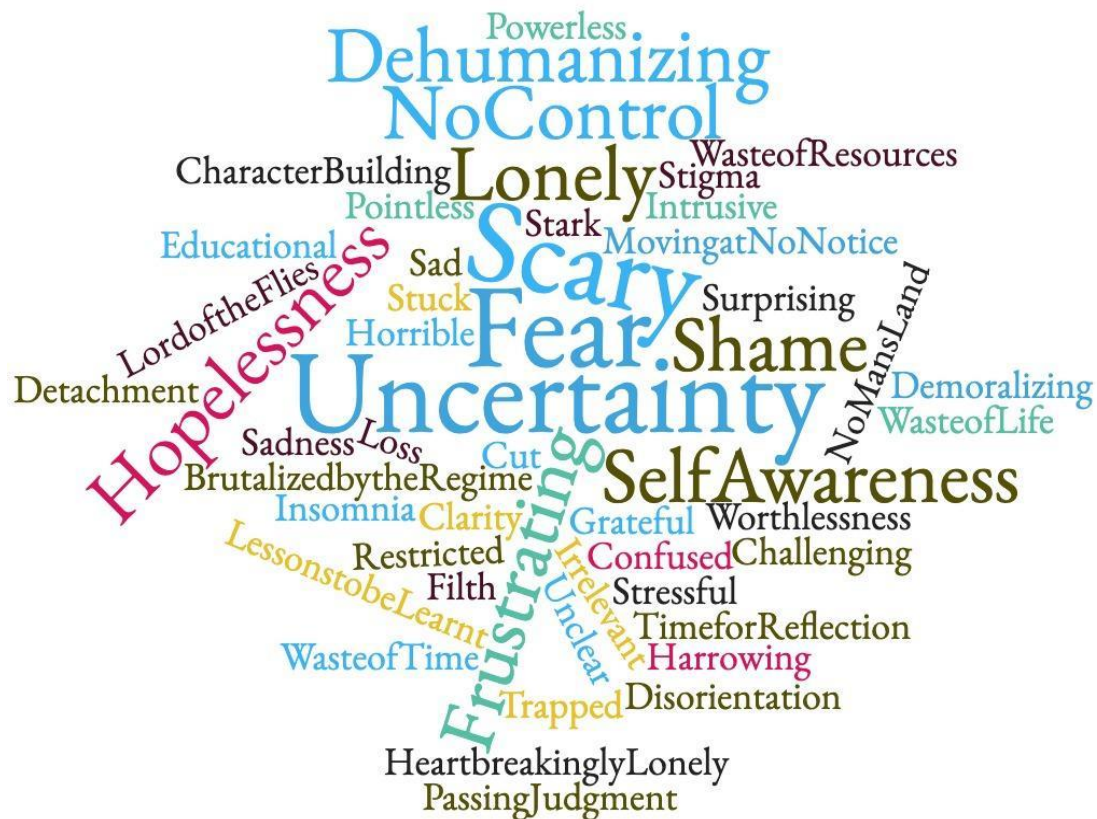
1. Introduction

Despite its place in the criminal process, remand and its possible ‘punitive tendencies’ (Skinns & Wooff, 2020: 2) has received little investigation. To date, the experiences of unconvicted and unsentenced prisoners have been largely overlooked in the literature on the pains of punishment. This chapter explores the pains experienced by participants who were detained in custody before their trial and/or sentence. Drawing on the pains of punishment literature, including policing, remand, immigration detention, probation, and imprisonment contexts, this chapter examines the applicability of existing frameworks to describe the pains of those recounted by participants in this study. Stripped of their liberty and placed into the care and custody of HMPPS, participants suffered deprivations similar to those described by Sykes (1958) and more contemporary studies on the pains of punishment (see, for example, Crewe et al., 2014; Jewkes, 2005; Skinns & Wooff, 2020; Warr, 2016; Wright et al., 2017). Specifically, this chapter examines the deprivation of liberty and its associated consequences through the lens of those detained on remand. Participants worried about their safety in prison, concerned about their newfound presence alongside strangers. They were bored, facing long stretches of time in their days, weeks, and months on remand with minimal purposeful activities. They worried about their families. They were anxious about administrative affairs left unresolved in the community. Participants’ narratives, however, highlighted unique pains stemming from their legal status, adding weight to existing research on remand pointing to the harms caused by periods of confinement in pre-trial and pre-sentence custody (see Pelvin, 2019; Ugelvik, 2013).

Individuals detained on remand are a paradox within prisons. Their liberty has been revoked by a court, yet their unfinished business with the criminal process puts them at odds with the majority of those confined alongside them. Participants’ experiences were significantly shaped by their criminal case and liminal legal status. During interviews, participants were asked to describe remand in five words, and Figure 5.1 provides a graphical representation of the frequency of answers recorded (with frequently used words appearing in a larger font). Participants most frequently described remand as an ‘uncertain’ time in their lives, using words like ‘uncertainty’ or ‘uncertain time’ to convey their overall experience. The indefinite length of their detention and the unknown outcome of their criminal case shaped participants’ time on

remand. This chapter focuses on the pains experienced by participants as a result of their placement within a carceral environment.

Figure 5.1: Depiction of most frequently used words to describe remand



2. Arrest: A seismic change

Many participants in this study described their arrest and subsequent detention in police custody as the point at which their lives began to unravel. Once arrested, nearly all participants found themselves in the grips of the criminal justice system; a force which would only further tighten around them as they moved through the early stages of the criminal process. In this study, nearly all participants followed the same path: arrest, detention in police custody, charge, bail denied, remanded to custody, trial and/or sentence, and a term of imprisonment. In recounting their time on remand, most participants began their story before they reached the gates of the prison. Participants' decision to start their stories at the point of arrest complement findings demonstrating the pains of punishment begin before confinement to a carceral environment (Laursen et al., 2020; Skinns & Wooff, 2020; Warr, 2016; Wooff & Skinns,

2018). Warr (2016: 587) posits that, ‘the process of mortification and the first psychological assault on the individual, their sense of self and their subjective narrative occurs not in the prison but at the point of arrest.’ Being arrested and detained in police custody was the tipping point. It was the start of the disruption to participants’ lives. Participants’ interactions with police was a gateway to their ‘deeper engagement with the criminal justice system’ (Wooff & Skinns, 2018: 575).

Arrests were conducted in a host of fashions. Some participants were arrested in their homes or on the street and subsequently carried away in police vans. Others were invited to travel to their local police station to speak with officers. After being interviewed by police, they were detained to await their bail hearing. The point of arrest and the process it triggered was the decision-making point in the criminal justice system which set the wheels in motion for participants’ detention on remand. Beau was asked to attend an interview with a detective in his local area. As the detective had given Beau assurances that he would be able to return home at the end of the day, Beau drove himself to the police station:

I went to the station, and I was then kept there. I’d parked my car in [city name] and that was it for two years. (Beau)

Beau was detained by the police and thereafter denied bail and remanded to custody. Unbeknownst to him at the time, Beau would only return to the community following his release from sentenced custody. Other participants also described their arrest as the point at which their freedom was removed:

I got remanded straight from that day. So, from being arrested, I never got out. I went straight to prison on remand. (Jason)

From the moment the police van doors closed I didn’t see freedom until I walked out of prison. (Scott)

Jason and Scott were arrested and detained by police to wait for their bail hearing. Both were subsequently denied bail and escorted to prison to wait for the outcome of their criminal case. Following arrest, most interviewees were detained in a police station where they waited to

appear before a judicial office-holder on the matter of bail. For some, detention in police cells lasted a few hours, while others waited days:

I was three days in a police cell, then shipped off to Magistrates' Court and they decided I should be remanded. Not bail. So, I was shipped to HMP T. (Kevin)

Beau was in police custody for a few hours before appearing in court:

It must've been around half-past 4 or 5 in the evening, I appeared at Magistrates' Court [...] I was kept in holding cells, then I appeared, and kept in some cells connected to the courthouse, and from there I was then taken to HMP F. So, I arrived there around 7pm. (Beau)

The swift transition from freedom to police custody to prison left many participants in a state of shock. It was difficult to process the incremental losses to their freedom—from being detained overnight in a police cell to being escorted to spend an indefinite period of time in prison—due to the speed at which they were being moved through the early stages of the criminal process. After meeting with police, Barry asked an officer about next steps in the process. Police explained there would be a decision on whether or not to charge him and, if charged, a hearing would be held to determine whether he would be released to the community on bail or remanded to custody. Barry described the early stages of the process as follows:

[...] it was quite swift. And then there was periods of waiting, you know, but those were, you know, hours, not weeks or anything like that. At that point, it was fairly swift and, yeah, you know, the idea that when I arrived in HMP A it was a Friday and I thought to myself, 'Two days ago, on Wednesday, I was in a lecture, you know, and now I'm here', which not many people can say. But yeah, lightning fast. (Barry)

Barry was stunned by the change in his life. In the span of 48 hours, he had gone from a college student to a criminal defendant awaiting trial in a local prison. It had all happened in the blink of an eye. In describing his experience, Scott recounted:

I was arrested, charged immediately—because it was quite a serious thing—so, it was quite immediately remanded into custody. (Scott)

Adrian also recalled the suddenness of his removal from society. At the time of his arrest, Adrian was unaware of the possibility that he may be detained pending the outcome of his criminal case. During his interview with police, Adrian expressed a desire to end his life. As recounted by Adrian, his admission to police on the state of his mental health resulted in the court's decision to remand him to custody for his own safety:

I was plucked from my house that I've worked all my life to pay for and owned outright. Fridge full of food, bowls full of fruit, so on and so forth, you know, bin full, dishwasher full, all the rest of it, and it was just abandoned. And that was it. (Adrian)

The haste with which Adrian was removed from society left his home frozen in time. Adrian had stepped out his front door on the day of his arrest with the expectation he would be returning. Instead, he would only return home following his release from sentenced custody. Participants frequently shared stories to elicit the swiftness of the process which culminated in their arrival to prison on remand. One minute they were roaming free in the community, the next they were gone. In speaking about his engagement with the criminal justice system, Beau recollected:

All of a sudden, now I'm on the receiving end in a world I really did not know anything about. You know, I had no interest in this world before. I didn't go look at what it might've been like in the judicial system. (Beau)

Descriptions such as 'all of a sudden', 'immediately', 'lightning fast', and 'plucked', demonstrate the speed at which the steps at the front-end of the criminal process unfolded. Unbeknownst to them, participants' freedom, already limited by their detention in police custody, would be indefinitely restricted by a court decision to suspend their liberty until trial or sentencing. In this study, participants had no time to ready themselves for what lay ahead.

Unlike their bailed counterparts, adults denied bail and remanded to custody are offered no opportunity to adjust to the notion that they may end up in a prison. Conversely, individuals released on bail may anticipate a future sentence of imprisonment. Waiting in the community for trial or sentencing may allow them to prepare for the possibility of their removal from society, such as appointing a power of attorney to act on their behalf or taking measures to shutter their home. There is no known study exploring similarities or differences in experiences

of individuals waiting for trial or sentencing in the community on bail versus those remanded to custody, and few studies investigate the subjective experience of bail (though see Yule et al., 2022). However, research exploring the call-up system in Norway, a process allowing convicted individuals to wait in the community until a prison bed becomes available, points to advantages and disadvantages associated with ‘queuing’ for a term of imprisonment (Laursen et al., 2020). On the one hand, prolonged waiting periods caused uncertainty in individuals’ lives. Without a set date on which a period of incarceration would begin, individuals lived in limbo, unsure of which activities to maintain, such as employment, in the face of an unknown future (Laursen et al., 2020). On the other hand, the prison ‘queue’ offered individuals the opportunity to prepare for prison. They were able to speak with prison officials in advance of their entry to custody, and to plan for their absence from the community (Laursen et al., 2020). Those in the prison ‘queue’ spent time in the community organizing their lives in preparation to be absent from them, such as securing childcare (Laursen et al., 2020). While little remains known about differences between bail and remand (again, see Yule et al., 2022), research on the prison queue in Norway depicts punishment-in-waiting as a double-edged sword. There is time to prepare, but that time is marred by uncertainty. Participants in this study, however, had no time to prepare. They suffered from the consequences of being ‘plucked’ from their community without notice as well as by the pains of uncertainty associated with the indefinite length of their detention and unknown future. A seismic change had come to pass in a brief period of time, leaving participants in a state of shock as they continued to move deeper into the criminal justice system.

3. Entering custody

Entry into a custodial environment is a disorientating experience (Irwin, 1985; Klofas, 1990). While the literature on experiences of prison predominantly focusses on sentenced persons, remand prisoners are subject to many of the same rules and procedures administered to those sentenced to a term of imprisonment (Casale, 1989; Pelvin, 2019). On arrival, participants faced the intrusive processes accompanying a sentenced person’s admission to custody, such as the removal of personal clothing and strip searches. They were required to conform to institutional rules and to the daily prison schedule. Attempting to adjust to their new environment was made all the more difficult by their separation from loved ones. Life inside prison, from reception processes to interactions with staff, can feel degrading and humiliating (Casale, 1989; Pelvin, 2019; Ugelvik, 2013) and result in significant impacts on mental health

(Birmingham et al., 1996; Davoren et al., 2015; Humber et al., 2013; Liebling, 1999). Early days in custody require a ‘survival strategy’ (Schmid & Jones, 1993: 446) and have been described as a period of numbness (Wright et al., 2017). Research exploring the transition from community to prison highlights vulnerabilities amongst prisoners in their initial days, weeks, and months in custody (Liebling, 1999; Schmid & Jones, 1993). In her research on suicide in prison, Liebling (1999) demonstrated the increased risk for self-harm and suicide amongst remand prisoners, given their uncertain present and future (see Chapter Two, Subsection 4.1). In this study, the disruption to participants’ lives, triggered by their arrest, was exacerbated by the period of disorientation marked by their entry to custody.

The majority of participants entered custody as unconvicted prisoners ($N = 14$; see Table 5.1). The remainder were waiting in custody to be sentenced. Save for two interviewees who were co-defendants, all participants were detained on remand in separate prisons across England and Wales. Nearly all described their prisons as ‘local’, meaning establishments housing remand prisoners, prisoners serving short-term sentences, or prisoners taken from nearby courts waiting to be transferred to another prison to serve longer-term sentences (Ministry of Justice, 2016). Despite legislative provisions placing a duty on HMPPS to keep unconvicted prisoners separate from the rest of the prison population, all participants in this study who were unconvicted prisoners were co-located with sentenced persons.

Table 5.1: Participants’ legal status on entry into custody

Pseudonym	Status on entry to custody
Steve	Unconvicted
Beau	Unconvicted
Armit	Unconvicted
Scott	Unconvicted
Jason	Unconvicted
Ethan	Unconvicted
Charles	Unconvicted
George	Unconvicted
Dan	Unconvicted
Frank	Unconvicted
Adrian	Unconvicted
Jamieson	Unconvicted
Gabe	Unconvicted
Barry	Unconvicted
Kevin	Unsentenced
Luke	Unsentenced

Kurt	Unsentenced
Tony	Unsentenced
Henry	Unsentenced
Craig	Varied (experience of both forms of remand imprisonment)

Participants recounted the dehumanizing experience that awaited them in the admission and reception area of local prisons. Without prompting, several participants spoke of the procedures on intake to custody. Personal clothing was removed. Strip searches were conducted. Intrusive questions were asked about their medical history and mental health. The experience of being incorporated into the prison system was a ‘shock’ (Luke and Barry), as well as a ‘disempowering’ (Ethan) and ‘dehumanizing’ (George) ordeal. Henry recalled:

My experience, when you walk into the prison—you’ve watched a prison programme or things like ‘Shawshank Redemption’, it’s not dissimilar. There was A, B and C wing and we had to walk past A wing to go into the block where new people went. And they were all rattling the cages and all asking you for drugs just as you’re walking past. It was a harrowing experience. (Henry)

As participants moved further inside the prison, they were faced with the stark conditions of confinement and a close-up view of those confined alongside them. Though conditions figured less prominently in this study, Luke and Armit, like Henry, also referred to ‘The Shawshank Redemption’ to illustrate the conditions inside their respective institutions. ‘Filth’ was an oft repeated word to describe the prison interior, and the frigid temperature was frequently remarked upon. Participants reported being cold, even freezing, due to broken windows or outdated heating systems. One participant, Scott, questioned whether his local prison would be found ‘fit for human habitation’. Conditions of confinement were, however, often left unexplored, which may reflect the time and space between participants’ detention on remand and the research interview. Instead, it was common for participants to focus on the shock and disorientation of their initial days and weeks in custody. Kevin described the first few moments after entering his cell:

The day I got there [HMP T], they issued me with some clothes and bedding and somebody carried a mattress into this cell, and then they [prison officers] shut the door behind me and I tidied things up a bit. I thought, ‘Oh, I’ll go and explore’ [laughs]. Tried the door and, of course, the door wouldn’t open. That was a stark realization I was in prison. (Kevin)

It took Kevin arriving to his cell to recognize the reality of his confinement and two of its consequences: the losses of the liberty and autonomy. Armit, who was detained for five months, recounted the difficulty of trying to live in his new environment:

I slept a whole week. Couldn't grasp that I was inside an institution. (Armit)

Other participants struggled to recollect their initial days on remand, such as Steve:

I think the circumstances of my going 'in', of being taken into custody, were such that I was so traumatized and remained so for quite some time, and then gradually emerged from that position. (Steve)

Similar to prisoners serving long sentences, participants seemed to apply strategies to try to defend against accepting their new reality (Wright et al., 2017). On arrival to prison, most participants spoke of discomfort and disillusionment. The majority of participants were new to custody with no prior involvement in the criminal justice system ($N = 17$). Part of their struggle lay in trying to come to grips with an unfamiliar world:

Remand is a real shock because you come into a completely different world, where the rules are different [...] It was like learning the rules of a different world. (George)

I'd entered a world of which I knew nothing about. (Beau)

To orient themselves, participants looked for information from authorities about living life inside a prison. Information, however, was slow in coming. Participants reported either having an unhelpful induction or no induction at all. Information related to participants' 'new world' was not readily available. Across the sample, participants reported the difficulty of entering an environment in the absence of knowledge to help them feel grounded. Many participants expressed their frustration and disappointment with the formal systems in place to familiarize them to prison life. In most cases, they were left to fend for themselves. Scott described feeling lost in his initial days in custody, owed in part to the lack of induction:

They don't give you a guidebook, but you just sort of figure it out as you go along. I think that's what everyone does. (Scott)

Most participants were strangers to their new environment, feeling out of place and clueless about the written and unwritten rules of life inside prison. In their accounts, minimal resources were allocated to help orient them to their new surroundings. Without support, participants faced significant difficulties trying to acclimate to prison.

The speedy transition to a new and unfamiliar environment was overwhelming. In his early days and weeks on remand, Armit reported it was difficult to feel settled. He preferred to sleep than try to process what was happening to him and the life he had once known. During this time, Armit described his emotions as ‘all over the place’. Luke spent three months detained on remand in a segregation unit. Given concerns for his personal safety, and in the absence of a unit for vulnerable prisoners, Luke opted to be placed in segregation rather than the general population. He described his mental state as follows:

[...] your brain is never off. There’s no come down [...] Mentally, I don’t think in that time I ever had a reprieve where my brain—all the things it was doing, you know, processing why I was there, what was happening. (Luke)

Luke’s mind was constantly at work, trying to make sense of his new surroundings, replaying the events which had led to his detention, and wondering about his future. It was exhausting. Eventually, Luke was sentenced to a term of imprisonment. During his interview, he reflected on his experience of remand in comparison to his experience of formal punishment:

For me, personally, my mental place was at its darkest and weakest in that remand period. (Luke)

Luke had the unique experience of being detained on remand inside a segregation unit, and he posited that the conditions of his confinement likely exacerbated his poor mental health. However, participants held within the general population of local prisons recounted similar ordeals. During his interview, Scott shared:

You can’t get out your head sometimes. It can be quite depressing, you know. Especially, ‘cause I was on remand as I said from October till January, so that was during the winter months. You know, during the time of the year when it’s starting to get dark at about 2:30, d’you know what I mean? So, it just added to the whole vibe. It just felt very miserable, you know. (Scott)

All at once, Scott found himself deprived of his liberty, surrounded by strangers, away from his family, and facing a sentence rumoured to range between 18 months and five years. For Scott, processing his new environment and potential sentencing outcome was emotionally draining. Jamieson also discussed his emotions on remand. Detained for four or five days before being bailed out, Jamieson recalled:

At that time, obviously, you're going through quite a lot of emotions and you're just up and down really with things, obviously, 'cause your mind's on overload with everything. (Jamieson)

Jamieson spoke of being at the mercy of a criminal justice system operating primarily out of view. He was unsure when he would appear again in court, whether he would eventually be granted bail (on appeal), or when he might return home to family. There was no relief from the unknowns. As participants entered custody, they struggled to process all of the events unfolding simultaneously: a pending legal case, the realities of life behind prison walls, the hope for bail, and an uncertain future.

For a few participants, the experience of remand, particularly in the early days of their detention, was unbearable. Steve and Adrian were remanded to custody over concerns for their own safety. Both had exhibited either suicidal behaviour or threatened to commit suicide. As explained by Adrian:

They remanded me into custody so I couldn't kill myself because they couldn't prosecute somebody who was dead. (Adrian)

Adrian perceived his detention as less to do with him, specifically his safety and wellbeing, and more to do with the aim of the justice system. In his view, Adrian was remanded to custody to allow the State to produce a living body before the court for trial. He was a means to an end.

While Adrian and Steve suffered from suicidal ideations before their confinement, other participants began experiencing mental health issues once in their new environment. On his first day in a prison in Wales, Tony was placed in the general population. He reported being 'really threatened' by another prisoner with 'scary tattoos on his face'. The threat, coupled with the rituals associated with admission to custody, contributed to Tony feeling 'out of his depth'. On his first night in prison, Tony recounted that he had access to a razor and was experiencing

‘very powerful thoughts’. On his second day in prison on remand, Tony’s brother died by suicide. For his own wellbeing, Tony was removed from the general population and placed in the prison hospital, where he remained until his sentencing date. Reflecting on the experience, Tony shared that he was uncertain how he would have coped if he had remained in the general population of the prison. Charles also struggled with his mental health while on remand, resulting from significant challenges related to his criminal case. Frustrated by the inaccurate information surrounding the circumstances of his (at the time, alleged) offence, he spent hours trying to correct the facts established by the police. Exasperated by engagements with various criminal justice agencies, Charles threatened to kill himself. Eventually, he took an overdose. Charles spent three days in the hospital shackled to a bed under surveillance by prison officers.

Being stripped of their liberty and confined to a cell within a prison for an uncertain length of time took a toll on many participants’ mental health. They described intrusive thoughts as they tried to process their new reality and cope with their liminal legal statuses. Although difficult emotions experienced on remand were not couched as ‘mental health’, participants spoke of the collective impact of remand on their state of mind. The speedy loss of freedom, the stark conditions of confinement, the indefinite length of their detention, the unsavoury company, and their uncertain future were bearing down on them. Though physically located within a prison, participants’ minds were trying to play catch-up. A few days or hours before, they had been free men. As they sat in their new environment, participants tried to make sense of what had happened, and what would happen, to them.

4. Prison and the community: One foot in, one foot out

Adding to the challenges of entry into custody was participants’ separation from the community. In early research on the deprivations associated with imprisonment, Sykes (1958: 65) remarked on prisoners being ‘cut off from family, relatives, and friends’. While the collateral consequences of incapacitation include the deprivation of relationships, research exploring the immediate aftershocks of the loss of liberty, such as police custody (see Irwin, 1985; Skinnis & Wooff, 2020; Spradley, 1970) and remand (see Casale, 1989; Pelvin, 2019; Reed, 2011), point to unique pains experienced by those recently confined to State custody. As examined in Chapter Two (see Section 4), the deprivation of relationships with family and/or friends may come second to more urgent anxieties, such as personal needs (e.g., medications) and obligations left unfulfilled in the community (e.g., employment: Casale, 1989; Irwin, 1985;

Reed, 2011; Skinns & Wooff, 2020; Spradley, 1970). The newly confined expressed worries beyond fracturing ties with community networks of support (Skinns & Wooff, 2020). Their proximity to the community and their links to family and administrative affairs, all of which are not yet severed by a formal punishment, result in hope for an eventual return to society (Irwin, 1985; Klofas, 1990; Reed, 2011).

As the majority of participants had been blindsided by their arrest and subsequent detention on remand, they were wholly unprepared to be absent from their homes and/or families. Family and employment commitments, tenancy agreements, and financial obligations, such as mortgage payments and telephone and cable bills, all remained intact. The swiftness of the decision to remove them from society resulted in several immediate concerns for family and/or personal affairs. Amongst the total sample, most participants had strong community bonds. Wives, partners, young children, adult children, and friends had all been left behind, but nearly all remained supportive. A few interviewees, however, had no relationship with family or friends in the community. This smaller group had either lost contact with their loved ones after their arrest or had fractured ties with family before the commission of the offence. Regardless of community attachments, both groups struggled with being cut off from society for different reasons. Interviewees with families or dependants were concerned about the emotional and financial toll of their absence. This group worried about the welfare of their families. In contrast, participants with limited or no family support focused on trying to tie up loose ends in the community. In the absence of support, this smaller group of participants were left to their own devices to sort out the administrative consequences of their detention.

Despite the specific interview questions exploring relationships in the community (see Appendix A), participants predominantly focused on life inside prison on remand and the impact of remand on their criminal case. The limited focus on family may be owed to the timing of the interviews, which occurred months or years after the experience of pre-trial or pre-sentence detention. It may be that, had the interviews occurred while participants were physically detained on remand, the subject of family and/or friends would have garnered more attention, given their immediate separation. At the time of the interview, however, participants were residing in the community, with most either living with loved ones or visiting them regularly. Although less time was spent discussing the impact of remand on relationships in the community, participants with family ties spoke of their concern for partners and/or children after being remanded to custody. In particular, interviewees whose families remained

supportive spoke of financial security. The knowledge of leaving behind a loved one to care for themselves independently weighed heavily on a few participants. After being remanded to custody, Frank's partner, with whom he shared an infant daughter, lost their council housing. Due to Frank's absence, his partner had to go to the local council to explain her new reality:

She had to go to the council and say, 'I can't afford the rent. I'm getting kicked out. What are you gonna do now? I've got a baby'. So, they had to rehouse her. (Frank)

Without Frank's income, his partner was unable to remain in the same home they had shared prior to his arrest. The consequences experienced by his family resulting from his arrest and detention weighed—and still weigh—heavily on Frank. Beau, too, worried about his family. Prior to his arrest, he was employed by a reputable organization in the community, and his earnings allowed him to be the single breadwinner in his household. His absence and the subsequent loss of his income had significant ramifications on his wife. In a discussion on punishment, Beau shared:

My wife was punished. My wife was punished. As much as me? Yeah, probably, I would even say more because she was a housewife before, and she had to go and find a job. (Beau)

Beau explained it was difficult for his wife without him, and her struggle was front of mind. Following his detention, his wife had to find a new source of income. There was little Beau could do but worry about his wife's immediate and longer-term welfare. Being cut off from society and unable to provide financial support resulted in anxieties over welfare. The impact on household finances is one of the collateral consequences of remand, which is noticeably absent from the literature.

In addition to finances, participants worried about the stigma inflicted on their family. Ethan shared that:

For me the hardest bit is being kept away from my family and not being able to be there for them 'cause I know they were struggling [...] it was difficult for my wife, my son and my family. In many ways, I always thought I probably got the easiest bit because you don't have any responsibilities or anything, cause there's nothing you can do. You're powerless. I don't have to see what people think, or think about what people think, cause you're in there, you know. You're shut off. (Ethan)

Ethan described remand as a shield. He was protected from the fallout of the events which led to his detention. His absence, however, inadvertently put the spotlight on his family left behind in the community. Ethan worried about their exposure to society's condemnation, despite their lack of knowledge or involvement in the offence. Steve shared similar concerns:

It [remand] gave me time and space to think; to slow down; to reflect upon what I had done. To reflect upon the effect it was having on my family and my friends. In that sense, Emma, I felt an enormous sense of guilt. I was inside and protected, you know. Outside—excuse the expression—the shit was hitting the fan. Big time. And my family, my lovely children, were suffering terribly on account of what I'd done. And I was shielded from it all. I was totally shielded in this bubble of the prison. Nothing got through to me at all. (Steve)

Most participants with strong community networks of support described feeling guilt or shame over the impact of their offence on their family. Armit described the sacrifice his sister made, putting her life on hold to travel from her home, in a foreign country, to England to help him with his criminal case. It was painful for participants to be absent from their homes and distanced from their loved ones at a distressing time and to witness, from afar, the suffering they had caused. In recounting their stories about remand and its impact on relationships, participants with strong family ties reflected on the struggle their families experienced as a result of their behaviour. Their decisions and actions had emotional and practical consequences on loved ones which, on entry to custody, were front of mind.

Unlike those who had strong family ties, participants who had weaker bonds in the community struggled to keep pace with their lives unravelling behind them. Without community support, participants were single-handedly responsible for the administrative burdens associated with their removal from society. There was no one in the community to pay their bills, notify employers of their absence, or shutter their home until their return. Gabe had difficulties managing his personal affairs. As his family lived abroad, there were few individuals available to support him in England. During the prison admission process, Gabe advised staff of his need to notify his bank and housing association of his detention. Despite the promptness of his request, it took nearly two months for Gabe to meet with a prison officer to discuss his affairs in the community. Until that meeting, no organization in the community, such as his bank or housing association, had been made aware of Gabe's detention. In his early days on remand, Gabe had attempted to exert some authority over his administrative affairs by speaking with

his solicitor. He was advised that a power of attorney could be arranged, but that the process would take approximately three months to complete. The task of managing unfinished business in the community consumed Gabe's initial months in custody. During his research interview, Gabe suggested the prison system could better support remand prisoners by providing information on measures they could follow to sort out their finances or housing arrangements from within the prison.

Similarly to Gabe, Adrian faced challenges related to housing. As described earlier, Adrian felt he had been 'plucked' from his home. Groceries had been left in the fridge, fresh fruit was on the kitchen table, and trash was in the bin. Ultimately, a home had been abruptly and involuntary abandoned. With limited support, and with an elderly father in poor health, it was difficult for Adrian to find someone who could travel to his home to clean out of the fridge, put out the bins, and take other steps to secure his home until he could return. In the end, Adrian asked his elderly father for help:

He [Adrian's father] was able to visit once and threw the fruit away, emptied the fridge, that kind of thing. But by this time, my house had been burgled several times. The place was ransacked. And, it was ransacked at leisure, you know what I mean? There were vans; there were several people who were taking away fence panels and furniture, and yeah. (Adrian)

Adrian felt helpless. Attempts to ascertain more information about the burglaries from prison staff, including whether they could signpost him to other resources, proved unsuccessful. Instead, he was left to worry about his home, its missing contents, and its future security. It was only on release from sentenced custody that Adrian learned police had shared information with the prison regarding his home being burgled. For reasons unknown, the information never reached him.

Challenges with personal affairs extended beyond housing and banking. Prior to remand, Kevin owned his own business and kept a storage unit for equipment. Following his arrest, he was quickly remanded to custody. Once in the prison system, Kevin was unable to determine what would happen to his storage unit. After being shunned by family and friends for his offence, Kevin had no one in the community to help him with his business or personal affairs. During his interview, Kevin shared:

Kevin: That £27,000 worth of equipment in there? Don't know what happened to it. No idea.

Interviewer: It just disappeared?

Kevin: Yeah, I didn't have any contact with the outside [...] I couldn't afford a solicitor, didn't have any money, you know, to look after matters.

Although Kevin inquired with prison staff about his business in the community, including his storage unit, he was advised to forget about it. Prison officers told him there was nothing they could do to help him with his affairs in the community. Despite several years elapsing since his detention on remand and subsequent incarceration, Kevin has yet to determine what happened to the equipment he kept in the storage unit.

Prison walls act as opaque barriers for all those trapped behind them, but they appear particularly impenetrable for remand prisoners whose ties have yet to be formally severed with the community. Participants moved from police stations to courthouses to prison worrying about family, housing, employment, and financial obligations. As they confronted a new reality of life inside prison, participants were focused on life outside. The prison system, however, is not designed to support remand prisoners in resolving dilemmas in their personal lives. The system is designed to incapacitate and to support sentenced prisoners' re-entry to the community, not remand prisoners' exit from it. While detained on remand, participants dedicated time and expended energy worrying about their families' financial welfare and mental and emotional wellbeing or, for those without support, trying to sort out the future of their homes, personal finances, and businesses. The speed of participants' transitions to prison resulted in unsevered links to the communities from which they had been forcibly removed. Despite their physical absence, participants' obligations, whether emotional or administrative, remained. For most participants, these responsibilities were a significant source of stress in their early days in custody and marked one of the collateral consequences of being detained pre-trial or pre-sentencing.

5. Boredom

Boredom is not a unique feature to the confinement of remand prisoners. Institutions of detention, such as police stations and prisons, are frequently void of goods and services to

which individuals are accustomed to in the community (Johnson et al., 2017; Skinns & Wooff, 2020; Sykes, 1958). One of the collateral consequences of confinement stems from the ‘Spartan environment’ of the prison (Sykes, 1958: 68). Limited access to possessions, stemming from the lack of control exercised by those subjected to incapacitation, precludes confined individuals from acquiring materials which could act as a source of distraction or relief from the daily monotony of prison life (Johnson et al., 2017). One of the consequences of ‘having nothing’ (Skinns & Wooff, 2020: 251) in a custodial environment is boredom. Without recreational activities or undertakings to busy the mind, time in prison stretches out (Johnson et al., 2017; O’Donnell, 2014). There is precious little to occupy time. In this study, participants were left to manage extended periods of time without meaningful activity, resulting in boredom. Nearly all interviewees reported being left to independently manage significant periods of unstructured time. Participants, though dispersed across the prison estate and across decades, described similar daily schedules. Prison routines offered minimal activities or leisure time outside participants’ cell. During his interview, Jamieson described a typical day on remand:

[...] you get up quite early, I think about 6 or something in the morning. You have very limited time. I think it was half an hour to get your breakfast and have a shower. That was it, really. Then you’re back in your cell till pretty much lunch time [...] and then you’d go for lunch. You’re getting out literally in time to pick it up and bring it back to your room. Then you’d have what’s called, like, yard time or whatever, so you’d have, I dunno, half an hour/45 minutes in the late afternoon before dinner to get out your rooms. So, basically 23 out of 24 hours you’re inside the cell. (Jamieson)

The majority of participants described spending upwards of 22 hours a day in their cell. Opportunities to leave their confined spaces were limited, but included reasons such as collecting meals, showering (for those without a shower in their cell) or spending time associating on the prison wing or in the yard. Absent these reasons, over half of participants were left to themselves inside their cell. Kurt described:

The structure of the day? You’ll get let out for your meal, you know. You get let out every two days for about an hour to do a bit of what they call association time. It was always short. (Kurt)

To pass the time inside their cell, participants read books, wrote letters, and watched television. Many participants spoke of forming platonic relationships with other prisoners. Conversations with others momentarily alleviated loneliness. Desperate for distractions, participants took up any activity available to them, such as visiting the library to collect reading materials or walking around the yard for 30 minutes a day. Reading and walking offered a few participants a sense of escape:

I would always take advantage of being, even if it was 20 minutes, being able to be outside going and walking 'round. In my own head, when I was walking, I wouldn't necessarily be walking in prison. I'd be somewhere else. I'd always put myself somewhere else. Somewhere nice. At the end of the day, just 'cause you're walking 'round a prison yard, it doesn't mean you're walking 'round a prison yard, if that makes sense. (Henry)

So, some of the books I read in that experience was pure escapism. You know things that I read just transported me outta that room. (Luke)

[Reading] took me away from everything. (Kevin)

Activities offered participants a reprieve from conditions of confinement, the monotony of the regime, and the weight of their unknown future.

Amongst the sample, a small group of participants found employment in the education department during their time on remand. These opportunities allowed interviewees to spend structured time out of their cell at least once a day, five days a week:

We got 3 hours in the morning, 3 hours in the afternoon. And lunch breaks. And then recreation at night. Weekends were worse for me because although you were allowed out for a couple hours, it was boring to me. [Working in] education, Monday to Friday, was great. (Jason)

I got through the nine weeks really, really well 'cause I did my education and I got a job within six weeks, teaching in the education department. (Henry)

I engaged as much as I could with anything that would get me out of the cell, [laughs] even yoga. And chapel and five aside football and just anything that would allow me out of the cell. I was

asked if I would undertake some teaching in the prison, so there was a scheme called Toe-to-Toe [...] it entailed my going into people's cells and trying to teach them to read and write. (Steve)

Employment provided a sense of normalcy and purpose otherwise absent in the routine of a carceral environment. It allowed participants time out of their cell and into an environment where they could engage with others in a meaningful way. Many participants, however, were either unable to find employment while detained on remand or did not seek out employment, believing they would be released on bail or sentenced and transferred to another institution in the near future. For these participants, there were significant periods of unstructured time in their cell.

Despite recreational activities or conversations with other prisoners, participants were bored. Kurt explained:

[...] it's boring because you don't get stimulated. You don't have the same sort of interactions or conversations that you want. Then there's also the lack of sporting activity that you might get. You know, you want to do some sort of release, you want to go to the gym. That's restricted. (Kurt)

As with most participants in this study, Kurt was in his cell for upwards of 22 hours a day trying to pass the time. Access to the gym was restricted and visits to the library were never guaranteed. In describing life inside a prison on remand, Barry recounted:

I didn't like simplicity. Life is supposed to be complicated, you know. You have to deal with money, you have to deal with relationships, you have to deal with your career, lots of different stuff. But there [prison], none of that really exists [...] it's such a simple place, but not in a good way. (Barry)

Barry struggled with the monotony of daily life, as did others:

I've always been an extremely active person in my life and simply to be sitting and doing nothing was entirely anathema to me. I couldn't—why do people just sit and do nothing? I mean I was able to get lots of books, but boredom of just being in the cell, and particularly when there was a lockdown. (Steve)

It's just the boredom [...] laid on my bed, slept, watched terrible television and that was it.
(Adrian)

You know the monotony becomes quite chilling. (Luke)

Remand immobilizes individuals until either the conclusion of the criminal process or a successful appeal for bail. The practice of remand is to wait and, in the eyes of participants, the restriction of their liberty in the name of waiting offered no incentive for the prison system to engage with them. Many participants viewed their status in prison as 'outsiders', believing this to be a contributing factor to the lack of education, recreation, and employment opportunities offered to those on remand. During their interviews, Kurt and Luke spoke of the lack of investment in remand prisoners:

[...] in remand, they really don't have anything in place because they can't. I guess it's almost not in their interest to invest in starting you on a course or doing anything because you could turn around and go the next day. (Luke)

[...] when you're on remand, like I say, you're in what they call a local dispersal prison. Once you get sentenced, you get sent away. So, they're not gonna invest in you; invest in getting to know you. (Kurt)

As persons with a pending legal status, remand prisoners can be transferred to another establishment with little warning. Leaving the prison to, for example, attend court was a gamble. At the end of a day in court, if the prison was suddenly at capacity, a remand prisoner would be transferred to another establishment to prevent or limit overcrowding. Jamieson viewed the transiency of the remand population as a factor contributing to the lack of engagement with pre-trial and pre-sentence detainees:

I mean, I can probably say looking at it from their [prison staff] point of view that they don't particularly want to build relationships with prisoners because they know you might only be here a few days or might be here a week or so and moving on. Whereas at the other places [sentenced custody], they do take a bit more of an interest in you. You get assigned an officer as well, don't you. I don't know if you know this is or not, but the places where you stay a bit longer, you will have your own personal officer and all that as well. So, you can have meetings, you know. There's somebody you're building a connection with, a relationship with as well. Whereas in holding

prisons you're not gonna be there long enough to do that and they don't encourage that anyway.
(Jamieson)

Toward the end of his interview, Kevin was asked whether there was anything else he would like to add. He responded with the following:

It wasn't very well-organized, you know. Most of them [staff] are indifferent. When it's remand, they're just there to make sure—I mean, 'lockees' they call 'em, cause all they do is unlock ya and lock ya back up again. (Kevin)

Unlike sentenced persons, the prison system has no duty to engage with remand prisoners. The role of the prison is to hold unconvicted and unsentenced prisoners indefinitely. Penal goals, such as retribution and rehabilitation, are not yet engaged for remand prisoners, as they are not being formally punished by the State. Though remand prisoners are frequently co-located with sentenced prisoners, the justification for their detention is rooted in prevention, not punishment. Participants' incorporation into a system designed to punish, but without opportunities to participate in meaningful distractions, resulted in boredom. Feelings of boredom, however, were perceived not as a by-product of remand, but as a form of overt neglect. As recounted by participants, their liminal legal status within the prison system rendered them undeserving of any form of investment.

6. Misrecognition

As individuals progress through the criminal justice system, labels are imposed on them: arrestee, bailee, criminal defendant, sentenced prisoner, parolee, and probationer, to name a few. The imposition of these designations serves to identify an affiliation with a particular criminal justice institution or a stage within the criminal process. These labels brand a person as belonging to an agency and, therefore, as an emblem of the aims or duties of that particular institution. The effects of labelling can be profound, stripping the person of their identity (Irwin, 1985; Schmid & Jones, 1993; Ugelvik, 2013) and reducing them to 'immoral other[s]' (Ugelvik, 2013: 170). Research with police detainees (Skinns & Wooff, 2020), remand prisoners (Irwin, 1985; Ugelvik, 2013), sentenced prisoners (Goffman, 1961; Schmid & Jones, 1993; Sykes, 1958; Warr, 2016), and probationers (McNeill, 2018) highlight the stigma, moral condemnation and degradation caused by labels, as well as by sustained engagements with

actors in the criminal justice system. In the context of community penalties, McNeill (2018) builds on the social justice concept of misrecognition, arguing that individuals under supervision ‘suffer the pain of *not* being seen; at least not as they would recognize themselves’. In his research with individuals under community supervision, McNeill (2018) found that being misrecognized as a person in need of supervision—that is, as a person in need of something unrecognizable to themselves—is a form of pain. Probationers’ perceptions of themselves became distorted by the manner in which they were seen and treated by State agents (McNeill, 2018). In the current study, participants with prior experience of being remanded to custody felt both mislabelled and misrecognized, a phenomenon particularly salient to those who spent time in pre-trial detention. Presumptively innocent men were misrecognized as guilty men. Their legal status, though relevant to the trial process, carried little to no weight to the care they received within the prison. Their treatment did not differ in any meaningful way, despite their presumptive innocence. Though misrecognition was acute amongst those who were, at one time, unconvicted prisoners, there were a multitude of factors within the prison contributing to feelings of being mislabelled and misrecognized across both groups of remand prisoners.

For many participants, the process leading up to their misrecognition began at intake to custody: the removal of personal clothing. Access to personal clothing depended on the individual establishment where the remand prisoner was located. A few prisons allowed all remand prisoners (i.e., unconvicted and unsentenced) to wear their own clothing, though most participants reported being unable to access personal attire during their detention on remand. Prison kit was similar across institutions: a monotone tracksuit, including trousers and a jumper, with essentials such as boxer shorts and socks. Adjectives to describe the uniform ranged from ‘dirty’ and ‘stained’ to ‘horrific’. During his interview, Steve spoke of the admission process, reporting:

[...] in theory, if you were on remand, you could wear your own clothes. In theory. But in fact, we all had prison clothes to wear. (Steve)

The loss of personal clothing was a degrading experience. As an unconvicted prisoner, Ethan should have been able to wear personal clothing, as per the Prison Rules 1999 (see Chapter One, Section 4). However, on admission to custody, the clothing he had been wearing at the time of his arrest was removed from his possession. During his interview, Ethan described the

admission process as one in which a person is made to feel ‘as low as you could possibly be’. When asked to expand, Ethan explained:

From the minute you have to get changed out of your ordinary clothes into prison kit, because you are given—I mean I’m 6 foot and well built—you’re given kit that would fit somebody a lot smaller. You’re given boxer shorts that are stained; bedding that has supposedly been washed, but always looks stained. You know, there’s not one part of you that goes in that you can actually keep. (Ethan)

Being issued with dirty and ill-fitting clothing was, for Ethan, a grim reminder of his newfound circumstances and his perceived lack of value to those whose care he was now under. His final statement in the above excerpt reflects the relationship between personal belongings, such as clothing, and identity. In Ethan’s experience, the act of discarding the clothes he had worn as a free man was a turning point. By crossing the prison threshold, he was leaving a part of himself behind. George also discussed the impact of prison kit on individuals coming into custody. As a remand prisoner in the late 1970s, George was supplied with a brown prison uniform, while those who had been convicted were issued a blue uniform. At the time, there was no option to wear personal clothing, even if unconvicted. George posited that the climate today, where unconvicted prisoners can theoretically access personal clothing, may make the experience of remand less impactful on identity:

Not wearing your own clothes is a big thing, like wearing a uniform that you hadn’t volunteered for. Now you can wear your own clothes, which I think makes a big difference to the sense of identity that you can retain on remand. (George)

The removal and replacement of personal clothing with a prison uniform was an attack on participants’ identity. During his interview, Armit spoke of the experience of being assimilated into prison, from strip searches to prison clothing. He felt that:

My whole identity got taken away. (Armit)

Putting on a uniform issued by the prison confirmed a belonging to the prison system; of being the property of the State and of the prison, despite a conflicting legal status.

Many participants in this study viewed themselves as outsiders within the prison system. As described in the previous section, participants frequently felt ostracized as a result of their label of unconvicted or unsentenced prisoner. However, the experience of misrecognition extended beyond labels. As highlighted earlier, nearly all participants were housed in local prisons. These institutions were colloquially referred to by participants as ‘holding prisons’. Jamieson explained the population detained inside these establishments:

It was a holding prison, you know, somewhere people stayed for no longer than a few months, I would’ve thought. That was where people went to when they got sentenced and then they’ll be shipped out to different category prisons [...] most of the people, they were either remand or they were waiting to go to court or they were gonna be moved on to another category prison, but I don’t believe a lot of people were there long term. At most, some people were there for a few months.

These establishments rarely had dedicated living units for persons awaiting trial or sentencing. Instead, participants waited for their fate to unfold beside men whose fate had already been sealed. As Kurt entered custody on remand, he was ‘put into one room with everybody’. In Kurt’s local prison in England, all prisoners, regardless of their classification (i.e., unconvicted, unsentenced, or sentenced) mixed together. When asked whether remand and sentenced prisoners lived in one space, Steve replied:

Yes, remand prisoners were scattered throughout the prison. They were not segregated at all, as far as I’m aware, at least. Certainly, I wasn’t. (Steve)

Most participants were co-located with sentenced prisoners, some even sharing a cell with a person who was serving a custodial sentence:

You’re not convicted, but I’m still in a cell with a murderer who was doing 30 years, you know. (Jason)

Living units housed all categories of prisoners. In a few cases, participants shared a cell with individuals who had been sentenced to a term of imprisonment. The proximity between remand and sentenced prisoners caused most participants, whether they were unconvicted or unsentenced, to feel they were treated like sentenced prisoners; as individuals the State

intended to punish. When asked the question, ‘Did you notice any differences or similarities between remand and sentenced prisoners?’ (see Appendix A), nearly all participants were quick to answer that there were few distinctions between the two groups. However, participants who spent time on remand as unconvicted prisoners were particularly detailed in their responses. Amongst this subgroup of the sample was a common feeling of being mislabelled and misrecognized by agents of the State. Despite the distinction between unconvicted prisoners and the remainder of the prisoner population, a distinction reflected in international guidelines and domestic legislation (see Chapter One, Section 4), participants believed their unique status as presumptively innocent persons was, at best, forgotten and, at worst, blatantly ignored. Dan, who spent two weeks on remand, shared:

Whether you’re on remand or not, staff treat you the same. (Dan)

Like Dan, a number of participants who were unconvicted prisoners pointed to the similarities between the treatment of the presumptively innocent and the remainder of the prison population. Steve recounted:

I was on remand for three months and I was treated as any other prisoner. *Exactly* the same. Same uniform, same regime, same food, same hours, same lockdown, just everything. I was even shouted at in the same way [chuckles] as other prisoners. (Steve)

Unconvicted prisoners were made to adopt the same regime as unsentenced and sentenced prisoners. Jason felt he was treated like any other prisoner, highlighting the regime of the institution, but adding his perception of the way he was viewed by staff:

You’re as much a prisoner as anyone else. I’m no different except for the few little perks you get. I mean, you’re locked up at the same time. To the prison officers, you’re as guilty as whether you’re remand or not. You’re a prisoner, aren’t you? So, it’s the same as serving a sentence. It is just the same [...] you wouldn’t have known if I was a remand or sentenced prisoner. (Jason)

Jason described the way in which he felt seen by prison staff: as a guilty man. Despite their legal innocence, participants waiting for trial were incorporated into the State’s formal system of punishment. Ethan shared:

When I queried the wing officer that I was on remand and I should be allowed to have some of my own clothes, I was told, in no uncertain terms and in not very polite language, that as far as he was concerned, everyone who comes into the gate is guilty and will be treated like they're guilty. (Ethan)

As an unconvicted prisoner, Ethan was entitled to his own clothing. He was also entitled to vote in the general election, which was taking place at the time of his detention:

The time I was there [remand], it was going to be the general election. And I did query about, 'As I'm a remand prisoner, I have a right to vote'. And I was told in no uncertain terms, 'No, you don't and you're not having it' [...] It's a no: 'No, you're a prisoner. You have no rights'. (Ethan)

Participants' perceptions that they were viewed by staff as guilty or as deserving of the treatment reserved for the guilty was also shared by George:

As far as the system is concerned, you're only unconvicted because they haven't got 'round to convicting you yet [...] In law, you're innocent till you're guilty. But in prison, you're guilty. They just haven't got 'round to it yet.

This subgroup of the sample repeatedly faced exchanges with staff which reinforced their perception that they were being treated as guilty men, as men deserving of formal punishment. Participants felt bombarded by the message that, regardless of their unconvicted status, they were prisoners: a prisoner is a prisoner is a prisoner. There was no space for nuance. Participants' perceptions were that staff believed they belonged to their carceral environment. However, as individuals waiting for trial, participants who were unconvicted prisoners were not deserving of the same punishment distributed to the guilty. In a system which did not differentiate treatment based on legal status, participants felt pains related to being misrecognized. Feelings of misrecognition amongst formerly unconvicted prisoners point to an interesting dichotomy. Participants were both pained by their perceptions of being misrecognized (i.e., as belonging to the system), and frustrated by not belonging to the system (i.e., not being deemed worthy of material or emotional investment; see above, Section 6). While no participant overtly pointed to this distinction, it emerged that there were pains associated with being misrecognized as something other than legally innocent, and pains associated with actually being legally innocent.

A few participants, across both the unconvicted and unsentenced groups, reported feeling ostracized as a result of their status as remand prisoners. Amongst the general population of sentenced prisoners, they stood out. Craig explained:

[...O]bviously you don't know what your sentence is gonna be when you do go to court. So, from that sort of point of view, there is a lot of prejudice against that. But in some way, they [sentenced prisoners] think you've got more privileges or you're a special person or [your] attitude is different. So, yes, it can be problematic within the system [...] It's the same regime, but you just feel you're not one of the crowds; you're not one of the gang. If you happen to be in custody with another remand prisoner, it might make it easier. But if you're sharing a cell with someone that's been sentenced it can be very, very awkward and a lot of people just don't like it.
(Craig)

Participants' legal status distinguished them from sentenced prisoners in an unwelcomed manner. Charles shared that, despite the opportunity to wear his own clothing on remand as an unconvicted prisoner, he opted to wear prison-issued clothing:

I could've had more clothing brought in, but I didn't want that. I didn't want to highlight—'cause inside, clothes and trainers and stuff like that become currency. So, you're better off not bothering and just wearing the prison issued stuff. And you don't stand out as much [...] People don't really look at ya. So, in that sense you blend in as somebody you don't even need to bother with.
(Charles)

Foregoing the right to wear personal clothing made Charles less visible. He could fade into the background. Blending in was safer than standing out. Privileges afforded to participants, both unconvicted and unsentenced, raised fears for personal safety. The liminal quality to participants' existence in local prisons had repercussions on their safety and security. Participants feared other prisoners' reactions to the hope which remained for their future. Unlike sentenced prisoners, whose short- or long-term fate was serving a term of imprisonment, remand prisoners were either unconvicted or unsentenced. There was still hope. Unconvicted prisoners may not be found guilty, allowing them to return to the community to resume their lives. Unsented prisoners may not have to serve additional time in a custodial environment. Craig recounted that remand prisoners' legal status was 'problematic' amongst the prison population. He explained:

They [sentenced prisoners] don't like the fact that you might get off. You might get 'not guilty' and that would be the end of that. (Craig)

While there were perils to living with an uncertain future, it was a future which still held hope. Co-locating remand and sentenced prisoners within the same wing or unit was viewed as a risk to the safety of those awaiting trial or sentencing:

Yeah, we're all together, which I find is a bad point of view. Innocent until proven guilty. So, if a prisoner—just say there's a prisoner that's been in there for about 6 years, doing an 8-year stretch, and someone on remand. They kinda put themselves in a vulnerable spot. (Dan)

Dan posited that, absent a conviction or sentence, remand prisoners were vulnerable amongst a group of prisoners serving a custodial sentence. There was a possibility, however slight, that Dan might walk out of prison, which was not a possibility for the sentenced prisoners around him. He went on to say:

I reckon all prisons should have a main building where, if you're vulnerable, like if you've got learning difficulties and things, or you're on remand, you're put into one section. (Dan)

A few participants worried about associating with sentenced prisoners due to their legal status. Dan and Craig recalled that remand prisoners felt unwelcome amongst a population whose hope had been dashed by the imposition of a court sanction. Their future and its potential for hope was a sore spot amongst the general sentenced population. In addition to these fears, Kurt explained the potential for violence amongst those who were recently sentenced:

[...] when you come through the door, you're put into one room with everybody. I know people's experiences when they've been in there and then, all of a sudden, they've been attacked by the person next to them because the person next to them's been given 15 years. Violent offender. 15 years. Very angry [...] And I don't like the term segregation, but segregating them [remand prisoners] from the others because you'll have people who come in who are quite blasé, 'Yeah, I got 3 months for this and a couple of weeks', next to the guy who's got 15 years and he's a violent offender. It's gonna go wrong. (Kurt)

Being classified as a remand prisoner raised vulnerabilities amongst participants. They were frequently shunned from the population of sentenced prisoners, resulting from their legal status

within the criminal justice system. Both unconvicted and unsentenced prisoners were recognized amongst the general population as not belonging to the environment, as not being ‘one of the gang’ (Craig).

7. Unsettledness

Research on remand points to its cross-institutional nature as a feature of the pains experienced by unconvicted and unsentenced prisoners (see Pelvin, 2019). As noted in Chapter Two (see Section 3), Pelvin (2019: 75) identified travelling to court as one of the ‘the most visceral experiences of humiliation, degradation, and pain on remand’. Pelvin’s (2019) finding is one of the only known studies of remand which describes the pains of traveling to and from court. As a transient population within the prison system, remand prisoners move frequently between prison and court. In this study, participants’ initial displacement from spaces of familiarity and comfort was compounded by their status as unconvicted or unsentenced prisoners. Amongst the sample, nearly all participants attended court hearings in person, though participants who were unconvicted travelled to court more frequently given the added burden of a trial. Travels to and from court left participants in a constant state of flux, as each appearance in court required submitting to the procedures for leaving and entering a custodial environment. Charles was required to attend court several times while detained on remand. During the interview, he provided a detailed overview of the process of attending court while on remand:

Woken up at six o’clock in the morning. You can have your breakfast, your breakfast pack would’ve been given the day before, which was either Rice Krispies or Corn Flakes. You’ve got that, you’ve got a mug of tea. If you paid for it, you’ll have coffee, so you can make yourself a quick coffee, get everything all tied up, get all your bedding and stuff together. At which point, if you’ve timed it right, they’re [prison officers] just at the door to unlock ya. You’re then taken down to a holding area, your stuff is searched. You’re then stripped searched, you’re then put into a holding cell, you’re then taken from the holding cell to the van, from the van to the courtroom, patted down, given a choice of hot beverage, tea or coffee, stuck in a cell and then you just wait there till your number’s called up. You’re then taken, cuffed, up to the courtroom [...] you’re taken back down to the cell, given your tea and coffee. If you’re lucky, eventually, lunch comes. If you’re lucky, you’ll be back at the prison before evening. If you’re unlucky, you miss out on your tea. If you’re late, you’ll get given a new noodle pack and a packet of crisps. And that’s it until the next day. (Charles)

Each time a participant attended court, he was required to pack all of his personal items into boxes. These boxes were then given to staff and placed in the transportation van. The purpose of travelling with their personal belongings was due to the possibility that participants may not be able to return to the same prison establishment at the end of the day. If the prison was full after a day of admitting new receptions, participants would be transferred from court to another facility. To avoid congested admission units and overcrowded prisons, participants were made to pack up their belongings each and every time they went to court. In most cases, participants reported being given little warning of their next court date, often learning the evening before or the morning of their court appearance that they would be travelling outside the prison. Gabe spoke of sitting by his cell door in the evenings, listening to hear whether prison staff were walking towards his cell to advise him he would be attending court in the morning. Charles, too, was told in the evenings whether he would be traveling to court the next day:

You're told the night before that you're gonna be going to court. (Charles)

Once outside the prison with their items in tow, participants were uncertain about whether they would return to the same institution or move to a new establishment. Steve explained the process of attending court during his interview:

[...] when I went to trial, I was given all my belongings, which I was given to take with me. I said at the time, 'I should be coming back', and they said, 'Not here. Not necessarily'. When people go to court, or if a prisoner goes out for any reason, they'll take all their belongings because the prison population is such that, if a cell becomes vacant, they bring somebody in straight away. So, not only is it possible, but it happened a lot, that you might be, say in HMP B, and go to trial in City Crown Court and from there you'll be taken to HMP C. There was no guarantee that you'd go back to where you'd just come from. (Steve)

The process of attending court in person meant gathering personal effects and packing them into boxes. In some cases, participants had to leave behind personal items as there was insufficient room to take all their belongings with them. This was particularly the case amongst participants who spent extended periods of time on remand and who had, by virtue of the length of their detention on remand, collected additional possessions, such as canteen items and personal bedding.

The process of attending court was, on its own, a stressful time. Participants spoke of sitting in court cells for hours on end, waiting to be produced before the court. Jason described his experience as follows:

I was just sat in a little cell with a little window you can't see out of. And I was sat there nearly all day. Yeah, 8 o'clock in the morning till probably about 4 o'clock in the afternoon. (Jason)

Participants worried about the clothing they would wear in court, the amount of time they would be able to interact with their legal representation, and even the purpose for attending court. It was never certain whether their appearance was related to their criminal case or to another legal matter altogether. Participants were only ever told when to show up to court, not for what purpose. Charles was made to appear in court for the purpose of extending the time limit on his detention on remand, while Jason was escorted to court on one occasion to deal with a speeding ticket. Jason recounted:

I got a knock on the [cell] door saying, 'You're going to court', and I'm saying, 'What am I going to court for?'. 'You're going to Y Magistrates' Court'. I don't know what I'm going for. So, they took me to Y Magistrates' Court, and I was there for a speeding ticket, which I'd done a few months before [...] I wrote them saying, 'I was meant to be attending, but I can't attend. I'm on remand'. So, they arranged for me to come in a prison van to the Magistrates' Court. And then I get back into the cell in the bottom of the courts and they say, 'Well, HMP X is full now, you'll have to go to HMP Z'. Well, to me, I'd just about got a bit settled in HMP X, but I moved to HMP Z and that was like a heartache to me. I thought 'Oh hell', but eventually it was the best thing that happened to me. (Jason)

During his nine months on remand, Jason was transferred to three different prisons. He spent the majority of the time at the second prison, where he began to feel settled. He was familiar with the regime, had formed positive relationships with staff in the education department where he was employed, and was friendly with some of the other prisoners. When asked to expand on his experience of prison transfers, Jason spoke of the difficulty of moving to the third location:

I didn't wanna go. I was that comfortable in that prison. So, if I'm gonna lose me cell, I'm gonna lose where I am. I've got all comfortable and they're just gonna take me somewhere else [...] It is stressful cause you don't know. (Jason)

Moving to a new prison was like starting from square one. Jason was the new face again. He was unfamiliar with the regime. He was unknown to the staff. Prison transfers triggered by a day in court uprooted participants' lives, leaving them feeling further displaced. The unknown outcome after a day in court caused upheaval and heightened levels of anxiety. Armit described the experience of preparing to attend court, travelling to court, and waiting for the decision of where he would go after a day in court as follows:

It was a nightmare. You never know if you're coming back. It's a lot to deal with. (Armit)

Similar feelings were expressed by Gabe, who travelled to and from court at least 10 times during his year-long detention on remand. Gabe described the process of transferring from prison to court and back to prison as 'very stressful', as it was never certain if he would be sent to a new prison. Henry was detained on remand for nine weeks, during which he was transferred once. He spoke of the difficulty of living within a constantly changing environment:

You couldn't settle down and I'll say grow into the prison. It was all about change and being on your toes. (Henry)

The experience of attending court, regardless of whether it led to placement in a new establishment, required participants to confront the possibility of leaving behind a familiar environment. Appearing in court introduced yet another element of uncertainty into participants' lives, exposing them to concerns about a potential new prison, new cellmate, new prisoners, new regime, and new staff. As a result of their liminal legal status, participants faced significant disruptions when transferred to another prison and the potential for disruptions each time they were required to attend court in person. Most participants struggled to acclimatize to a life in prison on remand as the length of their stay and location within the prison estate was never certain. By its nature, remand is an uncertain time as a person is forced to wait to learn their fate. Sitting in a prison cell waiting for a court date contributed to a life of an uncertainty. Participants waited indefinitely for a court date, and once notified of a date, were on the move, packing their personal items, leaving behind a familiar regime, submitting to searches, waiting for the transportation van, sitting in court, and pondering where they would sleep that night. Attending court was a disruption, precluding participants from feeling settled in any one place and leaving them anxious about their immediate and long-term future.

Detention in a local prison was marked by a steady flow of prisoners coming into custody and leaving shortly thereafter. The use of local prisons to manage custodial remand populations exacerbated the unpredictability of life in pre-trial or pre-sentence detention. Armit described a ‘constant churn of strangers’ while he was on remand. He reported that the environment within the local prison offered its population ‘no stability’. These locations within the prison estate were a revolving door of prisoners. During his interview, Henry spoke of relationships with other prisoners as follows:

In 9 weeks, I went through 7 different cellmates. So, there was nothing that stayed the same [...] effectively, people are coming and going all the time. And you never knew who your next cellmate was or what type of person they were. (Henry)

Participants worried about the movement of prisoners. As soon as one cellmate left, another arrived. It was common for participants to refer to several different cellmates during their stay on remand. Henry, Jamieson, Kevin, Jason, and Beau recounted stories of their time on remand involving multiple cellmates. Each new prisoner introduced anxieties about camaraderie and safety, as participants knew nothing about their character or criminal history. Jamieson described some of the worries he experienced over new cellmates:

It was definitely sort of anxiety-inducing because I’m quite an optimistic person and the guy I was with initially, I thought, ‘Doing my head in. I’m not gettin’ much sleep’. But it could be a lot worse, as well. But then I thought maybe the next person could be better as well. There’s part of me thinkin’, ‘Do I want somebody else here or not?’. So, I can’t remember if he just didn’t come back after his court or sumthin’, the next person I had just, obviously we’re never gonna be best mates, it’s just a situation you try to make the best of, but we were on the same level and we got along. But yeah, you are obviously anxious, ‘I wonder who it’s gonna be. I wonder what they’re like’ and that sort of stuff. And that’s difficult. (Jamieson)

Although frustrated with his first cellmate who stayed up late at night, Jamieson weighed his irritations against the potential consequences he might experience with a new cellmate. While he got along with his second cellmate, the local churn of prisons meant living in fear of his cellmate being replaced.

Local prisons provided participants with little consistency in their day-to-day lives. Not only could they be moved at a moment’s notice, participants also faced insecurities resulting from

the operation of holding prisons. The environment within these establishments was one of constant transition. Prisoners were admitted, processed, and moved out in quick succession, culminating in an unstable atmosphere for participants, who were ultimately being warehoused until their next court date. Participants were unable to feel settled, keenly aware that the purpose of the local prison was transitory and that they were simply a cog in the wheel of justice.

8. Safety, fear, and violence

The deprivation of security is an oft-remarked upon consequence of incapacitation (Crewe et al., 2014; Jewkes, 2005; O'Donnell & Edgar, 1999; Sykes, 1958; Warr, 2016). Prisons bring together strangers who are forced to live in confined spaces. Sykes (1958) argues that the proximity of strangers contributes to a sense of insecurity. Individuals, whose backgrounds are unknown, but whose presence within a custodial environment confirms at least one trait (i.e., inability to conform to societal rules), instils a fear of violence (O'Donnell & Edgar, 1999; Sykes, 1958). Accounts of life inside the four walls of a prison depict an environment of mistrust (Jewkes, 2005; O'Donnell & Edgar, 1999; Sykes, 1958). The fear of saying the wrong word or laughing at the wrong moment can cause prisoners to put on a façade; to construct a hardened identity during their period of imprisonment (Crewe et al., 2014; Jewkes, 2005). Crewe et al. (2014: 58) adopt Hobbes' (1651/1999) concept of 'diffidence' to describe 'the feelings of insecurity generated by the proximity of untrustworthy strangers, the psychological threats of the environment and the all-seeing institutional eye.' While physical and sexual brutality in prisons is well-reported (see Jones & Pratt, 2008; Lockwood, 1979; Wolff et al., 2006), it is the *potential* for violence which can cause prisoners to live in a heightened state of fear and anxiety (Crewe et al., 2014; Warr, 2016).

Amongst the sample, 17 participants were recounting their first and only experience of custody. Though they faced long stretches of boredom and feelings of unsettledness, they confronted another challenge: feeling safe within their new environment. While on remand, the majority of participants shared a cell with one other prisoner. These spaces were described as cramped, where most participants were deprived of their privacy and dignity. Two interviewees spent the length of their pre-trial detention in a cell with two other prisoners, making a total of three adult men confined in a small space. Most participants were housed in the general population of local prisons. A quarter, however, were held in a special unit for vulnerable prisoners. Developed in response to concerns over victimization, Vulnerable Prisoners' Units (VPUs)

reflect the stigmatisation certain categories of offences (e.g., sexual in nature) receive in society and the susceptibility of certain groups (e.g., former police officers) to violence (Hudson, 2005). One participant, Luke, opted to be confined to a segregation unit, as there was no VPU available. Regardless of their location within the prison, participants described fearing for their personal safety. They feared being bullied, intimidated, or assaulted by other prisoners. During their time on remand, participants were on heightened alert, keeping watch for potential threats.

Entering custody on remand was a ‘scary’ (Jamieson; Kurt), ‘fearful’ (Armit; George), and ‘terrifying’ (Ethan) experience. Since most were new to the realities of life inside prison, participants’ fears were based on movies, the television news, or the newspaper. During his interview, Barry explained he was fearful of violence because of the way prison was portrayed by the media:

Obviously, going to a place that’s been, you know, you see it in the news, never anything good, you know. It’s somebody who’s been killed or something at one of these places. And yeah, there were a lot of worries. (Barry)

As they made their way into the prison system, participants imagined the stories and images they had seen in public narratives about life in prison. During his interview, Kurt selected the word ‘scary’ as one of his five words to describe remand (see Figure 5.1), explaining:

You get scared on remand because, if you’ve never committed a crime and you’re there, you don’t know what’s going to happen with the people around you. You hear stories about prison, you know? (Kurt)

Like Barry and Kurt, Steve’s detention on remand was his first experience of custody:

One hears horror stories about prisons, about violence, or about sexual abuse in the showers or whatever. (Steve)

Depictions of prison by the media heightened participants’ fears as they entered custody. Based on these vicarious experiences, images were conjured up about the types of characters detained inside prison and the rumoured violence experienced in certain spaces (e.g., communal

showers). As the decision to restrict their liberty was made, participants turned their attention towards the potential violence they could experience in prison.

Moving deeper into the prison did little to assuage participants' fears. On their living units, participants found themselves surrounded by individuals from all 'walks of life' (Ethan; Steve). During his interview, Ethan described his first experience of walking to his assigned unit:

For me, I walked across the prison yard to the wing where I was being housed and when they opened the door, it just hits you. A wall of sound and smell. The best I can put it is when people go abroad and they get out of an airplane and it's so humid. They walk into a wall of humidity. It was just like that. Bang! Terrified. Terror. (Ethan)

When asked to expand on his feeling of 'terror', Ethan explained:

[sighs] For me, it was abject terror 'cause I was with people from walks of life I would never meet normally. My first night I was made to share a cell with two people that were in for very brutal murders that were on remand. That terrified me, as you can imagine. (Ethan)

Ethan's fear was rooted in entering a place full of strangers with criminal histories, some of whom, like his two cellmates, had recently exhibited violent behaviour. The culmination of unknowns associated with the strangers around him resulted in fears for his safety. A number of other participants described being scared by the company they were now being forced to keep:

I think it was mixing with men from all walks of life, which I hadn't done before. One meets people from all walks of life in Sainsbury's, but this was meeting in a close-up, personal level. (Steve)

The physical proximity to men with a history of violent behaviour instilled fear. In describing his initial days and weeks in custody, George shared one of the dominant emotions he experienced:

Fear. The fear was incredible. I was absolutely terrified. The fear of violence [...] about what was gonna happen to me. The not knowing, the fear of violence, including from my cellmate. (George)

Concerns for personal safety were, in part, rooted in the crimes committed by other prisoners. Individuals who had committed murder or other violent offences were held responsible for anxieties over the possibility of being victimized in prison. When asked about relationships with other prisoners, Dan shared that he spoke to a few other prisoners, but mostly kept to himself during his two weeks on remand. He was careful, explaining:

[...] it's the fear of violence of other prisoners towards myself. You've got murderers in there and everything else. (Dan)

The fear of others and their potential for violent behaviour kept participants guarded. Similarly to the extant literature on the pains of imprisonment (see Crewe et al., 2014; Warr, 2016), participants felt a sense of insecurity. Henry recalled being constantly 'aware of what's going on and making sure you're keeping yourself safe'. Early days in custody were particularly 'daunting' (Armit) as participants were focused on trying to protect themselves from potential harm. It was taxing to remain vigilant. As time passed, however, some participants began to adjust:

I don't think you can physically stay that scared for that long. You'd wear your adrenal glands out. You'd just be exhausted. You accommodate, you can get used to things. Quite quickly. (George)

George's description points to a wider psychological phenomenon, namely hedonic adaptation. Over time, heightened emotions tend to be reduced as people acclimate to their circumstances (Bronsteen et al., 2009). For George, as time passed, his fear lessened. He adapted to his new reality; his new world. Scott, too, spoke of 'getting on with it'. When pressed on elements which helped lessen their fear of violence, participants pointed to the passage of time. While some developed bonds with other prisoners, relationships were not attributed to a lessened sense of anxiety. Instead, it was the elapsing of days, weeks and months on remand that reduced the level of fear experienced by participants.

It is typical of prison life to unfold to the same routine, day in and day out. While certain events, such as staffing shortages, may interrupt the prison regime, it is common for prisoners to become habituated to life inside prison walls (Schmid & Jones, 1993). Cells open at a set time, meals are scheduled at three regular intervals throughout the day, and time for association unfolds as

per the regularly scheduled programme (barring unforeseen events). The monotony of daily life renders even a slight change noticeable. Newcomers stand out. Most of the participants in this study spoke of feeling fearful of being the new face in prison, particularly amongst a group of individuals they perceived as dangerous. As recounted by Adrian, there was no hiding:

[...] you're sort of, you know, trotted out to association time. You're brought on there with your bag full of nonsense and, you know, everyone's made to have a good look at ya. (Adrian)

As the new faces within the prison, participants worried about being intimidated by other prisoners or, worse, assaulted. In their first few weeks of custody, interviewees described being 'tested' (Scott), 'taunted' (Steve), and 'picked on' (Frank; Adrian) by other prisoners. These interactions were described by participants as opportunities for prisoners to exert their authority and to assert their place in the internal pecking order. On the receiving end, however, these engagements were defined as forms of bullying and intimidation. When discussing his relationships with other prisoners, Scott shared:

As I said, not everyone's nice, so you do get people trying to test you [...] you just get some people who sort of want to make a name for themselves and, you know, wanna prove themselves to someone. [...] They try and test you, see if you if you'll fall for it, d'you know what I'm tryin' to say? (Scott)

Steve was also regularly 'tested' by another prisoner:

We were walking out into the yard. And he—for some reason he was standing beside the door when we were going out—he was a very, very big man, indeed. And he'd been taunting me on previous occasions and, as I was going past, he kept repeating my name. He kept repeating my name in a mocking way. (Steve)

Kevin, too, experienced forms of intimidation and exploitation. He was frequently accosted by younger prisoners, who bullied him to buy certain items from the canteen:

[...] you fill a form in and ordered up biscuits, crisps, drawing materials, lots of things, but they [younger prisoners] were always 'round, 'I want you to get me this. I want you to get me that'. Threats of violence. (Kevin)

In these moments of intimidation, some participants felt compelled to stand up for themselves. A lack of response to attempts to intimidate or to exploit was viewed as an invitation to further harassment. An immediate response to threatening behaviour, however, demonstrated an intolerance towards such attitudes. Steve, whose name was being mocked by a fellow prisoner, responded in the following manner:

I just turned 'round and gave him such a mouthful. [laughs] People were amazed. And I just sort of carried on. They said to me afterwards he was in for murder, you see. [laughs]. Christ. (Steve)

Frank was detained on remand a few times in his early adulthood. One of the ways he coped was religion. He would pray and meditate in his cell, but was often interrupted by other prisoners tapping him on the head while in the midst of his practice. In describing his general experience of remand, Frank recounted:

We're all in the same boat. You get the extra 5%, the bullying goes on, you know, everything has to happen. But because of my previous experiences I knew I wouldn't let anything small get outta hand, so I'd have to fight back. I did have a couple of fights inside. I'm not the strongest, but once they see you're gonna fight back, that's what counts. They'll leave you alone after a while. (Frank)

Scott described his reaction to being 'tested' as follows:

I'd always defend myself if I had to. But I personally can stand my ground if and when anything were to kick off, d'you know what I mean? [...] In a place like that, yeah, you have to do what you have to do, I guess. (Scott)

The act of defending themselves typically quelled any further harassment by other prisoners. Nearly all interviewees who were bullied or intimidated found that, if they responded to the threat, life was made easier. Dan explained his reaction to attempts to bully or intimidate him:

It's like, you go into jail and everyone's already friends and you're the new face. They'll intimidate you a little bit. But you stand up for yourself and show respect for them doing it; it makes things, life, easier in there. (Dan)

Participants were clear that, given a real choice, they would not have resorted to violence. In a new, unfamiliar environment, surrounded by strangers, participants felt there were few available options besides meeting violence with violence. Ultimately, participants felt trapped in a Catch-22. To respond with force reduced their odds of being on the receiving end of any further bullying, intimidation, or violence. To do nothing invited the behaviours instigating their fears. In the end, displaying hardened versions of themselves reduced their odds of being victimized in prison.

For most participants, the anticipation of violence was caused by their proximity to others. Their fear stemmed from the potential behaviour of those around them. A quarter of participants, however, feared violence due to the nature of their (alleged) offence(s). These participants were segregated from the general population for their own protection. Research on fear in prison has found that prisoners detained on VPUs can experience higher levels of fears of victimization than those in the general population (Hudson, 2005; Jewkes, 2005; O'Donnell & Edgar, 1999). In this study, participants segregated from the general population expressed a constant fear of coming into contact with prisoners outside the VPU, believing the nature of their offence made them a target. Following his intake into custody on remand, Kevin had been sent to live amongst the general population. He feared for his life:

[...] you're put in with the 'mains people', not on a VP wing, you know, for sex offenders. So, you spend a couple or three days there telling as much lies as you can to save yourself from being stabbed or worse. It was quite frightening. (Kevin)

Eventually, Kevin was re-housed to the VPU, where he remained until sentencing. On intake to custody, Charles was immediately segregated to the VPU. When asked if he had requested to be isolated from the general population, Charles replied:

Oh god, yeah. I wouldn't be here otherwise. (Charles)

Charles was certain that, had he been housed in the general population, he would have been attacked by other prisoners. Participants detained on the VPU worried about potential interactions with the general population, as they felt vulnerable to incidents of violence. Many believed that the absence of the VPU would have resulted in life-threatening injuries. During his detention on remand, Luke was housed in the segregation unit of the local prison, as a VPU

was unavailable. From his segregation cell, Luke could hear conversations between other prisoners on the unit. Despite the stringent limitations on movement for those in segregation, Luke was terrified:

But at nighttime, it was hollow. And I say it was hollow because sometimes at nighttime, there'd be like—

[makes knocking sounds on the table]

—banging on the wall: 'Next door! Next door!'. They're trying to get stuff out of me. And I'd just stay quiet. Stay quiet. And then what would happen is you'd hear them shouting from cell to cell about why he's in and he's done this, you know, and, 'Oh, one of the wardens told me' and blah blah blah blah blah. You don't know if that's true. You don't know if wardens are saying whether or not that's why he's up there, you know. It was horrific. (Luke)

Luke worried about others learning information about him which, he believed, would have jeopardized his safety. These distant interactions with other prisoners had a physiological effect on Luke:

On a few occasions where I got scared, I've never felt fear like it. I've never felt the level of fear where my whole body felt like it was burning and on fire, like the rush of life, I don't know, it's—I mean, it's probably the closest that I've ever felt to what someone would feel like just before they're about to die. (Luke)

Participants housed on the VPU or segregation, such as Luke, were afraid. Their fears were regularly confirmed during physically distanced interactions with the general population:

Because of the nature of my offence, it's almost like you can be punished in an extrajudicial way. For example, on my way back from labour, you would get prisoners squirting bottles of urine at you through the fence [...] we had food that was deliberately tainted, so occasionally you would have found the odd mouse or rat in the food which, bearing in mind the lids are clip-on, it must've been some sort of human intervention for it to get in there. Either that or it was wilful suicide by the mouse. (Charles)

The laundry. There was laundry twice a week. You could put your stuff in, which went to the main part of the prison. If you got your stuff back, you were lucky. Or you got it back in tatters,

you know. They [prisoners] knew where the clothes had come from, so you washed your clothes in the sink. (Kevin)

Behaviours exhibited by prisoners in the general population confirmed participants' worst fears. They were marked men. Luke was exposed to abuse by prisoners in the general population:

[...] there were some days when I went out in the yard and the windows— some of them would have holes and people sort of throw stuff out and like, you know, there'd be things, not much, but used tea bags or hot water and stuff. (Luke)

Although participants had been segregated from the general population, repeated encounters with the general population reinforced their fear for personal safety. In addition to being new faces in prison, participants housed in the VPU faced the additional stress of being the targets of violence and condemnation by the general prison population.

9. A time of uncertainty

In almost all of the preceding sections, an element of uncertainty is present. Participants were uncertain about their next court date. They were uncertain about the welfare of loved ones. They were uncertain about their physical location in the prison estate, given the transient nature of pre-trial and pre-sentence custody. One of the overarching themes of this study is the element of uncertainty permeating participants' lives. Without any clarity on what their future might hold, pre-trial and pre-sentence detention was described as living in an extended present, where time 'was suspended' (Tony). Across both group of participants (i.e., unconvicted or unsentenced), remand was experienced as a place of 'limbo' (Luke); a 'no man's land' (Craig; Luke); a 'time of waiting' (Armit) and a feeling of being 'stuck' (Barry). Participants felt trapped between two worlds. On the outside, life carried on without them, while inside in prison, interviewees waited. They waited for communication from counsel. They waited for police investigations to conclude. They waited for an outcome. And all from behind prison walls. In discussing life on remand, Craig said:

You're fearing what's gonna happen. Everything could go wrong again. It [court case] could be adjourned, and you have to do more time, you know. You just don't know. Or some new evidence

comes to light that they've only just found out about and that's gonna put things back further. Or it could change the outcome. It is uncertain. (Craig)

Participants worried about all of the different possibilities which could unfold in their case. As criminal justice actors fulfilled their duties behind the scenes, interviewees could only wait. Armit described the experience of remand as one in which individuals are 'suspended in time', a similar description to that shared by Luke:

The most fitting word is it's such a limbo. It is the ultimate sensation of limbo to be in [...] It might be too religious-leaning, analogous, but that concept of limbo; being in this no-man's-land; of existence. (Luke)

Craig, too, characterized his detention on remand as a period of time in 'no man's land'. Later in his interview, he added:

[...] on remand, you're obviously waiting and waiting, and you're in suspension in many ways because: what's gonna happen? (Craig)

Words such as 'suspended', 'limbo', and 'no man's land' illustrate a general feeling of being stuck between two states, and correspond with findings from studies exploring police custody (Skinns & Wooff, 2020), jails in the U.S. (Gibbs, 1982), and immigration detention (Turnbull, 2016). On the one hand, participants were no longer active members of society. A court had sanctioned their removal from the community, restricting the freedoms and privileges they had once enjoyed. On the other hand, participants were detained in a place ill-fitted for the unconvicted and the unsentenced. They had been incorporated into the State's vessel of punishment in the absence of the grounds on which punishment is justified (see Chapter Three). They were prisoners, but without a conviction and/or sentence. Participants were neither free nor formally punished. In this suspended state, they could do little but wait to learn their fate. Would a court convict them of their alleged crime(s)? Would a judge sentence them to serve (more) time in a custodial environment? Participants' experience of living in-between states was also discernible through comments likening remand to travel through space. During his interview, Beau shared an image which came to mind in his early days on remand:

I'd only been there maybe a week or two weeks. I can't remember if it was a dream or if I was just half asleep, but it was almost as if I'd been put on to a rocket ship, and I was leaving the earth or the life I had before and I was just looking back at this and going off to somewhere else. Now that's a very unusual [chuckles] way to describe it, but it was almost as if everything that I'd had before is now thousands of miles away and I can never get back to it [...] I didn't quite know where I was going to. I'm on this rocket ship, I can see the earth or that life I had in the distance and that was it. I would never return to it. (Beau)

George used the moon as an analogy for the 'detachment' he experienced as a result of remand:

Like being on the moon, you're only a mile away from the city, but you might as well be a quarter of a million miles away. You're completely detached from everyday life. (George)

These excerpts point to a transition. Participants had left a familiar life to hurtle in the darkness towards the unknown. Within this space of waiting and legal ambiguity, participants felt an effect on their conception of time. Luke described the shift in his notion of time as follows:

I mean one of the weird sensations that I had on remand was how, literally, the concept of time changed for me [...] when you have 23 hours to do nothing. Absolutely nothing. Go nowhere. Not even wander to a fridge to just waste time looking in the fridge or go out for a walk, or tidy something up that, you know, you've been meaning to tidy up. A day seems really, really, really long. (Luke)

Steve, too, provided commentary on time. He recalled:

It [remand] was a big space and a big time, too. (Steve)

With no end in sight, time on remand stretched out. There were no scheduled dates for court hearings, meaning there was no way to measure the distance between the present and the next step in their lives. While in pre-sentence custody in Wales, Tony spoke of the way in which he experienced time:

Time drags on a lot. They're very long days. Remand has an indefinite nature as to time [...] Time is a vacuum. (Tony)

In the absence of everyday activities and routines, such as making a cup of tea before work or catching the evening news on television, and no timeframe for decisions in their criminal case, participants' sense of time warped. Without a frame of reference, time felt different. Luke recalled:

[...] you don't really know when it is, and you don't think it will be so easy as a human to not know what time or day it is. Or what day of the week it is. But you realize we only really know that from the constant measurements that we are able to judge it by. The things that are always on TV on the same time of week; your watch, obviously; but the 6 o'clock news. All those types, you know. (Luke)

As individuals with an unknown fate, time took on a new dimension. It slowed and dragged. Participants sat and watched seconds, minutes, hours, and days elapse without any knowledge of how long they would remain in their liminal state. Time moved to the rhythm of the regime, leaving some participants to feel like time was happening *to* them. Life in the community had afforded participants the opportunity to act on time—to take charge of their day and to plan their future. Remand, however, withdrew the ability to act on time by holding participants in a perpetual state of waiting. They were 'suspended in time' (Tony).

Following a series of decisions by criminal justice actors, participants had transitioned from freedom to prison. Their legal statuses had changed from innocent to presumptively innocent or from guilty to unsentenced. While these shifts marked a change in status, they were also triggers for influencing conceptions of time. Time was intricately connected to interviewees' unknown future; a future which hinged on the machinery of government. Participants were captive to the outcome of police investigations, charges by the CPS, court schedules, and other intangible forces. Participants lived in waiting with no control over time in their day or the length of time they would remain in legal limbo. In a recent study on migrants, Bendixsen & Eriksen (2020: 93) hypothesized that 'waiting is a congested crossroads clogging the route leading from the present to the future'. Their participants felt trapped, unable to move forward. Time in a liminal state was a breeding ground for uncertainty. The uncertainty associated with remand was one of participants' most emotionally difficult elements to navigate while in pre-trial or pre-sentence detention. When asked to describe remand using five words, almost half of participants chose 'uncertainty' or a derivative of uncertainty (e.g., 'you just don't know what'll happen'; 'uncertain') as one of the words to describe remand (see Figure 5.1).

Exploring participants' choice of the word 'uncertainty' was like unpacking nesting dolls. Each factor contributing to their sense of uncertainty led to another, which led to another, which led to another. The act of being remanded to custody was the tipping point, but uncertainty was linked to the indefinite nature of remand, the volatility of life inside a prison, the anxiety of a pending trial or sentencing date, and the turmoil over an unknown future. Participants were surrounded by unknowns. Uncertainty was grounded in the physical environment participants woke to each day, but also in the intangible forces surrounding them. Behind the scenes, the State was at work, conducting investigations, reviewing charges, preparing for trial, and scheduling hearings in court. There was no backstage access for participants, which left them facing questions without answers. Only the passing of time would bring them a resolution.

Scott was initially remanded to custody as an unconvicted prisoner, but quickly changed his plea to guilty on learning of the evidence against him. He described one of the most challenging features of remand:

I s'pose, I mean, the dark thing about remand is that it's quite daunting, the not knowing what your fate's gonna be. Knowing that I could potentially spend 5 years in prison, d'you know what I mean? That's quite frightening as a prospect. (Scott)

Scott waited four months on remand before he was sentenced to a term of imprisonment. In that time, he faced multiple unknowns. There was the possibility he could serve five years in prison, but there was also the prospect of a less severe punishment. There was a chance, however slim, of a court deciding to impose a non-custodial punishment. Craig recounted some of his thoughts in his early days on remand:

I mean, I can remember lying on my bed thinking, 'What the hell's gonna go on now?'. I've got no idea. [clears throat] So, I say to my solicitor, 'I don't know what I'm gonna get. I don't know where they're gonna put me'. It's a real worry. It is. And you just can't wait for them days to tick down so that you do finally get to know what sort of path you're on and what destination you're going to, because you just don't know. (Craig)

There was nothing Craig could do to answer lingering questions about his fate except wait. Kurt, too, was left with open-ended questions about his future. He described the challenge of waiting to learn his sentence:

You're second guessing, you know? I was reading through legal books and trying to look at case studies of people in my situation. And nothing was really the same, you know. There's nobody you can go and ask for advice, you know. There's no expert. There is nobody who can give you that sort of, "How long?". It's that old analogy, "How long's a piece of string?". You're left there to think about it. (Kurt)

George felt the experience of remand was one defined by uncertainty. He was unsure about the length of his detention and had no idea whether he would spend additional time in prison under formal sanction. Ultimately, George was sentenced to a term of imprisonment. He compared remand time to sentenced time to convey the uncertainty associated with the former:

What was different to the sentence is you start *here* and you end *here*. That's immutable. Whereas being on remand [...] the up and down; not knowing how long you were gonna be there or what your future was gonna look like. It's very, very different to the sentence itself. (George)

The criminal justice system was 'clogging' (Bendixsen & Eriksen, 2020: 93) participants' ability to see their future. They could only sit and wait and wonder about how it would unfold. During his interview, Barry described one of the differences between remand time and sentenced time:

[...] it feels very different serving the sentence to the remand. You have more hope during the remand. I mean, you have more hope and fear. You know, things could go really well, things could go very badly. It's a more emotional time than when you're on a sentence. (Barry)

A few participants reported feelings of both hope and doubt about their future. It was possible that they could receive a harsh sanction, but there was the hope for leniency. Until a conviction or sanction was imposed, there was a chance. In fieldwork with remand prisoners in Papua New Guinea, Reed (2011: 529) found that 'hope and waiting regularly intersect, one often precipitating an interest in the other'. The act of waiting is oriented to the future, allowing a person to be hopeful or wishful for a certain outcome to unfold at some unknown future point in time (Bandak & Janeja, 2020; Reed, 2011). Until the point where the outcome is reached, such as the finding of guilt or the imposition of a court sanction, the absence of certainty can be filled by the presence of hope (Reed, 2011). Although participants held anxieties and frustrations over their unknown future, these emotions co-existed with hope. Despite the

myriad of pains inflicted on participants by their confinement to prison pre-trial or pre-sentence, there was still hope. George recounted:

There was this constant up and down of hope: ‘Oh God, I’m going to prison for five years!’. ‘Oh, it might only be 18 months’. ‘Oh, it might not be at all’. ‘Oh, I can go home tomorrow!’. ‘Oh, no I can’t’. You know? (George)

Life on remand was a rollercoaster. One day might feel hopeful if there was news of a less severe punishment being imposed on a similarly situated offender, while another might instil fear if the prospect was significantly more time in custody. Participants’ orientation toward their future hinged on events by external parties, such as information from legal counsel or stories from prisoners. Hope ebbed and flowed throughout pre-trial and pre-sentence detention, and while it opened room for the consideration of a less perilous future than one anticipated by participants, it was a desperate hope.

It was painful for participants to live with the indefinite nature of their detention. The pains stemming from the uncertain length of detention on remand are strikingly similar to experiences of individuals serving indeterminate sentences (Harris et al., 2020; Stewart & Collier, 2018) and immigration detainees (Griffiths, 2013; Hasselberg, 2016; Turnbull, 2016). Indefinite punishment and detention can produce psychological stress and anxiety (Griffiths, 2013; Hasselberg, 2016; Turnbull, 2016), feelings of uncertainty and hopelessness (Harris et al., 2020; Sainsbury Centre for Mental Health, 2008), and social isolation (Harris et al., 2020). The angst associated with participants’ indefinite detention was demonstrated when they spoke of the relief of being sentenced. Though their sentences were unwelcomed, they offered interviewees a chance to look into the future with a degree of certainty. While the challenges associated with daily life in prison would remain, a sanction allowed them to envision what lay ahead. Participants could finally count the number of days till their release from custody. They could begin to plan. Having lived without any future point on which to fix their gaze, participants expressed a sense of relief when their sentence was handed down by the court. After his sentencing hearing, Kurt described his interaction with one of the prison officers:

I remember getting sentenced and one of the officers said to me, ‘Why you smilin’? You just got this much time’. And I said, ‘Well, this is the start of the journey. I know when the end is now’. When I’m on remand waiting for my sentencing, I don’t know how long I’m gonna get. Is it 4?

Is it 5? Is it 7? Is it 10? Now I know. Now I've got my goal to focus on. And this is the day I'm gonna walk out of here, and I can share that information with my family. (Kurt)

Beau recounted one of the consequences of receiving a formal sanction:

I didn't welcome the conviction at all. But it gave me the ability to pace myself [...] most people I'd known seemed to have some sort of calendar system where they would cross off the days. And that's what I did, so you could see. (Beau)

Unlike time on remand, a sentence offered Beau, Kurt and others an opportunity to look ahead; to count down the days till release. During his interview, Craig described the impact of learning his fixed date of release. He shared the 'relief' of being sentenced and the resulting change in his orientation toward the future:

[...] when you do get sentenced, it's sort of a relief. You feel that relief at either getting not what you expected or even just that relief that you can just see an end to it. You've actually got a date there, you know? You can picture and write down the certain dates, and you look at that date and you think, 'Right. Now I can count down the days to that date and I know when I'm gonna be released' [...] you look at that date and you think, 'Well, I'm gonna be free on that date, and that will give me some sort of goal to do, or I can approach things differently, you know? Not meet the same people. Not do the same thing. And all these things are running through your head and you're thinking, 'I just wanna get out'. And when you can see that date, it makes it much—no, anything's possible once you see that date. (Craig)

The end was now in sight. The imposition of a formal punishment opened the path ahead of them, removing the uncertainty which had plagued them throughout their time on remand. Being sentenced shut the door on a chapter in participants' lives. Remand was over. The unknowns associated with a life in legal limbo were no longer existent. Luke recalled the impact of being sentenced to serve time in prison:

I genuinely had a tally chart that I was crossing down just arbitrarily on a piece of paper as I worked towards the thing [release date]. That was significant actually, probably should've told you that, cause the significance in my head and for me—for my mental health and getting through—of seeing dates to get to. To cross down, you know? (Luke)

Participants had spent days, weeks or months sitting at a crossroads. Ahead of them lay numerous possibilities: guilty, not guilty; custodial time, no custodial time. There was no way to know which path they would be told to follow. As such, being sentenced was a milestone. It marked the end of waiting. Life in limbo had ceased. Participants were able to move forward again, not to a destination they had hoped for, but to a known destination nonetheless.

10. Being punished

This study is based on participants' recollections of a past experience of pre-trial and/or pre-sentence custody. At the time of the interviews, participants had, at least materially, closed the remand chapter of their lives. The gap between their detention on remand and the date of the interview is one of the unique features of this study. Interviewees were able to offer the full picture of their experience of remand and formal punishment: from arrest, to remand, to trial or sentencing, to the administration of formal punishment, and to life on the other side of their ordeal. Though the interview questions were focused on remand, participants drew on their cumulative experience of the criminal justice system to frame their time on pre-trial or pre-sentence custody. At the time of the interviews, some participants had been living in the community for decades, while others had recently been released from sentenced custody. Discussions on ideas about punishment arose out of stories about interviewees' lives in the present. Most participants shared their disappointment and shame at the operation of the criminal justice system in England and Wales. Adrian selected the word 'shame' as his fifth word to describe remand (recall Figure 5.1):

Probably 'shame' at how the whole system works that you've paid for all your life. And now you're discovering how it actually works. It's an absolute disgrace. (Adrian)

Kurt spoke of the hypocrisy amongst those who call England an 'accepting country':

It's like, you talk about second chances for people, but anybody who's been to prison will not get a second chance. (Kurt)

Though their perceptions of criminal justice had hardened from their own experiences, participants had empathy towards those caught up in the system. Almost all interviewees commented on their disbelief at the number of individuals in prisons who, they believed,

belonged elsewhere for reasons of mental health, substance misuse, or low-level, non-violent offences:

I always had the impression when you walk down the road, you walk past a prison, ‘People in there, it’s their own fault. Let them get on with it’. But now I’ve experienced it, I have a totally different point of view. Totally different. If I had the time and effort, I’d try to introduce humanity into it. (Ethan)

I never had much sympathy before for people involved in the system. It’s their fault, you know. Why should we have to care about them? I know a lot hold that view, but nowadays I take a wider view than that. If we give these people some attention and rehabilitate, it’s just better for the world as a whole, you know. Less victims of crime. Less perpetrators of crime, you know. Isn’t that really the best way? (Barry)

You do have to ask yourself when you’re with people who have serious mental health issues—I suppose it’s helped in a way with my empathy. In the sense that I’m more prepared to listen to what other people have to say because what you read in the papers isn’t who the individual is. (Charles)

These conversations were illuminating, but also helpful, providing a more natural segue to the question in the interview schedule exploring punishment: ‘Did you feel as if you were being punished by being detained on remand?’ (see Appendix A). This interview question was designed to explore a theoretical debate in the literature on punishment, specifically whether pre-trial and pre-sentence detention are deserving of the formal designation of ‘punishment’ (see Chapter Three). Most participants were quick to label their experience of remand as a form a punishment doled out by the State. They justified this view by pointing to the deprivation of liberty and its manifest consequences. In answer to the question of whether remand felt punishing, Barry replied:

Oh definitely, yeah. I mean it’s very tough, you know. You’re stripped of your liberty. I guess that’s the name of the game. But yeah, it felt like one hell of a punishment. (Barry)

In response to the same question, Henry alluded to the conditions of confinement to justify remand as a form of punishment:

Well, you are effectively [being punished] because you're locked up. Lots of days you're locked up for 23 hours with somebody in an 8x6 cell with no shower and a toilet in there. (Henry)

The pain of being incapacitated pre-trial or pre-sentence was reflected by other participants. Tony characterized his four weeks on remand in Wales as 'an unbearable punishment' and a 'form of sadistic punishment'. Though the physical environment played a role in capturing remand under the umbrella of 'punishment', other factors were at play. As a result of conducting interviews after the experience of remand, participants were able to compare the experience of 'pre-punishment' with that of formal punishment. Some participants opted to compare the two forms of detention to highlight the struggle of remand. During his interview, Beau observed:

[...] that [remand] was the toughest 6 months of the 2 years [of imprisonment] because I think, firstly, I was in an environment I was completely unfamiliar with. And I shared a room with someone else. And I didn't have an idea of what might happen to me. (Beau)

For many, remand felt punishing because it involved waking up each day to an unknown future, leading back to the temporal pains of remand. When asked if remand felt like punishment, George replied:

Oh yeah, absolutely. I mean, they'd say you're not sent to prison to be punished. But that's not worth the paper it's not written on because the process is punishing. And they will punish you further if they don't think you're behaving the way that you should. So, you're sent to prison as punishment, and you're sent there to be punished. You get both. There's no doubt about that. (George)

Participants were trapped at the back end of the criminal justice system, stuck in prison for an unknown length of time, while their case was still making its way through the early stages of the criminal process. Participants had moved leaps and bounds ahead of their legal case. By virtue of their status as remand prisoners, participants held a liminal legal status. Living life in legal limbo within the confines of a prison felt punishing.

11. Conclusion

This chapter explored the pains associated with participants' loss of freedom, starting with their arrest and moving to the experiences they endured while detained in prison. Participants were shocked at the swift transition from free men to remand prisoners, and wholly unprepared for the processes and realities which lay ahead of them. The denial of bail introduced most participants to a life they had only seen depicted on television series or haphazardly read about in the newspaper. The consequences associated with their loss of liberty were painful, exposing them to the hardships commonly reserved for those guilty and sentenced to a term of imprisonment. Their pains drew parallels to the suffering explored in Chapter Two and to the wider pains described in the literature on the ramifications of punishment and punishment look-alikes (see Crewe et al., 2014; Griffiths, 2013; Hasselberg, 2016; Jewkes, 2005; McNeill, 2018; Skinns & Wooff, 2020; Sykes, 1958; Turnbull, 2016; Warr, 2016). The connection to existing pains is not unexpected, given participants' engagement with police and their co-location in institutions holding sentenced prisoners. Examining remand through the lens of existing penal frameworks reveals similarities between remand prisoners and other groups of individuals under State custody or supervision (e.g., police and immigration detainees, probationers, sentencing prisoners). Participants struggled with boredom and feelings of being unsettled. They felt degraded by the procedures at intake to custody and believe they were misrecognized by prison staff. These pains were, in the context of the extant literature, familiar and add weight to existing research on probation, sentenced prisoners, police, immigration detainees, and remand (see, for example, Crewe et al., 2014; Jewkes, 2005; McNeill, 2018; Pelvin, 2019; Skinns & Wooff, 2020; Turnbull, 2016; Ugelvik, 2013; Ugelvik & Damsa, 2018; Warr, 2016).

However, some findings emerging from participants' narratives were a new twist on an old theme. An uncertain future instigated by a life in legal limbo and exacerbated by the stresses associated with incapacitation was painful and, for some participants, felt punishing. Oscillating between hope and fear for the future was emotionally taxing, a finding similar to those across research with remand prisoners (Reed, 2011), sentenced prisoners (Crewe et al., 2017; Zamble & Porporino, 1988), police detainees (Skinns & Wooff, 2020), and immigration detainees (Griffiths, 2013; Hasselberg, 2016; Turnbull, 2016). Participants in this study were unable to make sense of time as there was no 'amount' to it. It stretched onwards. Yet, the waiting and uncertainty offered hope. Hope for reunification with family. Hope for a lesser punishment. Hope for release. Regardless of its outcome, this hope, desperate as it was, was

inextricably linked to their uncertain future and to the pains of living in a liminal space (Bandak & Janeja, 2018; Reed, 2011). Although remand offers its subjects no assurances over their future, no timeframe for a final decision by a court, and no certainty in outcome, it is these doubts and uncertainties that open space for hope. The void of the unknown leaves room for a hopeful outcome (Reed, 2011).

Finally, this chapter began to examine differences amongst unconvicted and unsentenced prisoners. As described in Chapter Four, one of the objectives of this study was to explore whether there were similarities or differences in experiences across both groups of remand prisoners. There were notable similarities stemming from participants' location in prisons, but a few distinctions emerged. Participants who were formerly unconvicted prisoners struggled with feeling both unsettled and misrecognized. By virtue of their criminal trial, this group, while detained in pre-trial custody, were frequently on the move, traveling between court and prison, and being re-located to new prisons when space was limited. In addition to the pains stemming from their transiency, this group of participants were frustrated at being misrecognized by staff. It was painful to be treated in a manner inconsistent with their legal status. As a result of their decision to plead not guilty, this group of participants suffered additional burdens while detained on remand.

Chapter Six: Loss of Control

Everywhere there is one principle of justice, which is the interest of the stronger.
Plato, *Republic* (4th century BC)

1. Introduction

The preceding chapter demonstrated that life as a remand prisoner carried similar deprivations to those experienced by other persons under State custody and supervision. While it explored deprivations associated with the transition from community to prison, including time in a carceral environment, Chapter Five did not examine participants' experience of loss of control. The manifold applications of this theme to the experience of pre-trial and pre-sentence detention mean that it deserves separate analysis. Similarly to research with sentenced prisoners (see Crewe, 2009; Jewkes, 2013; Sykes, 1958; Warr, 2016), participants in this study experienced a loss of control manifested by the power exercised over them by prison authorities and the daily institutional regime. Interviewees described losing decision-making authority over their lives and feeling infantilized through their interactions with staff. However, the loss of control extended further. While trying to navigate their existence behind prison walls, participants faced the additional burden of managing, or attempting to manage, legal affairs. The complexities associated with the criminal case were an added pain of remand. Participants who spent time in custody as unsentenced prisoners waited to appear in court for sentencing, while those who were unconvicted attempted to participate in trial preparations. The majority of participants, regardless of their plea, described feeling like they had no control over legal matters. Interviewees struggled to communicate with counsel and collect information related to their case and the criminal process. While nearly all participants described a loss of control in prison, one group experienced an additional pain resulting from their lack of decision-making power. Participants who were unconvicted prisoners felt as though the deck was stacked against them. Their sustained engagements with criminal justice agencies, coupled with the indefinite length of their detention, resulted in a sense of pressure to plead guilty. This chapter explores participants' loss of control instigated by their entry into custody, beginning with life inside prison and moving to the struggle to reach out from within it. It concludes by investigating unconvicted prisoners' experiences of attempting to take their case to trial and the specific difficulties encountered by some to maintain their original resolve to plead not guilty.

2. Inside the prison

Prisons are designed to incapacitate. Movement is inhibited and subject to the daily schedule designed and imposed by those in power. One of the collateral consequences of incapacitation is loss of control (Crewe, 2009; Jewkes, 2013; Skinns & Wooff, 2020; Sykes, 1958; Warr, 2016). In a custodial environment, ‘prisoners are forced constantly to confront their lack of power, their lack of ability to affect decision-making parameters via their reliance on official others’ (Warr, 2016: 593). Prison offers its inhabitants few opportunities to exert power and decision-making control. The routine is established. The meals are pre-planned. Across the literature on the pains of imprisonment is the power imbalance between the keeper and the kept (Crewe, 2009; Crewe et al., 2017; Sykes, 1958; Warr, 2016). The operation of the prison establishment reduces autonomy and creates a sense of dependency by those subjected to the exercise of power (Crewe, 2009; Jewkes, 2013; Sykes, 1958; Warr, 2016). In custodial environments, including police detention and prison, detainees depend on staff, necessitating their cooperation to achieve the most basic tasks (Jewkes, 2005, 2013; Skinns & Wooff, 2020; Sykes, 1958; Ugelvik, 2013). In their study of detainees in police custody, Skinns and Wooff (2020: 252) found that staff power generates ‘a sense of helplessness and disempowerment’ amongst detainees. The discretionary exercise of power over incapacitated individuals, while linked to the loss of control, is a useful tool in maintaining compliance (Crewe, 2009). By creating an environment of uncertainty, where those subservient to displays of power are never confident of how and to what extent power will be utilized, the State can maintain the subordinate’s acquiescence (Crewe, 2009).

Consistent with the existing literature on the pains of punishment, participants in this study expressed an inability to exert control. Immobilized by a decision of the court, and exposed to the power vested in prison officials, participants felt their lives were determined by others, a finding consistent with studies exploring sentenced prisoners (see, for example, Crewe et al., 2017; Sykes, 1958; Warr, 2016). Nearly all participants spoke of the frustration of being unable to make independent decisions for themselves. George observed that:

They [prison officers] had total power. They could decide whether or not you get out of the cell that day. They decide who you share the cell with, whether or not you get your food parcel. Just complete control. I mean, at one point, I think in the second or third week, I got diarrhoea because the conditions were pretty unsanitary. I was walking ‘round the exercise yard and every time I

went 'round, I asked if I could go to the toilet and the guard said, 'No, just keep walking'. In the end, I shit myself. They had complete control. (George)

George's experience of being refused access to the washroom was one of the most extreme examples of power exercised by staff. However, George's description of staff members' 'complete control' was consistent across the sample. Participants found it difficult to transition into a system which required their subserviency:

I had no control over anything. (Kevin)

I guess most people have control over their lives, but I'm a fairly active participant [chuckles] in the direction of my own life, and that all evaporated very quickly. (Beau)

You feel helpless in there; nothing you can do. That's the hardest part. You've got no control over anything. (Jason)

It was hell because of the limitations. (Armit)

Being in prison, [...] you don't have any control. (Charles)

Participants' loss of control was influenced by their detention within a carceral environment and by the myriad decisions made every day by those responsible for operationalizing the daily schedule. There were few qualities to participants' lives which remained untouched by the rigours of living life in prison. Participants, such as Kevin, described feeling a lack of control due to the physical limitations imposed by the establishment:

Interviewer: Can I ask, you said something about when it comes to remand this 'no control over anything', but could you expand a little bit on what you mean by 'no control over anything'?

Kevin: You got out of an 11x7 cell when they [staff] said you could go out. There was days when you didn't get out, you know.

Movement was one factor contributing to a sense of losing control. Interviewees spoke of the inability to move freely and its influence on when and how their basic needs could be met.

Through accounts of their inability to determine when to eat or shower, participants conveyed their loss of control:

Your life's controlled. It's literally taken away. You can't go and have a shower, you know. Except on Tuesday and Thursday and you were lucky if you'd get let out on a Saturday for a shower. You know, you feel filthy. You feel dirty. (Kurt)

In his interview, Ethan explained the loss of control he experienced by highlighting the realities of his day-to-day life on remand:

You're told when you have to eat; when you have to wash. (Ethan)

Basic physiological needs were dictated by the regime. It was impossible for participants to decide the terms of their needs. Instead, they were forced to follow the daily programme implemented by prison staff. During his interview, Armit described 'not having any control'. He explained that everything was done to him and for him. He was told when to eat. He was told when and where to drop-off his laundry. He was told when to shower. There were few features left in Armit's life which allowed him to display an iota of independence. When asked about specific examples of losing control, a few participants pointed to their health to demonstrate their lack of decision-making power. Kevin shared:

I got a toothache. I managed to get an abscess, big lump on me jaw. I couldn't just say 'I want to see a dentist'. I had to wait three weeks. I was in sheer agony. Two paracetamol a day, that's all you were allowed, you know. And when I got a bit angry with the pharmacist at the window, the prison guard said, 'Look, you're in an effing prison. You're not outside now. Eff off'. I had the tooth pulled while it was still all swollen. It took a long time to heal. (Kevin)

Kevin was unable to negotiate the terms of his dental health. As a person detained in prison, he was incapable of managing his physical pain without interference from officials charged with his care and custody. Barry used his broken eyeglasses as an example of losing control:

I mean a great example I think would be my glasses ended up getting—the arm actually came off my glasses about halfway through, and it was nobody's fault, really, it's just one of those unfortunate things. But nevertheless, you know, in the real world you could easily get some superglue and get, you know, an optician appointment for the next day sort of thing. But 'round

there it wasn't that simple. I managed to get some Sellotape but that was—it didn't—you know what I mean. [chuckles] (Barry)

Barry's eyeglasses were never fixed beyond the Do-It-Yourself Sellotape repair. The story of his eyeglasses conveyed the depth of his helplessness. One of the consequences associated with confinement is the impact on prisoners' ability to influence decisions over their personal needs (Crewe, 2009). Barry's inability to properly repair his eyeglasses was stinging because it reinforced the lack of control he held within the prison environment. Luke, too, faced challenges related to his vision. Throughout his three months on remand, Luke was left without a pair of glasses or a change of contact lenses:

I'd gone to court that day in my contact lenses and hadn't taken my glasses with me, and I ended up wearing that same pair of contact lenses for nearly two and a half months in my eyes because it took so long. It just became farcical trying to get things to me. That's one thing that will always sorta stick out because it, you know, I was sort of phoning home on a daily basis to say, 'What's happened?' and my mum's like, 'I've posted your contact lenses. I've posted your glasses. I've rung the warden or, you know, the prison people, and they said they've got them. It's somewhere lost in the system'. But things weren't getting through to me in my cell [...] it's challenging to achieve the simplest of things [...] well, I never got my contacts. (Luke)

Luke was unable to exert any control related to his eyeglasses and contact lenses. Although the items were inside the prison, they were out of his reach. Beyond following-up with prison staff, there was little Luke could do on his own to locate his glasses and contact lenses. The clarity of his vision and long-term eye health depended on a decision by staff to locate and retrieve his personal items. Luke could only wait.

As a result of their confinement, participants depended on staff. Staff were needed to unlock cells, facilitate access to recreational activities, and escort them to the healthcare centre or visiting area. Participants relied on staff to deliver toilet paper, post letters, and advise them of upcoming court dates. While the regime itself was limiting, the attitude of staff towards the execution of their duties was an element contributing to participants' loss of control. The ability to successfully achieve certain tasks or meet basic needs depended on staff cooperation. Adrian remembered the uncertainty of accessing the library:

The library was supposedly once a week between these set times, but if there was staff who decided they couldn't be bothered, then that was it. Your spot at the library was gone. (Adrian)

Like many others, Adrian described remand as a 'frustrating' experience (see Figure 5.1 in Chapter Five), in part, because of the autonomy he had surrendered on entry to custody. While waiting for his trial, Adrian depended on staff to fulfil their duties which, in turn, allowed him to achieve his intended objective, such as borrowing a book from the library. Ultimately, participants' decision-making process in prison was interrupted by an intermediary. To execute a decision required some level of staff intervention. There was no longer a straight line from decision to action. As explained by Jason, a task such as accessing the daily newspaper was impossible on his own:

I'd ordered newspapers. They didn't give me the newspapers and I knew prison officers had been reading them in the office rather than giving me the newspapers. And so, just small things. (Jason)

Although Adrian and Jason were frustrated by different events unfolding (or not unfolding) in their day, their irritation was grounded in the same phenomenon: staff power. In addition to controlling participants' schedules and movements within the prison, the authority of staff was manifested in small but significant ways. When asked to describe the experience of remand in five words, participants frequently chose the words 'no control' and 'frustrating' (see Figure 5.1 in Chapter Five). In exploring their choice of words, interviewees spoke of their interactions with prison staff. Due to the limitations on their freedom, participants were required to engage with staff every day. A number of examples were given to demonstrate the reach of staff involvement in participants' daily lives. In describing his feeling of 'powerlessness', Ethan pointed to the gatekeeping function played by staff:

Everything you do, you have to ask somebody to do it. You're given so many letters, prison letters and prison envelopes, but you had to go and ask for it. And it was always an effort. Like toilet paper, you had to go and ask for it. There's nothing you can do on your own free will. You have to get permission from somebody. (Ethan)

Interviewees required permission and/or assistance to accomplish most tasks. However, they were frequently left uncertain whether staff would follow-through on requests for assistance.

The following is an exchange which occurred during Kurt's interview, after he selected the word 'frustrating' to describe remand:

Interviewer: And then in terms of 'frustrating', do you mean what you said earlier—the lack of movement you get to have, you don't get to decide what your day entails, you don't get to choose where you might like to go?

Kurt: It's not just that. You'll make a request, for example, and you might get a response a couple of days later [...] You just got no control over anything and that's the frustration.

The decision to make a request or seek permission to achieve a certain task was empty of any assurances of staff assistance. During his interview, Luke described interactions with prison officers when he attempted to meet basic hygienic needs:

Out in the real world you can nip to the shop to buy new pen or you can nip to the shop to buy yourself new trainers, but in custody, 'My razor's broken'. 'Oh, yeah, we'll give you one in a few days' time'. No, you want it now [...] and I won't say, well actually I will say, that some prison guards do relish having that kind of power. But it shouldn't be too much to get a soap given to you if they've realized that you've used up the soap, or you know, 'Can I have another toilet roll?' [...] You'd ask some [prison officers] and some would just be like, 'Well, I *might* be able to. Well, maybe I *might* get that for you'. (Luke)

Armit, too, had difficulty with staff, recalling that information was only shared with him when it was convenient for prison officers. Participants were left uncertain whether staff would be willing to assist them and, ultimately, felt helpless. Henry described the frustration of relying on staff:

To do anything was a task in itself [...] to try to get anything done is just a minefield, really. Staff wouldn't follow up on stuff. You go and ask them something or ask them, 'Can I do this?' or 'Can I send a letter?' and, 'Yeah, yeah, yeah, just see Joe Blow on the next shift' or 'Yeah, I'll get it put under your door'. It just didn't happen. (Henry)

Henry's depiction of trying to achieve various tasks as a 'minefield' denotes a space filled with potential problems; a place where prisoners learn to move with caution and care to avoid a negative fallout. The notion of 'minefield' carried parallels to George's description of the

power held by prison staff and its effects on those on whom it was exercised. During his interview, George conveyed the careful steps he took with staff, trying to maintain his distance, while also trying not to alienate himself altogether. The following exchange occurred during a discussion on power dynamics:

George: Yeah, it's like a tightrope over a maze.

Interviewer: That's a good way—

George: No, really, you fall off, you haven't got a fucking clue where you are.

Engagements with staff were a reminder of participants' lack of control and, conversely, a wakeup call to the power held over them by staff within the institution. Very few participants reported helpful engagements with prison staff working on their living unit, though one shared a story of a positive relationship with an officer. Luke spoke of a prison officer who was a lifeline for him. When Luke felt terrified of the other prisoners around him in the segregation unit (see Chapter Five, Section 8), he wrote a note and slid it under his door. On the note, Luke had written about his fear for his safety. The prison officer, after reading Luke's note, took the time to assure Luke that he was safe; that staff would keep him safe. For Luke, the reassurance quelled his immediate fears, and the compassion displayed by the prison officer towards Luke remains with him to this day. Rarely, however, did participants share accounts of helpful assistance or positive experiences with prison staff.

Participants' reduced autonomy led some to describe the experience of remand as one in which they were made to feel like children or dependants. Research on the relationship between staff and prisoners points to the infantilizing of the latter (Jewkes, 2002, 2005; Sykes, 1958; Ugelvik, 2013). In her research with sentenced prisoners, Jewkes (2002: 17) concludes that 'the prisoner is reduced to the weak, helpless, dependent status of a child who is unable to contest parental power'. Some participants used this language of parent and child (or being 'nannied') to describe their experiences:

They're [prison staff] gonna make you wait for this. They're gonna make you queue for that. They're gonna make you wait for everything, so you learn patience [...] it's all designed to make

you think. You know, it's like if you're a kid and your mom tells you to go sit on the step or on the stool. (Kurt)

It's like being a child, when you been—what's the word—grounded essentially and told to go to your room for a period of time. When you're in one place without the ability to sleep and do what you want for 23 hours that would definitely be a punishment. Now that I look back at it. (Jamieson)

To some extent like nannied, as well. You just go and get your stuff, you go and get your food, you give your laundry, you get your laundry back, you know. You make your own bed, that's about it. (Luke)

The inability to make independent decisions about the structure of their day, their movement, their meals, and their health care felt akin to being treated like a child. As participants succumbed to institutional rules and procedures, they acutely felt their autonomy being stripped away from them. Their control was weakened by their newfound dependency on others. Participants' accounts of staff engagements and frustrations over their lost independence bore similarities with existing research on the pains of punishment (see Crewe, 2009; Jewkes, 2002, 2005; Skinns & Wooff, 2020; Sykes, 1958; Warr, 2016). Like other groups of individuals whose liberty has been suspended, it was painful for participants to be unable to make decisions on their own, and to be subjected to the discretionary power vested in prison staff.

3. Trying to reach out

Previous research with individuals detained in pre-trial and/or pre-sentence custody points to the challenge of trying to interact with the outside world from behind prison walls (Brookman et al., 2001; Casale, 1989; Pelvin, 2019; Vacheret & Brassard, 2015). In their research with accused persons, Ericson and Baranek (1982: 77) found that a criminal defendant in pre-trial custody is 'usually excluded from the arenas in which outcomes are arrived at. He is rarely present when lawyers discuss with the police, the crown attorney and/or the judge the possibilities of concessions'. Pre-trial and pre-sentence prisoners depend on their legal counsel for up-to-date information about the progress (or lack of) on their criminal case. Research with both groups of remand prisoners (i.e., unconvicted and unsentenced) demonstrates the difficulty of trying to ascertain information about a criminal case from inside an institution

(Brookman et al., 2001; Pelvin, 2019; Vacheret & Brassard, 2015). As explored in Chapter Two, outdated telecommunications systems, the daily schedule in prison, and the geographical distance between a prison and a remand prisoner's legal counsel can stymie efforts to communicate with the world beyond the prison gates (Casale, 1989; Pelvin, 2009; Vacheret & Brassard, 2015). In this study, the loss of control felt by participants was exacerbated by a pending criminal case and a general feeling of being unable to actively participate in that case. Outside of the prison, the criminal process was unfolding largely without participants' involvement. Rarely did they feel informed about decisions and events transpiring across multiple criminal justice agencies. The majority, regardless of the plea entered in court, struggled to exert any agency in matters related to their trial or sentencing. During each interview, participants were asked about their experience navigating the criminal process, specifically 'Did you feel in charge or in control of the direction of your criminal case?' (see Appendix A). Nearly all participants answered 'no'. Beau and Frank were quick to answer:

[...] virtually no control, no, none whatsoever [...] I recall having a feeling of lack of control or hopelessness. I don't know. I was just not able to be active in the direction of my case. (Beau)

Never. Never. Never. You're never in control of anything because what happens is, it [the system] is loaded against you all the time. (Frank)

Jason and Ethan believed they were inconsequential to their criminal case. Decisions were being made about them and for them, but essentially without them:

You have no control over your destiny in there. The hardest part is coming to terms with having no control over what's happening. You're in everybody else's hands. (Jason)

Well, it's just generally like, the process was just going on without me being there, really [...] You're not asked your opinion on anything. All these things are just done around you. (Ethan)

Barry believed the only control he had was in the plea he entered in court:

Really the only thing you had control over on remand was whether you said the word 'guilty' or the word 'not guilty'. That was the only control you have, really. (Barry)

Being detained on remand was paralyzing for those trying to be active participants in the direction of their case. Several features of the prison acted as a barrier to communication between client and legal counsel. These obstacles, including the management and operation of the telecommunications system within prisons, obstructed attempts by participants to communicate with legal counsel and, as a result, left participants feeling like they had no meaningful role in their criminal case. Remand hindered participants' efforts to participate in the processes and decisions leading up to their trial and/or sentencing and, ultimately, the direction of their future.

3.1. Communicating with legal counsel

All participants in this study relied on legal counsel for assistance navigating the criminal process. Over half of participants retained counsel ($N = 11$), while the remainder relied on legal aid ($N = 6$) or were unable to recollect whether their legal counsel was a duty solicitor or not ($N = 3$). Participants reported three methods of communication with their legal representation: telephone; written correspondence; and visits. Each carried its own unique challenges. The most common method of speaking, or attempting to speak, with legal counsel was by telephone. Save for two participants with access to prison telephones in their cells¹⁰, participants relied on communal telephones located on the prison wing. Though shared telephones are intended to provide a means for prisoners to maintain contact with the outside world, participants reported issues with supply and demand. During his interview, Henry described the scene on his wing when prisoners were let out for association. There were approximately 100 prisoners on his wing, all of whom shared six telephones. Most days, only three telephones were operational. Given the ratio of telephones to prisoners, long queues formed with no assurance prisoners would make it to the front of the line within the allotted time out of their cell. There was no guarantee Henry would reach the telephone in the window of time he was permitted out of his cell each day. Like Henry, Jason had a difficult time making telephone calls:

Yeah, I had the phone calls, but obviously you're only—I was in HMP E for the first 7 or 8 weeks—and you're only allowed a small time slot, which is about an hour a day, to get to the phones, and everyone was on the phones. (Jason)

¹⁰ In 2018, HMPPS began to install in-cell telephones (Ministry of Justice, 2018).

Many participants felt there was insufficient time out of their cell to allow them to make important telephone calls. Scott spent lengthy periods queuing for the telephone:

Obviously, you only get a limited amount of association time out of your cells, so you use the prison phone [...] there's obviously a lot of people in the queue waiting for the phones. So, yeah, it's not ideal. (Scott)

While long queues were a barrier to communicating with counsel, so too was the internal operation of prison telephones. In 2005, the prison service introduced the Pinphone system, which requires prisoners to have sufficient credit in their prison account to make telephone calls (Ministry of Justice, 2021i). For participants detained after 2005 ($N = 13$), the cost of telephone calls was prohibitively expensive:

[...] the phone calls are really expensive. I think you're talking on average 20p a minute. (Henry)

The cost pushed many participants to either find work inside the prison or ask family members to add money to their internal prison account. Unless participants were able to fund their account, no money was available for telephone calls. Gabe found employment during his year-long detention on remand. The decision was based solely on his need to add money to his prison account to afford telephone calls to his solicitor. Gabe agonized over the decision, as time spent working meant less time dedicated to trial preparations. However, without employment, Gabe would have been unable to maintain regular contact with his counsel, which would have left him in the dark about decisions and events leading up to his trial.

In addition to access and costs, participants described difficulties surrounding the length of time they could spend on the telephone. The telephone system within prisons falls under the purview of the prison governor, who has the authority to restrict the length of a single telephone call; the time between telephone calls by a single prisoner; and the maximum number of calls a prisoner can place in one day (Ministry of Justice, 2021i). Beau recounted that:

I think, there seemed to be some limit on time, and I wasn't always able to phone the solicitor. (Beau)

Scott was able to recollect the exact time limit placed on his telephone calls:

If I recall correctly, you get 8 minutes of phone time, so your call will get cut off after 8 minutes so that someone else can have a go. Once your call's ended, you've got to wait, I think, 3 minutes [to make another call]. (Scott)

Participants reported a time cap on a single telephone call as well as a 'cooling off' period between calls. Frequently, however, pressure from other prisoners kept telephone calls short. Henry explained:

If you got on the phone and you was on it long, after a couple of minutes everybody would be shouting, 'Get off the phone!'. That's how it was. Everybody's waiting for the phone. (Henry)

Restrictions were designed to ensure all prisoners could access the telephone. In practice, the operation of communal telephones resulted in many participants being able to make one call a day. Participants with strong networks of support in the community opted to call family rather than their legal counsel. A single telephone call to a family member served two purposes: participants could maintain regular contact with loved ones as well as ask family members to liaise with their legal counsel on their behalf. Dan described his dependence on his mother during his two weeks on remand:

I'd contact my mum and she would do all the calling around for me. And then write me a letter with an update. (Dan)

Jason received help from his adult children:

I always rang both me sons at 8 o'clock, breakfast time, just to ring, check you're alright, and if I had anything they needed sorting. They were me link with the solicitor and everything. (Jason)

Ethan also depended on his family to communicate directly with his solicitor, as did Charles. During his interview, Charles recounted that he was 'reliant, totally reliant' on his father. Participants with support in the community reported speaking to family members about court appearances, potential sentencing outcomes, and general information about the criminal process. Family members often acted as proxies between their loved one in prison and legal representation in the community. However, the use of family members as a conduit to information about a criminal case was not without its frustrations. Charles described the relationship with his father during his time on remand:

So, raise it with my dad and he can call the solicitor. But then my dad's one of these people who you need to go through minute detail on what needs to be done, and then, worse, he still questions what needs to be done. So, you end up explaining to him and then he's on about 'What about this? What about that? Have you thought about that?'. It's like, 'Well, no, I need you to'—and before long it turns into a bloody argument because you're stressed out cause you're either on a ten minute phone call, or you've written a letter and you find out that it's not done what you needed doing, or worse still, in one instance, he forgot the bloody password to my email, so then it's trying to unravel that mess. That took over a month. And the whole thing was based solely on the fact that there's no proper way to communicate. None at all. It's frustrating. (Charles)

Barry largely counted on his parents to provide him with legal information, such as potential sentencing outcomes for his offence. However, he was occasionally able to speak with his solicitor. He shared that:

You know what is very tricky is, I'd been given conflicting information by my dad and my lawyers, you know. I said, 'Well, what does the internet say is gonna happen to me?', and my dad said, 'Oh, your offence looks as though people generally get a year or a bit less for that', and I said, 'Oh, a year or a bit less? That's pretty good!'. Whereas the lawyers said, 'Barry, we're really sorry to tell you, but there's a mandatory minimum', and I said, 'What!'. Well, how can both of those be true? In the end, they were both wrong. (Barry)

The operation of the telephone system contributed to some participants' decision to relinquish control over communication with counsel, not necessarily because they wanted to, but because it was the best available option given their circumstances. Just as participants had become dependent on staff within the prison, they depended on family to liaise with legal counsel and coordinate the direction of their criminal case. However, participants noted that being dependant on family brought its own stresses. The passing of information between numerous individuals across time and space conjures the image of the childhood game of Broken Telephone, where the message said aloud at the end of the line differs significantly from the one whispered at the start.

Participants without family support were left to fend for themselves in trying to ascertain information about their legal case. Craig, who had no support from his family, spoke of feeling 'forgotten':

You're just that person that's gonna be on remand, and you're gonna be forgotten about for a short period of time before you're back in court again. (Craig)

Craig felt his duty solicitor was burdened by a heavy caseload and, as such, was 'not really interested' in what would happen to him. He was left in the dark, unaware of events unfolding outside the prison walls as it related to his criminal case. A few participants had little to no community support, and therefore had no one to stand in when information from legal representation was slow in coming. Their only option was to wait for information, either through written correspondence or when they appeared in court and could speak with their legal representation face-to-face. During his interview, Barry spoke of the support he received from his family and the difference it made to his time on remand:

You know, I was very fortunate to have family who could look into things for me, make phone calls for me when I couldn't, but imagine if you don't have that? (Barry)

For a few participants, no imagination was required. In the absence of strong bonds in the community, participants were entirely reliant on their legal counsel to act on their behalf.

A final challenge communicating with counsel resulted from the internal prison schedule and its incompatibility with the outside world. Participants described a set time during the day when they were permitted out of their cell to queue for the telephones. Rarely, however, was the time convenient to schedules outside the prison. Jason and Kurt both struggled to contact their legal counsel, in large part due to the timing of daily association:

You wanna speak to your solicitor and unless your solicitor is available at the time when you happen to get to a phone, you know, you're not gonna get to speak to him [...] You phone your solicitor on the times you can get out of your cell. Your solicitor is not available, you're not speaking to them, you know? And it's not like they can call you back. [chuckles] (Kurt)

To actually get through to a solicitor in that small time slot [is hard], 'cause they can't ring you back. If you don't get through, you don't get through [...] It was hard to communicate. (Jason)

Eventually, and as outlined above, Jason relied on family to communicate with his solicitor. Charles had difficulty reaching his solicitor during the time he was allowed on the wing, which he believed adversely affected the progression of his criminal case:

If you're only allowed out of your cell three times a day, and you're trying to speak to somebody who may be in a hearing themselves or getting on with other work, it becomes more and more difficult to actually try and progress things. (Charles)

The prison schedule did not coincide with convenient times to speak with a solicitor who, during the day, may be preoccupied with a client, attending meetings outside of the office, or completing other work (Casale, 1989). Further, scheduling a time to speak with a solicitor was problematic. Participants were never certain they would reach the front of the telephone queue and, if they did, at what time they would be next in line. Scott and Barry described being unable to contact their legal representation:

You know, I got voicemail. I got a lot of secretaries saying, 'No, they're out of the office at the moment'. (Barry)

If they don't answer, you'll have to wait again, whether or not it's because of the [time] limit and, yeah, it's not ideal. If I phone my lawyer, they're not there, it goes to voicemail, I'm fucked. 'scuse my language. (Scott)

The daily schedule, the cost of telephone calls, and the high demand for telephones complicated access to counsel. In spite of their ongoing legal case, no special privileges were afforded to participants trying to navigate the criminal process. In describing access to modes of communication, participants conveyed that there was little recognition amongst prison authorities of their uncertain legal status and the need for additional telephone calls to manage their case. The consequence of the configuration of the telephone operating system in prison was inadequate access to legal representation.

Despite the challenges, the prison telephone was the best of three options. Visits and written correspondence were each described as inadequate methods of communication with the outside world. Writing letters was a time-consuming process. It required participants to find writing materials, such as paper, pencil or pen, envelopes, and stamps. Finding writing supplies in prison required asking staff for paper and envelopes or waiting to buy the items from the canteen. In addition to the time it took to find supplies and to write a letter, participants described waiting several days or weeks to receive a reply from their solicitor:

If I wanted to write to him [solicitor] and put a more detailed explanation through, it would take, well, a day or two for me to put the letter together 'cause I need to have a think about what I'm saying and all the rest of it. So, I've put the letter together and then you need to put it in the post, which I can do first thing in the morning or last thing at night. The post is then collected overnight, it then gets sorted because it's a rule that [legal] correspondence is not gonna get searched or anything like that, or not as closely anyway. It then has to be posted. Then it needs to be opened and read by the solicitor on the other end. And they need to do their bit. And they then need to reply back to me in writing. The whole process you're looking at between 10 and 14 days. (Charles)

The sluggish pace of correspondence was frustrating. After posting a letter there was nothing to do but wait. Once a response was received, the entire process, and the challenges associated with it, repeated itself. Another option was to meet with legal counsel face-to-face. However, participants reported several issues with visits, ranging from annoyance at witnessing their counsel's apparent discomfort at sitting in a prison to finding a convenient time in their solicitor's diary. Frank recalled that:

[...] my experience of that is that the lawyers have to come to you, into this room, and you can see they're uncomfortable talking to you. Over a table, in a prison, with all these noises, and all these things going around them. (Frank)

For Frank, it was hardly worth the trouble. Visits with counsel were also frustrating as participants rarely had access to written materials related to their criminal case. Charles described visits with his counsel as 'a bit of a waste of time' as he often found himself without the necessary documentation needed to seek legal advice:

[...] if I'm trying to explain something to him [solicitor], he can't see it in front of him because he's not allowed a computer inside. I can't exactly print a copy and send it off to them. You're screwed. (Charles)

Storing personal documents in prison cells was a risk. In the wrong hands, participants' personal information could render them vulnerable to intimidation, exploitation, or violence:

[...] even if you do get all the [legal] material, the other problem is storing it securely. Like I only kept the bare minimum I needed because who's to say that a prisoner decides to go through

it. That puts you at risk. I know talking to people on the general population wing that it was fairly routine for people who they hadn't seen before to go through all the paperwork to look for sex offences or look for something that could be used as a weapon or as leverage [...] It was always a possibility, so you have to plan for that. (Charles)

While Charles' legal documents were never stolen or tampered with by prisoners or staff, there was a fear of information being discovered and leveraged against him. Gabe believed he was jeopardizing his safety by keeping legal materials in his possession. However, without the documents, he would have been clueless about the criminal process unfolding behind the scenes and, ultimately, the direction of his case. During his interview, Gabe expressed a constant worry over the confidential information stored in his cell as he felt anybody, staff or prisoner, could access it if he was not careful. In the end, Gabe was willing to take the risk to his personal safety to feel in control over the direction of his case. While some participants chose to keep legal documents in their possession, others opted not to risk it. As an unconvicted prisoner on remand, George did not retain any documents:

I think if I'd wanted a copy of the case documents and all this kind of thing, it would've been possible, but that would've meant sharing a whole lot with every guard in there and everyone they told [...] you might as well paste all your documents on the wall. (George)

For George, keeping sensitive or privileged information in his cell was not worth the risk of others discovering information about him, no matter how arbitrary the information might be. As a consequence of their pending criminal trial, unconvicted prisoners faced a difficult decision about their involvement in the process. The decision to actively participate in the trial process—to be informed about the evidence against them and to make decisions in response to that evidence—had to be carefully weighed against the possibility of information being discovered by others within the prison.

3.2. Collecting information

In addition to the difficulties of trying to communicate with legal counsel, participants struggled to access information independently. Searching and finding information required a level of autonomy participants were unable to exert while detained on remand. Stuck inside a prison, participants had no access to the internet. Participants accustomed to the speed of

retrieving information via platforms such as Google viewed the absence of the internet as a setback. Charles described the challenge of preparing for trial:

Bear in mind that the evidence I needed was on the internet. I'm sat in a prison cell in which I don't have access to the internet. (Charles)

Barry recounted the effort it took to acquire information about sentencing options for his offence. He was interested to learn about the punishments imposed in cases similar to his own, which he hoped might give him some idea of the sentence he would receive, if convicted. Without access to the internet in prison, he asked his family to conduct searches online, resulting in a delay to the information he sought, even though:

If I'd had access to the internet and a computer, I'd have found it myself, you know. (Barry)

Without the internet, participants were forced to rely on family, legal counsel, or the prison library for legal information. HMPPS policy charges prison libraries with the function of providing prisoners with 'an accessible service which has a focus on supporting learning, improving literacy and other barriers to effective resettlement' (Ministry of Justice, 2019b). The purpose of prison libraries, as participants quickly learned, was not to support those seeking legal information. While participants were able to find books to distract them from their current environment (see Chapter Five, Section 5), the prison library was rarely useful in their efforts to find legal information, such as sentencing legislation or case law. Participants frequently described the library as under-resourced and lacking any helpful legal materials. When asked whether the library held information which may have been helpful to his case, Ethan answered:

Nooooo. [laughs]. No, don't be silly. (Ethan)

In answer to the same question, Adrian replied:

No. The library? It wasn't for that. It was 'get in there, grab yourself a book, none of this chit-chat, get out'. (Adrian)

Only a few prison libraries carried legal materials, all of which were reported as reference-only texts. Charles and Gabe spoke of the difficulties of finding answers to complicated legal

questions in the short timeframe they were permitted in the library. Without being able to loan any of the legal texts, participants struggled to conduct research into criminal law within a 30-minute window of opportunity. While on remand, Kurt sought out legal texts to try to discern the sentence he might receive. However, given the high number of remand prisoners in his institution, it was a struggle to gain access to the information he sought:

Everybody's chasing this one [legal] book. You think, on a remand wing you might have 150 people, let's say, and half of them are chasing this one book. So, you're thinking to yourself going to the library every day, 'Is it available? Is it available? No. No. No.' And you can't book your future reading, you know, 'cause you might not be there. They might send you away to another jail. (Kurt)

As highlighted in Chapter Five (see Section 7), membership of a transient population within prisons carried disadvantages, such as the potential to be transferred to another institution after a day in court. Kurt worried he might be moved to another prison, one which had limited legal materials in the library. He was also concerned, however, that he might not gain access to the book everyone was 'chasing', given the popularity of certain legal materials amongst the remand population.

Participants wanted to communicate with their legal counsel. They wanted to conduct research into the criminal law. They wanted to be updated about their criminal case and to see the evidence against them. However, the prison—from its regime to its communal telephones to its prison libraries—made it difficult for participants to feel in control of their criminal case. Being unable to effectively reach out from within the prison was an added pain experienced by participants; and an unwelcomed reminder of their prisoner status. In spite of their efforts to search for legal information on their own and/or to rely on family members for support in managing their criminal case, participants acutely felt that their lives were being determined by others. They had little to no control over matters which would directly influence their future.

4. The pressure to plead guilty

The extant literature on remand (see Chapter Two, Section 5) describes pre-trial detention as a form of coercive power exercised by the State over unconvicted prisoners (Ericson & Baranek, 1982; Euvrard & Leclerc, 2017; Heaton et al., 2017; Kellough & Wortley, 2002; Vacheret & Brassard, 2015). The conditions of confinement and the hopelessness surrounding the outcome

of the criminal case frequently result in unconvicted prisoners deciding to plead guilty as a means of escaping their circumstances on remand (Euvrard & Leclerc, 2017; Kellough & Wortley, 2002; Vacheret & Brassard, 2015). As they wait in prison, suffering from the burdens accompanying their loss of freedom, unconvicted prisoners engage with multiple criminal justice institutions. These engagements, ranging from reviewing evidence for trial to attending court, have been described as frustrating and emotionally taxing, and frequently result in a waning resolve to go to trial (Euvrard & Leclerc, 2017; Kellough & Wortley, 2002; Vacheret & Brassard, 2015). Amongst the participants in this group, a sub-sample of those who served time on remand as unconvicted prisoners detailed the pressure they felt to plead guilty. While experiences across both group of former remand prisoners (i.e., unconvicted and unsentenced) were largely similar (see above and Chapter Five), this important difference emerged when exploring the experiences of participants who served time on remand as unconvicted prisoners. Amongst the cohort of formerly unconvicted prisoners were two groups:

1. Participants who had remained in custody until the conclusion of their criminal case ($N = 10$); and
2. Participants who had been granted bail (following an appeal) and released from remand custody before their trial ($N = 5$).

Of participants in the former group ($N = 10$), six felt pressured to plead guilty. As none of the interview questions specifically asked participants about whether they felt pressured to plead guilty, this detail was volunteered by participants during discussions on the management of a criminal case. Six participants in this study reported that the indefinite length of their detention, the stresses associated with life inside prison, and the burdens of managing a criminal case from behind prison walls weakened their determination to go to trial. As time wore on, participants considered changing their plea to bring an end to their painful predicament. Participants who felt pressured to plead guilty faced sustained engagements with criminal justice actors over a period of months. Of the total sample of this study, unconvicted prisoners who felt pressured to plead guilty served the longest periods of time on remand. Entering a plea of 'not guilty' extended the criminal process. It triggered police investigations, assessments by the CPS on criminal charges, and frequent travels to and from court. It necessitated discussions with legal counsel which, as pointed out earlier in this chapter, was challenging to accomplish from within a prison. No single agency within the criminal justice system was responsible for influencing participants' decision about whether to continue to trial. Instead, it was the

collective force of the criminal justice system—of each institution working towards a common goal of administering justice—which left participants wondering if it would not be easier to plead guilty. In his interview, Frank spoke of his experience of going to trial:

You know, you've got everything stacked against you. (Frank)

Frank and others felt the system was out to get them; an invisible power was working behind the scenes to prove their guilt beyond a reasonable doubt. As participants witnessed the case against them being mounted by criminal justice agencies with unlimited time and resources, they weighed whether it was worth continuing to trial. For some, such as Scott, the presentation of the evidence against them, and the knowledge of how that evidence would be used by the prosecution in court, resulted in a change of plea:

[...] because the police had plenty of evidence, they knew it was pre-planned. I was basically told, in no uncertain terms, that there was like a chance in a million of being found not guilty of that. It would literally take five minutes for a jury to go, 'Right, yeah, this guy's guilty.' There's just that much evidence against me, know what I'm trying to say? [...] Initially pleaded not guilty, but eventually realized that was a stupid idea. Changed my plea and was sentenced. (Scott)

Beau spent six months on remand before changing his plea to guilty. As investigations continued into his alleged criminal conduct, the number of charges against him began to increase:

[...] what seemed to happen with me is that a certain number of charges were filed, those charges put me into HMP G, and there were about, I don't know, three charges, four charges. That seemed to then go up to about eight charges, [chuckles] so there's a very worrying pattern psychologically. And then that went to, I think something like, 30 charges. Now these weren't different crimes. It was just how the crimes had been broken down [...] I seemed to be facing 30, I think, and that information was only released to my barrister about four days, something like that, before a point of trial. (Beau)

The charge count influenced Beau's original plea decision, as did the pains of living on remand and concerns for his wife's wellbeing in the community. Beau shared:

By month three or month four, I just wanted to get out of there. So, I would've said anything. I was naïve, tired. I know that it was a difficult time for my wife without me. So, the quickest way out was what I wanted to take [...] So, in the end, I remember saying something like, 'What do you think I should do here?'. It overwhelmingly seemed sensible to enter a plea of guilty, so that's what I did. (Beau)

Charles, too, found it difficult to manage the stresses associated with being wrapped up in the criminal process. During his 11 months on remand, Charles was in constant battle with criminal justice agencies, in particular the CPS, surrounding the circumstances of his offence. Though ultimately unsuccessful, he spent months trying to clarify information being used as evidence against him. Of his experience, Charles shared:

In hindsight, you're better off just saying, 'Alright, guilty, whatever you want me to say, I'll say it. I'll just plead guilty' [...] To do what I did in terms of fighting a case is impossible in prison. It's not possible for you to mount any sort of defence that's in any way constructive. You cannot do it. (Charles)

Though he did not change his plea, Charles faced a number of anxieties in his pursuit to bring his case to trial. In the end, his mental health suffered. Managing a criminal case was fraught with challenges, not least of which was finding the determination to move forward with the initial plea entered in court. Bearing witness to the process of 'doing justice' was a constant reminder of participants' powerlessness. Their determination was often no match for the force of the criminal justice system and its agents.

In addition to sustained engagements with actors in the system, participants described extended periods of waiting. Police investigations dragged on. Decisions about further criminal charges were delayed. Court officials rescheduled hearings. Participants were at the mercy of the system and the needs of various criminal justice agencies. Jason attributed the indefinite length of his detention on remand to police and the CPS:

The CPS are still trying to work out what crime I had committed. They didn't really know what I had done. They were still trying to get the facts together. Everything they put was nothing like what really happened. And so, my barrister then said because of the seriousness of the crime I couldn't get bail. He said, 'We're going to trial in about another 2 months', so he said, 'Hopefully you'll be sentenced and out by then and we'll sort it'. So, 2 months come, and CPS didn't have

the facts together, [the case] got adjourned for another 2 months. This carried on. It [the case] got adjourned four times and I ended up doing 9 months on remand. (Jason)

Gabe, too, spoke of waiting. He waited for news about decisions being made behind closed doors, in rooms he was unable to reach. As he waited on remand, Gabe described feeling compelled to plead guilty. The resolve to continue to his trial date was difficult to maintain over his year-long detention. Participants described their exhaustion trying to keep pace with powerful adversaries working towards their conviction. Despite their centrality to the case, participants felt inconsequential to the decisions and events unfolding around them. The longer they waited and the more excluded they felt from the processes leading up to their trial, the more resigned they became. In their research with accused persons detained on remand, Kellough & Wortley (2002: 200) found that unconvicted prisoners' determination to fight the charges against them 'eroded over time'. As time moved forward, participants in this study frequently questioned whether they had the energy and wherewithal to bring their case to trial. Was it worth the struggle, the investment, and the time on remand? The process of waiting in a carceral environment, coupled with powerful adversaries and uncertainty surrounding their future, pushed many to consider pleading guilty.

Participants' time in pre-trial detention was filled by frustrations over lack of information, ineffective communication, and the perception that State actors were hard at work against them. Research on remand has pointed to time being a tool harnessed by the State to coerce guilty pleas from unconvicted prisoners (see Euvrard & Leclerc, 2017; Kellough & Wortley, 2002; Vacheret & Brassard, 2015). This scholarship identifies engagements with criminal justice agencies and the indefinite length of detention as factors influencing plea decisions, but rarely marry these experiences with the pains affiliated with daily life inside prison. Studies exploring the concept of waiting within prisons have described certain spaces, like a cell, as being able to 'isolate the body in space and time making it available to be produced and trained as an individually disciplined subject' (Armstrong, 2018: 138). Being able to control time allows punishment regimes to control subjects (Armstrong, 2018; Foucault, 1995; Kohn, 2009). In this study, time was controlled not solely by the prison regime, but by each of the actors playing a role in the criminal process. As participants waited for information from police, the CPS, or their legal counsel, they did so from inside a cell. Participants were stationary across two spaces: the prison and the criminal process. In the end, the emotional and material realities associated with confinement to a prison and the hopelessness of trying to manage a criminal

case from within that space resulted in a loss of control. The effect of living within a prison and facing the force of the criminal justice system was, for a small cohort in this study, acquiescence. In order to move on with their lives—to give themselves a trajectory to see and follow—participants gave in to the pressure; they succumbed to the power of the criminal justice system. Time in prison and time in the criminal process were a form of disempowerment for participants who wanted to defend themselves against the criminal charges laid against them.

5. Conclusion

This chapter examined the loss of autonomy experienced by participants during their time on remand. In many ways, the loss of control experienced by this group mirrored those experienced by sentenced prisoners (see Crewe, 2009; Jewkes, 2002, 2005, 2013; Sykes, 1958; Warr, 2016). Sustained engagements with prison staff were a reminder of the lack of control participants could exercise in their daily lives in prison. The course of their day, and more broadly their time, was dictated by others. Participants were dependent on staff, feeling similarly to a child in need of a guardian. Although there were parallels between control described by sentenced prisoners and individuals formerly detained on remand, there were differences as well. Participants in this study were, at the time of their detention, either unconvicted or unsentenced prisoners. They had a pending date(s) in court. Given their upcoming trial or sentencing date, participants tried to exert some authority in learning about next steps and/or possible outcomes. The prison, however, made this a challenging endeavour. Reaching out from behind prison walls was difficult. Access to telephones was not guaranteed. Written correspondence took weeks. Visits with legal counsel were infrequent or, when they did occur, frustrating. In the end, many participants relinquished control over their criminal case, either depending on family for support or accepting that they were simply along for the ride. The prison rendered participants powerless on two fronts: their present (i.e., life inside the prison) and their future (i.e., the outcome of their criminal case). It was disempowering to sit in prison and wait, feeling unable to actively participate in their court case. Participants were immobilized both by their current living conditions and by their place within the criminal process. The prison and the wider justice system worked in tandem to instil a sense of pressure in unconvicted prisoners to plead guilty. For some, the disempowerment they experienced within the custodial environment and within the criminal process translated into a decision to forego going to trial. Opting to plead guilty was the fastest route out of remand custody.

Chapter Seven: The Triumph of Substance over Form

1. Introduction

Historically, little attention has been paid to the subjective experience of remand (Player et al., 2010; Smith, 2021) and to its impact on prospective assessments of penal severity (Manson, 2004; Roberts, 2005). To begin to fill these gaps in the literature, this research explored the experience of pre-trial and pre-sentence detention in England and Wales through the use of semi-structured interviews with 20 adult men who had a prior history of being detained in custody before trial and/or sentencing. Their experiences suggest a process of swift transition to a custodial environment, where they were bored, worried for their safety, and faced a constant churn of new faces and the potential to be displaced. Pre-trial and pre-sentence detention were spaces defined by unknowns and characterized as a metaphorical space trapped between two worlds. Alongside the losses of liberty and safety was the loss of control. The physical barriers imposed by the institution, and the manner in which power was exercised by staff, resulted in participants feeling they had minimal or no control over their lives, including the direction of their criminal case. The following chapter interprets these findings and assesses them against the backdrop of existing research on remand and punishment. It draws connections between themes uncovered during this research as well as examines remand in the context of the ‘penal painscape’ (Skinns & Wooff, 2020: 245) and the dilemma presented by State responses overlooking this panorama of pain. This chapter details three overarching pains of remand: the pains of disruption, the pains of disempowerment, and the pains of uncertainty and liminality. After reviewing these pains, implications of this research are explored in the context of the administration of remand. Here, the chapter focuses on the importance of situating remand as a fixture within the penal literature, before exploring reforms to reduce the harms caused by pre-trial and pre-sentence custody. From there, the chapter discusses the link between remand and formal punishment, specifically exploring the difficult questions surrounding the incorporation of a ‘punishment look-alike’ (Kolber, 2013: 1142) into sentencing decisions. The current approach in England and Wales to crediting time served is reviewed, and compared against the practice in Canada. This chapter concludes with limitations of this study and opportunities for future research.

2. Remand and the penal painscape

Pain is endemic to remand. However, its features which result in the use of words such as ‘harsh’ or ‘difficult’ (Pelvin, 2019: 69) have been under-conceptualized. Applying the pains of punishment framework to explore the data collected in this study revealed that experiences of remand cut across the literature. Experiences borne out of pre-trial and pre-sentence custody bear similarities to existing research on remand, policing, imprisonment, probation, and immigration detention. Although similarities were identified, certain pains are unique to remand. The following section presents three main findings, marrying together themes covered in Chapters Five and Six, and placing them against the backdrop of the pains of punishment literature. The decision to remand a person to custody interrupts a life. It uproots the individual from their home, their family, their routines, their responsibilities, and their communities. The transition from free man to remand prisoner was disruptive, exposing remand prisoners to many challenging features of prison life. As such, the first pain of remand is the pains of disruption. The interruption to a person’s life was exacerbated by feelings of disempowerment, the second pain of remand identified by this research. Power was found to emanate from within and outside the prison, exposing unconvicted and unsentenced prisoners to a loss of control inside the institution and within the wider criminal justice system. From engagements with prison staff to the struggle to participate in the criminal process, remand creates few opportunities to remain in control of one’s present and future. Finally, participants in this study spoke of being trapped in a no man’s land. The time spent detained before trial and/or sentencing is a liminal space, filled with uncertainty. Yet in that space, unconvicted and unsentenced prisoners grappled with hope and despair, oscillating between the two throughout their ordeal. As such, the final pain of remand is the pain of uncertainty and liminality. These pains, explored in more detail below, describe the different features associated with life on remand, and present the opportunity to analyze the pains of remand through a conceptual framework.

2.1. Remand disrupts a life (Pains of disruption)

Chapter Five demonstrated the disruptive experience of remand custody. As with previous research exploring experiences of remand, this study illustrates that persons confined to prisons before trial or sentencing suffer a myriad of hardships resulting from their abrupt removal from society (see also Casale 1989; Pelvin, 2019; Ugelvik, 2013). A forced and unwelcomed transition to a custodial space dislocated participants from their lives in the community.

Participants faced the struggle of entering a foreign, frightening environment, where they were left to fend for themselves amongst a population of strangers perceived to be dangerous (and were, in certain cases, violent). The prison impeded participants from carrying on with their lives and subjected them to an array of negative experiences, ranging from boredom and fears for their personal safety; pains well-documented in the extant literature on the consequences of punishment and punitive measures (see Crewe, 2009, 2011; Irwin, 1985; Skinnis & Wooff, 2020; Sykes, 1958; Warr, 2016). Many of the stories recounted by participants paralleled the deprivations identified by Sykes (1958), such as the losses of liberty and personal safety. Their narratives, however, went beyond these pains to include more contemporary findings on experiences of punishment, such as the process of infantilization (Jewkes, 2005; Warr, 2016) and of being misrecognized by staff (Irwin, 1985; McNeill, 2018); pains discussed later in this chapter.

Though the regime and material conditions of their confinement were difficult to bear, remand was also a time when many participants watched their lives in the community crumble behind them (Irwin, 1985). Those with close family ties were distressed to leave behind partners and dependants without a steady income, worrying about the well-being of their loved ones at home. Interviewees without close community ties attempted to manage the administrative burdens associated with their abrupt removal from society. Immobilized by a decision of the court, participants were physically located in the prison, but still tethered to personal and financial commitments in the community. In common with existing research on remand, participants in the present study had ‘one [foot] inside the gaol and one outside it’ (Reed, 2011: 534). The decision to deny a person bail and remand them to custody does not remove their financial and familial obligations in the community. These commitments remained in place and were, for many participants in this study, a heavy burden to carry.

The disruption to participants’ lives extended beyond their removal from society. While being pulled from the community and dropped off inside the gates of the prison was the initial disruption, the transient nature of life on remand lent itself to further volatile interruptions. One of the acute pains of remand is the process of travelling to and from court. It required participants to pack their belongings. To prepare to move to a new location. To dwell on the potential consequences of a transfer to a new, unfamiliar prison environment. Pelvin (2019) reports similar experiences, framing the pain of attending court as tangible, such as the requirement for remand prisoners in Ontario, Canada to be strip searched on each entry to

custody. However, the process of attending court in England and Wales also involved significant emotional turmoil. Travelling to court, and the possibility of such, interrupted participants' already disrupted lives. Amongst the pains of remand, attending court in person was one of the more severe hardships. Following the immediate disruption to their lives in the community, participants faced a sequence of further potential upheavals within the prison system.

2.2. Remand disempowers (Pains of disempowerment)

In the discourse on punishment, and specifically its administration, the relationship between staff and prisoners is commonly explored (see, for example, Crewe, 2011; Sykes, 1958; Warr, 2016). Crewe (2011: 455) notes that 'at the heart of any prison is the relationship between staff and prisoners.' A central finding of this study is the complex nature of power involved with remand, which is not limited to one group of public service employees or one institution, but shared by all State agencies involved in the criminal process. In this study, the power exercised over participants came from many directions.

Inside the prison, participants felt their lives were determined by others, a finding similar to those from empirical research with sentenced prisoners (see Crewe, 2011; Sykes, 1958; Warr, 2016). They felt powerless against the prison regime and those who operated it. These findings correlate with experiences of sentenced prisoners and the process of infantilization resulting from the exercise of staff power and the loss of decision-making control amongst prisoners (Jewkes, 2005; Warr, 2016). By virtue of the operation of the prison system, participants felt reduced to a child-like state, where decisions were made about them and for them. It was painful to live in a place that lacked opportunities to exercise individual autonomy; to be unable to decide on dental treatment, library visits, and telephone calls with loved ones or legal counsel. Remand, like a sentence of imprisonment, suspended an individual's control over their lives.

Findings in this study point to power emanating from within *and* outside the prison. Though interactions with staff were a source of disempowerment, so too were engagements with the wider criminal justice system. As a result of the unfinished business of their criminal case, participants, both unconvicted and unsentenced, were repeatedly required to engage with various actors in the criminal justice system. These interactions were a front-row seat to the

power of the criminal justice system, and to the authority vested and exercised by State agents. Though not visible from behind prison walls, participants were acutely aware that, outside the prison, State actors were working towards their conviction and/or sentencing. Ugelvik (2013) describes the relationship between the criminal justice system and remand prisoners as ‘the thing they are up against. It is the thing they attempt to influence, but which has no voice of its own’. The system was invisible and untouchable, but ever-present. It was both everywhere and yet, somehow, nowhere. As participants attempted to gain access to police evidence or information about the charge(s) against them, they were confronted by a wealthy and powerful opponent: the State. Participants were the underdog, but without a fairy-tale ending. Being confined to a prison placed participants at a disadvantage, stymieing their efforts to fully participate in the criminal process. The operation of the prison establishment, from the daily schedule to the number of communal telephones on the wing, made it difficult to reach out from within. Participants were thwarted in their attempts to manage their criminal case, resulting in most either passing off duties to families in the community or resigning themselves to the fact that they had been forgotten.

Remand has been framed as ‘cross-institutional’ in nature (Pelvin, 2019). It is shaped not merely by the prison but by the processes unfolding outside the institution’s walls. It was painful for participants to be forced to relinquish their autonomy. It was frustrating to repeatedly face barriers imposed by the prison: the prison walls; the regime limiting access to telephones; the absence of internet. These hurdles prevented participants from gaining access to information and, in turn, making informed decisions. As a result, participants were required to adjust their lives and the management of their case to reflect their new reality. They found employment in prison to earn money to pay for telephone calls. They sought help from family to oversee their criminal case. It was demoralizing to accept that, as a result of the prison and its regime, participants were unable to be active in their criminal case and, more specifically, the procedures and decisions which would ultimately dictate their future. Being detained in a prison on remand limited participants’ control within their physical environment, a reality which had direct consequences for their agency outside the prison and within the criminal process. While these forms of pain are ‘cross-institutional’ (Pelvin, 2019), the pains identified by this research are framed from the perspective of the person subjected to them—that is, not as multiple criminal justice institutions applying their power, but from the purview of the person being rendered powerless.

While the loss of control was a finding across the sample, there were unique pains amongst the group of formerly unconvicted prisoners never released on bail. As in other studies (see Euvrard & Leclerc, 2017; Kellough & Wortley, 2002; Vacheret & Brassard, 2015), many of the participants who initially decided to take their case to trial (i.e., pleaded not guilty) described the difficulty of resisting the power of the State. Coming up against police investigations, CPS charges, and court administrators took a toll. It was a grim reminder that participants were not in control. They were along for the ride. As they waited inside the prison and in the criminal process, some participants described feeling pressured to change their plea. These decisions were influenced by the indefinite length of detention, the challenges of living inside a prison in a state of limbo, and the growing hopelessness associated with fighting a wealthier, more powerful adversary. Over time, a third of participants who opted to initially plead not guilty described their weakened resolve to take their case to trial, a finding which correlates with earlier studies on remand (Euvrard & Leclerc, 2017; Kellough & Wortley, 2002; Vacheret & Brassard, 2015). Time worked against this group of participants. It disempowered them. The reality of waiting inside a prison cell, while battling an invisible force exterior to this space, resulted in this group of participants making a decision which was inconsistent with their original objective.

2.3. Remand is a no man's land (pains of uncertainty and liminality)

The construction of time was a major theme in this study, permeating experiences of being detained on remand. Despite the passing of minutes, hours, days and weeks, participants felt stuck. They could do nothing but wait, trapped in an extended present. Inside their cells, they waited for information about the progress of their case. They waited to hear footsteps coming down the corridor to inform them of a potential court date. They waited for a decision in their criminal case. Remand was a time of waiting. Participants' conceptions of time were raised without prompting and revealed two things. First, these narratives depicted remand as a liminal space. By involuntarily leaving their communities and crossing the prison threshold, participants transitioned to 'no man's land' (Craig). Second, within this liminal space, participants faced significant challenges resulting from the uncertainty created by the criminal justice system around them, both in the form of the prison and the ever-present reality that, outside the prison walls, the criminal process was unfolding largely without their involvement. Participants were unable to fathom when they might transition out of the liminal space, given the absence of decision-making power over their present and their future. Remand was a space

and time void of certainty. In this void, participants faced a constant tug-of-war between uncertainty and hope, influenced by their indefinite period time waiting on remand and the possibility, however slim, of a desirable outcome or an outcome less perilous than the one conjured up in their mind.

Liminality has been conceptualized as the process of transitions in life and follows three stages, beginning with the separation of the old self, moving into the liminal, and reintegrating back into the social structure (Turner, 1967; van Gennep, 1900; see also Chapter Two, Section 5). The concept of liminality is applicable in the context of remand insofar as it upsets an individual's sense of self and belonging within society (Beech, 2011; Noble & Walker, 1997; Turner, 1967). Beech (2011: 290) builds on the idea that liminal spaces can be places of reflection, arguing that an individual stuck in the liminal phase 'considers the views of others and questions the self'. It was common for participants to speak of the effect of remand on their perceptions of themselves. The removal of personal clothing, the process of infantilization, and the perception of being misrecognized as a 'prisoner' or person deserving of punishment was degrading. Being incorporated into the system responsible for administering punishment rendered participants unrecognizable to themselves. They belonged neither to society, nor formally to the prison. As they forcibly transitioned to a custodial environment, participants left a version of themselves behind without knowing when they would transition out of their liminal state and, when they did, whether they would recognize themselves on the other side.

3. Theoretical implications

One of the contributions of this research is its addition to a small evidence base on the pains of remand. Chapters Two, Five and Six detailed the features of remand which feel painful and punishing and, collectively, demonstrate that pre-trial and pre-sentence detention result in a punitive experience. Pre-trial and pre-sentence custody inflict harm, and regardless of whether these practices are recognized as punishment proper, their administration results in suffering. Though research in this area has been limited, the punitive elements of remand have been highlighted since the 1960s and 1970s (see Chapter One; also see Davies, 1971; Friedland, 1965). Once denied bail, a person is folded into the system of punishment, trapped inside a prison and stagnant within the criminal process. These findings, when set against those in the broader literature on the pains of punishment, situate remand as an important point in the 'penal painscape' (Skinns & Wooff, 2020). This concept refers to the landscape 'in which institutions

have punitive tendencies in common, linked to the delivery of pain' (Skinns & Wooff, 2020: 246). Following their study of police custody (see Chapter Two, Section 4), Skinns and Wooff (2020) demonstrate the spectrum of pains experienced by detainees in police custody, ranging from losing control to living in a space and time filled with uncertainty. By identifying the pains of policing and illustrating, where relevant, their overlap with traditional pains of imprisonment, Skinns and Wooff (2020: 257) argue that, while the pains experienced by police detainees may not be intentionally inflicted, 'police custody has at its core... a pain-punishment nexus'. In detailing the spectrum of overt and subtle pains inflicted on police detainees, Skinns and Wooff (2020) assert that pain, and therefore punishment, are fundamental aspects of policing. The imaginative use of the 'penal painscape' to describe punitive elements across criminal justice institutions attempts to bridge the divide between on-the-ground experiences of State control measures and orthodox notions of punishment. As described in Chapter Three (Section 5), there is a small, but growing scholarship calling for a re-thinking of the connections between pain and punishment, alongside criticisms of the strong hold that traditional definitions of punishment have over which deprivations formally 'count' as punishment (see Geeraets, 2018; Kerr, 2019; Sexton, 2015). Developing conceptual frameworks, like the pains of policing and pains of remand, provide an analytical vocabulary to express the myriad harms inflicted on an individual as a result of a decision by the State or its actors. Placing these frameworks under the 'penal painscape' provides a link between each of the various steps taken by the State against a person—from arrest, to bail, to remand, to a formal sanction—and allows for reflection on the different (or similar) forms of pains experienced by individuals depending on where they are situated in the 'penal painscape'. Moreover, it invites questions as to the justification for classifying 'punishment' based on the institution delivering the pains, rather than on the pains themselves. The 'penal painscape' illustrates that the pains experienced by (in)formal modes of State coercion are no less severe, and therefore no less deserving of recognition as punitive, than those formally imposed as punishment by a court of law.

Establishing that remand carries punitive elements points to a discord between its intended aims, which are preventive in scope, and its punishment-like outcomes. Chapter Three (see Section 1) explored the justifications for remanding a person to custody in advance of their trial and/or sentencing date. In its earlier iterations (see Chapter One, Section 2), remand was used as a tool to secure a defendant's appearance in court. However, the grounds to justify the use of incapacitative measures in advance of trial and/or sentencing expanded to include public safety considerations, with little reflection over whether the outcomes of the decision to detain

(e.g., the removal of liberty and its associated consequences) are proportionate to both the intended purpose of the detention and the risk presented by the individual. Problematic is that, theoretically, remand is not punishment (see Chapter Three). As it seeks to prevent a person from causing some form of future harm to others it is, ultimately, a form of preventive detention. Flowing from the acceptance of remand as something other than punishment is a distinction that must be made between experiences of incapacitation for punitive purposes and incapacitation for preventive reasons. In practice, remand should not look or feel like punishment, yet evidence points to a spectrum of emotional, physical, and administrative pains inflicted on the presumptively innocent and the unsentenced. To date, there has been little acknowledgment of the gap between remand in theory and remand in practice, and specifically the difficulty of reconciling remand as a measure of preventive detention when its practices so closely resemble punishment. To situate remand outside the punishment club necessitates divorcing it from realities which allow comparisons to be drawn to formal punishments, like imprisonment. At present, there is a lack of harmony between the intended purpose of remand (preventive) and the manner in which it is experienced by those confined before trial and/or sentencing (a punishment look-alike), a gap which carries implications for the manner in which the State operationalizes remand detention.

Pre-trial and pre-sentence detention carry punitive elements, each of which results from the decision to deny a person their liberty in advance of conviction and formal punishment. Like detainees in police custody, this study demonstrates a range of pains inflicted on individuals confined to remand before their trial and/or sentencing. While most adults charged with a criminal offence bypass remand, either being released from police custody or granted bail by the courts, many individuals find themselves sitting in a prison cell, stunned by the immediacy of their removal from society and left to fend for themselves in the prison and the criminal process. Given the empirical research pointing to the harms inflicted by detention in pre-trial or pre-sentence custody, these State measures are an important site of study. Pre-trial and pre-sentence detention are ‘critical point[s] in the penal painscape’ (Skinns & Wooff, 2020: 245), in which hard treatment is doled out by the State well before the finding of guilt and/or the imposition of formal punishment. Though the pains of remand cut across the literature on punishment, they are unique in the context of the point of delivery (i.e., in a prison after charges have been laid, but before a trial or a sentencing hearing). To leave this juncture in the criminal process under-explored and under-conceptualized is to ignore the harms it causes and to overlook the substantive questions it raises about the integrity of the criminal process, the State

commitment towards the presumption of innocence, and notions that State practices can only be considered punishment if they meet a prescriptive definition. In an era marked by a punitive turn and a shift in focus by the State to preventive measures (Zedner, 2012, 2016), these sites of tension become ever-more important to examine.

4. Implications for policy and practice

The findings of this study have implications for policy and practice. First, the pains of remand imprisonment identify opportunities to reform practices inside prison. As detailed in this section, there are opportunities to amend and improve the manner in which the State cares for remand prisoners in its custody. Their treatment stands at the crux of many of the problematic features of this form of custody, and efforts are needed to explore the pains of remand with a view to implementing changes which reduce the parallels between remand and sentenced custody. Second, the findings also carry implications outside the prison. Explored herein are measures which could be instituted in bail decision-making to divert the number of individuals remanded to custody and which would, in turn, subject fewer people to the pains of pre-trial and pre-sentence detention.

4.1. Inside prison

As described in Chapters Five and Six, participants in this study painted a grim picture of the realities and consequences of life on remand. From the emotionally wrenching experience of being removed from society to living life in a state of unknown, the denial of bail caused suffering. Participants' narratives revealed troublesome policies and practices across both group of remand prisoners, including the inconsistent application of the Prison Rules 1999 (see Chapter One, Section 4) across the prison estate in England and Wales. Questions surrounding the treatment of remand prisoners are not new, though most have been limited by an acceptance of prisons as the location to confine all individuals denied bail. In 1991, the UK government committed to 'prepar[ing] a model regime for local prisons and remand centres, taking particular account of the needs of unconvicted prisoners' (Home Office, 1991). The commitment followed one of the recommendations by the Woolf Report (1990) to develop a dedicated statement of purpose for remand prisoners to recognize their unique status within the prison system. At the time, the UK government 'reluctantly accepted Woolf's recommendation that there should be a distinct body of rules for unconvicted remand prisoners' (Stockdale &

Casale, 1992: 59). Academics who had conducted research on experiences of remand (e.g., Casale, 1989) recommended policies tailored to reducing the adverse effects of pre-trial and pre-sentence detention, such as minimum standards of accommodation and access to visiting facilities as well as legal advice and information (Stockdale & Casale, 1992). Additional reforms were proposed by the third sector, alongside scholars, with respect to financial assistance (Stockdale & Casale, 1992). External parties advised the UK government that unconvicted prisoners' dependants in the community should receive financial assistance and, in cases where an unconvicted prisoner was housed a long distance from their home community, monetary aid to facilitate visits (Stockdale & Casale, 1992). These proposals, grounded in the evidence illustrating the collateral consequences of remand, never found their way into the Prison Rules 1999.

The pain inflicted on individuals denied bail and remanded to custody is the result of a decision made by the State. Co-locating remand prisoners in custodial environments alongside sentenced prisoners is a policy choice. While reforms may be necessary to ameliorate conditions of confinement, operational proposals ignore a more fundamental problem: the use of prisons as places of confinement for every person deemed to present a risk of possibly committing some type of harm at some future point in time. Suggesting changes to domestic legislation to influence operational policies and practices feels like tinkering around the edges of a much larger problem, and risks loaning credibility to a fundamentally flawed State practice. The position here is one which rejects the idea of locating all persons denied bail (or who present a risk to obstruct justice and/or commit offences on bail) to prison. Engaging in policy debates about treatment in prisons is to accept that the denial of bail and the loss of liberty, including its collateral consequences, must always go hand-in-hand. As a starting point, the question should be: is prison the appropriate environment for all individuals unlikely to be granted bail? This study is not one advocating for abolition. Instead, it seeks to question the reliance on the prison as the moderator of risk.

Despite broader questions about the appropriateness of prisons for remand detainees, it is inevitable that, for the foreseeable future, spaces of confinement will continue to be required for individuals denied bail as a result of presenting an undue risk to public safety and/or the administration of justice (see Chapter Three, Section 2 for an example of a case). It is therefore important to reflect on the treatment of those confined to prison before trial and/or sentencing. Since the introduction of the Prison Rules 1999 in England and Wales (see Chapter One,

Section 4), the treatment of remand prisoners has received little attention in policy discussions, despite criticisms surrounding legislative and regulatory compliance in prisons (see, for example, HM Inspectorate of Prisons, 2012; Chapter One, Section 4) and research pointing to the pains of remand and its coercive effect (see Chapters Two, Five and Six). Although these Rules were established to protect (certain) remand prisoners, the findings of this research expose an experience of remand custody that bears a striking similarity to a term of imprisonment: remand prisoners were housed in institutions designed to punish; they were subjected to the same routine as sentenced prisoners; and they shared cells with sentenced prisoners. For many of those who participated in this study, time on remand felt like a punishment and, in a few cases, was described as a harsher experience than the formal term of imprisonment served following their detention on remand (see Chapter Five, Section 10). Participants in this study faced a myriad of pains resulting from life in prison, each of which is detailed in Chapter Five. However, there were pains affiliated with remand which have been overlooked and under-explored, in particular the loss of control in the context of remand prisoners' ongoing criminal case (see Chapter Six). Stories from participants revealed that access to justice was frequently inhibited, resulting in pains of disempowerment (see above, Section 2). Reducing these burdens inflicted on remand prisoners as a result of their confinement is no easy task. It requires reflecting on the current distinction between the unconvicted and the unsentenced, the lack of compliance in England and Wales with existing rules, and the absence of imagination towards conceptualizing life on remand.

The Prison Rules 1999 set out the manner in which *unconvicted* prisoners are to be treated while in custody (see Chapter One, Section 4). For this group, regulations dictate separate housing, meaning no interaction with sentenced prisoners. They should have access to their own cell, to reading materials, to visits with family, and to their own doctor and dentist. However, the moment a presumptively innocent person is convicted of a crime(s), these entitlements disappear. Unsented prisoners, despite no formal punishment having yet been imposed by a court, are not offered the same protections. As explored in Chapter Three (Section 6), unsentenced prisoners are treated differently to unconvicted prisoners as they are considered formally blameworthy. Unlike pre-trial detainees, they wait for a punishment to be doled out. The position here, though, is that there should be no difference between the treatment of the unsentenced prisoner to that of the unconvicted. Until a court of law has fixed a formal punishment, a person detained in custody for reasons owed, at least in part, to the decision to deny bail should remain entitled to the full spectrum of protections limiting pains beyond the

deprivation of liberty. Amending existing rules in England and Wales to include unsentenced prisoners would align with international guidelines, such as the European Prison Rules (see Chapter One, Section 4), where unsentenced persons maintain entitlements to special accommodation, personal clothing, and access to visits, to name a few.

Based on the experiences of participants in this study, there is a gap between written rules and operational realities unfolding within prisons. Despite their legal status, both groups of remand prisoners spoke of being treated like sentenced prisoners (see Chapter Five, Section 6). This finding is not surprising. Prisons operate to punish. In an environment tailored to the administration of punishment, remand prisoners do not fit in, and nor should they. Remand is a form of preventive detention, not punishment. On the one hand, blame for the current treatment of remand prisoners could be shouldered by those meting out punishment on the ground level: to those dictating the daily routines in prison units across England and Wales. However, the scale of the problem is much larger than operational decisions being made on the frontlines. There has been a lack of imagination towards conceptualizing the treatment of unconvicted and unsentenced prisoners (Kavur, 2021). To date, the State has followed the path of least resistance, applying existing rules for sentenced prisoners to those denied bail and using existing carceral spaces to house remand prisoners. At present, the doctrine on the treatment of (certain) remand prisoners is the following:

Their imprisonment should not deprive them of any of their normal rights and freedoms as citizens, except where this is an inevitable consequence of imprisonment, of the court's reason for ordering their detention and to ensure the good order of the prison (HMPPS 2022).

The extent to which this doctrine deviates from the treatment of sentenced prisoners, if at all, is unclear. Case law points to similar wording respecting the care and custody of prisoners serving terms of imprisonment. Under English law, prisoners retain all civil rights ‘not taken away expressly or by necessary implication’ of the person’s imprisonment (see *Raymond v Honey* [1983] 1 AC 1). Save for the requirement that (certain) remand prisoners be housed in separate accommodation—a rule frequently overlooked—there appears to be no substantive difference between the treatment of those on remand and those serving a sentence of imprisonment.

It is unjust for rules on the care and custody of remand prisoners to mirror those for sentenced prisoners, as the latter are serving a formal punishment, which the pains of imprisonment form an intended and intrinsic part. The State has a history of approaching the operationalization of remand in a lackadaisical manner, where little effort has been vested in protecting the rights of the unconvicted and the unsentenced. To remedy injustices towards remand prisoners (see Chapters Five and Six) requires developing evidence-based policies and practices tailored to responding to their needs, beginning with the growing evidence that the pains of remand are inflicted by events and decisions unfolding within *and* outside the prison. As a first concrete step, the State should comply with the legislative requirement to house remand prisoners in their own unit or institution. Creating a spatial divide between remand and sentenced custody would allow for a demarcation between preventive detention and punishment proper. This separation of space would foster opportunities to develop policies and practices geared to reducing the collateral consequences of incapacitation on remand prisoners and to instituting measures necessary to support them as they navigate the criminal process.

Separate accommodation for remand prisoners has the potential to alleviate some of the emotional harms caused by remand detention. In this study, participants frequently remarked upon their boredom (see Chapter Five, Section 5), their misrecognition as guilty persons or persons deserving of punishment (Chapter Five, Section 6), and their fear of violence resulting from their proximity to sentenced offenders (see Chapter Five, Section 8). While it may not be possible to eliminate all fears related to entry into custody and time on remand, separating remand prisoners from the general prison population would be a start to reducing the level of anxiety and stress experienced by this group of prisoners. Further, an environment within prisons solely for those detained on remand may allow regimes to better comply with the principle of least restrictive measures. Prison Service Order (PSO) 4600, *Unconvicted, Unsented, and Civil Prisoners*, stipulates that rules limiting remand prisoners' activities 'must provide only for the minimum restriction necessary in the interests of security, efficient administration, good order and discipline and for the welfare and safety of all prisoners' (HMPPS 2022). In spaces dedicated to the care and custody of remand prisoners, the daily routine should be modelled on the doctrine of retained rights (see above) as well as on the principle of least restrictive measures. At present, however, the principle is lost in prison regimes operating for the care and custody of *sentenced* prisoners. Remand prisoners have been forced to assimilate into a system not designed for them. They have been forced to succumb to practices intended for those being formally punished. Respecting the principle of least

restrictive measures in an environment dedicated to remand prisoners may allow for greater access to recreational activities and programmes, employment opportunities (for those seeking it), fewer restrictions on remand prisoners' movements, increased access to visits, and other initiatives which would reduce the boredom experienced by this cohort in prison. Another potential benefit of separate accommodation is an intangible one: lessening the pains experienced by remand prisoners as a result of being misrecognized (see Chapter Five, Section 6). A division of space between remand and sentenced custody, coupled with policies and practices designed for remand prisoners' care, sends a message: remand prisoners are not sentenced prisoners. The former is made up of persons who are presumptively innocent or not-yet (formally) punished. As such, they are entitled to be treated differently and to be seen as a separate entity from those being formally punished in prison.

In addition to separate accommodation, further consideration must be given to remand prisoners' access to justice. As explored in Chapter Six, participants in this study felt they had no control over their case. During interviews, participants shared that they were forced to choose between calling their legal counsel or their family member and, in some cases, participants altogether abandoned attempts to communicate directly with their counsel due to internal policies on the use of prison telephones. Measures are needed to facilitate remand prisoners' communication with the outside world. To begin, policies surrounding the telecommunications system in prisons requires updating. While waiting for their trial and/or sentencing, remand prisoners should not be hampered in their attempts to communicate with their legal representative by telephone, such as through time limits on telephone calls or an insufficient number of communal telephones (see Chapter Six, Section 3). In tandem with these changes, HMPPS should investigate the feasibility of providing remand prisoners with access to legal materials, whether in hardcopy or via online services, a step which would be consistent with approaches grounded in the principle of least restrictive measures. Too often, participants faced a dearth of information related to their case, including the potential penalty for their (alleged) crime, as a result of inadequate information in prison libraries and the denial of access to online materials. Based on participants' stories, many were denied access to justice during their time on remand, suggesting that citizens in England and Wales do not have equal access to justice.

One of the central findings of this study is the uncertainty experienced by remand prisoners. Participants were uncertain about the outcome of their case, the future of their loved ones, and

their own safety within the prison system. However, one of the features of remand which caused uncertainty and a sense of unsettledness was participants' transfers between institutions during their time on remand (see Chapter Five, Section 7). Each day in court could, and often did, result in a transfer to a new institution. Attending court was an anxiety-inducing experience made worse by the knowledge that, at the end of the day, a participant may find themselves in a new prison, with a new cellmate, with new staff, and within an unknown regime. These unknowns wreaked havoc on participants' lives and caused them to feel displaced within the prison system. At present, the default by the State is to pre-emptively prepare to move a remand prisoner to a new location each time the individual appears in court. Although remand prisoners are a transient population (see Chapter Five, Section 7), consideration should be given to keeping remand prisoners in the same location for the duration of their time on remand. This is not to suggest that transfers can never take place or that, in certain circumstances, a transfer may be necessary for the safety of an individual or the security of the institution (e.g., following a violent incident). However, the requirement to appear in court should not automatically trigger preparations for an institutional transfer.

The operationalization of remand custody has failed to comply with existing rules on the treatment of remand prisoners and has been marred by a lack of imagination over how remand custody could be made less painful for those denied bail. It is therefore worth asking: What might remand detention look and feel like if it was removed from spaces of punishment and rebuilt to meet the needs of those detained in custody before trial and/or sentencing? The above changes could form part of an initiative to reimagine remand detention with a view to limiting its punitive qualities. Such an initiative could reflect on the advantages presented by separate housing for remand prisoners, on policies which protect and promote access to justice behind prison walls, and on practices which lessen uncertainties for those denied bail and remanded to custody. While theorizing remand as a form of preventive detention is relatively simple, it is much harder to initiate and commit to practical measures to sever the ties that bind remand to punishment proper.

4.2. Before the prison

To reduce the use of pre-trial and pre-sentence custody, and thereby limit the number of individuals exposed to the pains of remand, requires exploring the decision-making point in the criminal process which results in custody: bail. Certain jurisdictions, including England

and Wales, have attempted to limit the use of detention before trial or sentencing by applying a ‘no real prospect’ test, where detention should not be sought for individuals with no real prospect of receiving a term of imprisonment, if found guilty (CPS, 2022). During the bail decision-making process, judicial office-holders are meant to apply the ‘no real prospect’ test in advance of granting bail or remanding a person to custody (CPS, 2022). The efficacy of this test in reducing or limiting the use of remand custody has yet to be fully explored, but problems are evident. A recent report found that the test ‘has not succeeded in preventing unnecessary remands of women’ (Howard League for Penal Reform, 2020), and in recent testimony to the UK Justice Select Committee, Penelope Gibbs, Director of Transform Justice, stated that the test ‘is not working properly’ based on evidence that ‘nearly two thirds of those remanded and dealt with by magistrates’ court do not get an immediate custodial sentence’ (House of Commons, 2022b). Despite these findings, however, there is a lack of research investigating the implementation and continued application of the ‘no real prospect’ test. While the ‘no real prospect’ test intended to limit reliance on custodial remand by asking judicial office-holders to consider the potential outcome of a criminal case, other jurisdictions have opted to legislate an outright ban on pre-trial and pre-sentence custody (Crijns et al., 2016; Martufi & Peristeridou, 2020). In France, detention before trial or sentencing is only permitted when the potential punishment for the offence(s) with which the person has been charged is above a minimum term of imprisonment of three years (Martufi & Peristeridou, 2020). In the Netherlands, it is four years (Crijns et al., 2016). This latter legislative option is more stringent than the ‘no real prospect’ test, adding a definitive stop to the use of remand for certain offences based on their associated punishments. The effectiveness of this legislative initiative, however, has yet to be fully investigated. One recent study exploring pre-trial detention in the Netherlands, which involved court observations and interviews with members of the judiciary and legal counsel, highlights that both judges and prosecutors continue to view remand as an ‘efficient cookie factory’ and a practice ‘used far too easily’ (Crijns et al., 2016: 19, 28), which may point to problematic practices despite the legislative threshold. At present there is no conclusive finding on whether linking remand custody to potential custodial sentences is an effective tool to curbing its use.

Another potential avenue to reducing the use of pre-trial custody is to focus on the judiciary, specifically on the application of the legislative criteria for bail, educational initiatives geared towards disseminating information on the pains inflicted by remand, and ensuring members of the judiciary are aware of alternatives to remand custody (Cape & Smith, 2016; Cjirns et al.,

2016; Smith, 2021). Although few studies have explored judicial decision-making on bail, research points to a rushed process, where decisions are made quickly in an effort to keep the wheels of justice turning (Cape & Smith, 2016; Howard League for Penal Reform, 2020; Smith, 2021). Rushed decisions may impact assessments of risk and, in turn, individual liberty interests (Smith, 2021). In addition to hurried decision-making, research has found troublesome interpretations of risk factors amongst judicial office-holders (Dhami, 2010) as well as insufficient reasons for decisions to detain (Smith, 2021). To remedy these problematic practices, recommendations have been made to develop stricter guidelines on bail decision-making, including increased training for judicial office-holders on risk assessments (Dhami, 2010; Smith, 2021). In partnership with training on risk, consideration should be given to education initiatives with bail decision-makers about the effects of pre-trial and pre-sentence detention, to demonstrate the outcomes affiliated with a decision to deny bail. As discussed in Chapter Three (see Section 5), the intent of remand is (purportedly) not to inflict pain. However, applying the concept of oblique intention to decisions on bail, which could be fostered through educational programmes, could pave the way to accepting that there are foreseeable harms in denying a person bail before their trial or sentencing, and that the State is, at a later date (e.g., sentencing), responsible for making reparations for those harms.

Calls for reforms also extend to building confidence amongst judicial office-holders to apply alternatives to remand. Lack of awareness of alternatives to remand custody, such as bail support and supervision programmes (see Chapter One, Section 3), as well as lack of confidence in the effectiveness of these alternatives, contribute to a continued reliance on pre-trial and pre-sentence detention (Cape & Smith, 2016; Cjirns et al., 2016; Howard League for Penal Reform, 2020; House of Commons, 2022b, 2022c). Alternatives to remand, however, recognize that the outcome of bail need not be a binary one (i.e., unconditional bail or remand to custody). Different levels of supervision and support, including electronic monitoring as a condition of bail, can reduce the likelihood of a defendant committing offences on bail or obstructing justice, and are recognized in England and Wales as important measures to ‘minimize the use of custody’ (UK Government, 2019). Raising awareness of viable alternatives to remand amongst the judiciary is an important endeavour, and one which has been raised by witnesses in recent committee hearings with the UK Justice Select Committee (House of Commons, 2022b, 2022c). During oral testimony, Tom Franklin, Chief Executive Officer of the Magistrates’ Association, advised the Committee that training, in concert with efforts to provide magistrates with information on possible bail conditions associated with a

particular case, might instil greater confidence in the use of alternatives to remand (House of Commons, 2022c). While this testimony was applicable to magistrates, it can be applied to all members of the judiciary tasked with making decisions on liberty interests in advance of a trial or sentencing hearing.

Identifying the pains of remand may help incentivize political leaders (legislators) and judicial office-holders (decision-makers) to find alternative means to preventing future harmful behaviour. Attention should focus on efforts in courts to reduce and limit the use of remand detention at the front-end of the criminal process. While the ultimate responsibility for the decision to bail or remand a person to custody falls to members of the judiciary, their decisions are shaped by evidence presented to them by other parties, including CPS recommendations based on police information and submissions by defence counsel, who share a responsibility toward limiting the use of custody before trial or sentencing. Remedying a reliance on remand custody requires a cross-institutional approach, where all institutions and actors work together to find and implement solutions.

5. The pains of remand: Now what?

Conceptual frameworks have been developed to identify and describe the pains inflicted by the State in advance of, and following, the imposition of formal punishment (e.g., pains of policing, pains of imprisonment). These frameworks provide a detailed vocabulary to convey the harms and suffering experienced by those subjected to coercive State power. However, to what extent can these frameworks go beyond the conveyance of pain? Can the vocabulary move into spaces where decisions are made about punishment? And if so, what theories support the incorporation of these pains into decisions about punishment? The literature on the pains of punishment has incrementally begun to push for the incorporation of subjective pains into measurements of penal severity by demonstrating the breadth of harms inflicted against individuals coming into contact with the justice system and encouraging a re-thinking of punishment definitions (e.g., intent; see Chapter Three, Section 5). However, greater attention is needed to investigate approaches which can facilitate this exercise in sentencing. Remand is one of the measures of State control which reduces the severity of certain forms of punishment, offering an opportunity to explore the effects pain can have on the calibration of punishment. As explored in Chapter Three, finding a means of integrating pre-trial and pre-sentence detention into punishment presents some theoretical challenges (e.g., absence of moral blameworthiness for

those detained before trial). These barriers are not insurmountable, and nor should they be given the human cost of detention before trial and sentencing. Overcoming them, however, requires re-thinking the concept of proportionality in the allocation of punishment (see Chapter Three, Section 5).

Appellate courts in common-law jurisdictions, including England and Wales, have repeatedly commented on the unjust discrepancies resulting from terms of imprisonment imposed without due regard for time served in pre-trial and pre-sentence custody, and on the inherent injustice of ignoring this period of time in the imposition of custodial sentences (see *R v. Governor of Brockhill Prison*, 1996; *R v. Reagan*, 1975; *R v. Rezaie*, 1996). Unlike prospective assessments of pain in the calibration of punishment (see Hayes, 2018; Kerr, 2019; Sexton, 2015 in Chapter Four, Section 5), remand has already taken place by the time of the sentencing hearing. The proof of hardship exists. All that is needed is to investigate the experience, asking questions of the former remand prisoner, and seeking evidence in the form of prison records or testimony from correctional staff. The information is there. It need only be sought out. Adopting an expanded definition of the principle of proportionality, one which allows for the consideration of personal suffering, would create an opportunity to make space for compassion in the allocation of (formal) punishment which, in turn, could embed values of humanity and mercy into the distribution of justice (see Christie, 1981; Lappi-Seppälä, 2019; Tonry, 2018). Compassion has many definitions (for examples see Gilbert, 2010; Goetz, et al. 2010; Kanov et al., 2004), but a common thread amongst them is that it is a ‘feeling that arises in witnessing another’s suffering and that motivates a subsequent desire to help’ (Goetz et al., 2010: 351). A sentencing framework which incorporates compassion could begin to acknowledge the pains inflicted on legally innocent and legally guilty individuals and recognize that these burdens were imposed in advance of a conviction and formal punishment (Goetz et al., 2010; Strauss, et al. 2016). Maintaining a sentencing process that ignores well-documented harms caused by State acts or omissions, and which fails to respond to those harms, is unjust. It disregards values beyond purely retributive notions of holding morally blameworthy individuals responsible for their criminal conduct. In response to the traditional role of desert-based proportionality in sentencing, Christie (1981: 45) asserts that ‘a system that allows itself to be directed solely by the gravity of the act in no way contributes to a satisfactory set of standards for moral values in society’.

As explored elsewhere in this thesis, countries have adopted various methods of crediting time served in pre-trial or pre-sentence custody for offenders who go on to receive a custodial sentence (see Chapter One, Section 2; Chapter Three, Section 5). Introducing a less stringent concept of proportionality into sentencing frameworks would permit judicial office-holders to consider experiences of remand, rather than leaving it to a mathematical formula applied by prison officials. In the context of England and Wales, the current practice to credit time served is administrative, but has a varied history. Since the 1960s, the UK government has alternated between removing and re-instating judicial office-holders' discretion to consider time on remand. In the 1990s, after prison officials were found to have been miscalculating credit for time served (see *R v. Governor of Brockhill Prison*, 1996; *R v. Secretary of State for the Home Department ex parte Naughton*, 1997), legislation was introduced to return discretionary power to judicial office-holders via the Crime (Sentences) Act 1997. Before the 1997 Act became law, Lord McIntosh of Heringey stated during a debate on the Bill:

We have made our position on honesty in sentencing clear for many months now [...] We consider that the court should specify the effect on the sentence of the time spent on remand and custody. There has been a great deal of confusion about the time spent on remand and custody (Hansard HL Deb vol 577 col 975, 27 January 1997).

For three years, judicial office-holders were able to grant credit for periods of time served in custody before trial and/or sentencing. In 2000, the Powers of Criminal Courts (Sentencing) Act 2000 repealed the remand credit provisions set out in the Crime (Sentences) Act 1997, returning to the formulaic model under the purview of HMPPS. The back-and-forth on authority to grant credit reflects the complexity of attempting to incorporate remand into formal punishment, not only theoretically, but practically. Political debates have been unconstructive as they have largely failed to engage with important practical questions such as: how much time is one day on remand worth; do particularly adverse experiences on remand justify additional recompense; should a higher credit ratio apply if a remand prisoner was located in a prison with poor conditions of confinement and/or inadequate access to recreational activities, medical services, and family visits; and should a higher credit ratio apply if evidence points to barriers to accessing legal advice and/or information during remand? The UK government has managed to skirt around these questions by enacting legislation which purports to resolve dilemmas around credit for time served based on who holds discretion. However, these issues are not entirely centred on who is responsible for credit, but also of how remand should be

amalgamated with formal punishment. It seems that the UK government is asking the wrong questions and, in doing so, ignoring the much larger task needed to establish a coherent approach to responding to time on remand and to the pains it inflicts on pre-trial and pre-sentence detainees. A first step would be to acknowledge that different questions need to be asked in concert with looking elsewhere for examples of approaches which allow judges to consider the subjective experience of remand.

One such model can be found in Canada, where sentencing judges hold considerable discretion to consider the pains of pre-trial and pre-sentence detention (Bourgon & Grech, 2010; Manson, 2004; Roberts, 2005). After codifying the practice of granting credit for time served in 1972, Canadian courts began to apply a higher ratio to credit for time served, departing from the traditional one day for each day served on remand (1:1) (Manson, 2004). In 1975, the Alberta Court of Appeal reviewed a Crown appeal against sentences imposed for assault causing bodily harm (*R v. Regan*, 1975). In its judgment, the court addressed the issue of pre-sentence custody, stating that, ‘Each instance of sentencing has to be considered on its own merits, and, no doubt, in proper cases time already spent in custody, and the circumstances thereof, may be taken into account’ (*R v. Regan*, 1975). It was the first confirmation of authority for courts to take account of the circumstances of confinement as a factor in considering the amount of credit to award (Manson, 2004). Following the decision, judges across Canada began applying higher ratios to credit time spent on remand (Manson, 2004; Nadin-Davis, 1982), holding that there was no ‘rule of thumb’ for granting credit (*R v. Regan*, 1975; *R v. Rezaie*, 1996). It became common for judges to apply two (2:1) or even three days (3:1) towards a custodial sentence for each day spent on remand (Manson, 2004). In one of the most cited decisions on the subject of pre-trial and pre-sentence custody credit (Manson, 2004), the Ontario Court of Appeal wrote in 1991 that,

*[I]n my view a sentencing judge should ordinarily give credit for pre-trial custody. At least a judge should not deny credit without good reason. To do so offends one’s sense of fairness [...] pre-trial custody is even more onerous than post-sentencing custody [...] local detention centres ordinarily do not provide educational, retraining or rehabilitation programs to an accused in custody awaiting trial. For these reasons, pre-trial custody is commonly referred to as ‘dead time’ (*R v. Rezaie*, 1996).*

Since this decision, sentencing judges have considered circumstances beyond lack of rehabilitation in institutions housing pre-trial and pre-sentence detainees. These circumstances extend to overcrowded conditions (*R v. Tulloch*, 2014; *R v. W. V.*, 2016), institutional ‘lockdowns’ and their adverse effects on remand prisoners (*R v. Cook*, 2017; *R v. Doyle*, 2015; *R v. Gardner*, 2016; *R v. Nsiah*, 2017; *R v. Shah*, 2016; *R v. Tulloch*, 2014), restrictive daily regimes (*R v. Nguyen*, 2017), lack of access to and/or inadequate medical treatment (*R v. Casey*, 2015; *R v. Doyle*, 2015), lack of mental health services (*R v. W. V.*, 2016), lack of respect from prison officers (*R v. W. V.*, 2016), and the length of custody before trial and/or sentencing (*R v. Kravchov*, 2002). Sentencing judges hold discretion to consider ‘particularly harsh treatment’ (*R v. Summers*, 2014) experienced by remand prisoners, generally holding fast with legal precedent that ‘to pretend that pre-sentence imprisonment does not occasion a severe deprivation and that it is not punitive would result in a triumph of form over substance’ (*R v. McDonald*, 1998). The current approach to crediting time served in Canada offers an example of a sentencing system, based on individualized proportionality (Berger, 2020; *R v. Nur*, 2015), which takes into account certain pains of remand. It is, however, only a starting point, as the credit model applied in Canada overlooks some of the pains identified by this research (see above and Chapters Five and Six) and other studies (see Chapter Two). Under the Canadian model, pains accounted for by the State are those which result from operational failures or breakdowns in the duty of care towards prisoners. Many of the pains identified by this research and other studies involving remand prisoners (see Chapter Two) are not factored into the quantum of pain. For example, there is little to no consideration of the emotional or psychological pains resulting from a life of uncertainty or the pains stemming from the deprivation of liberty before trial (e.g., barriers to communication with counsel). As such, Canada only takes us so far in developing an approach to quantifying the pains of remand. It provides a method for calculating pain (i.e., judicial discretion), but falls short of incorporating the spectrum of pains which result from the deprivation of liberty before trial and/or sentencing.

Incorporating the pains of remand into legal sanctions in England and Wales would require greater effort than legislating permission for judicial office-holders to consider these subjectivities or embedding values beyond proportionality into fundamental principles of sentencing. Similarly to familiarizing judicial office-holders with available and viable alternatives to remand, discretionary credit schemes would necessitate training for sentencing judges on experiences of pre-trial and pre-sentence detention. Education programmes for members of the judiciary are already extensive, ranging from developing effective

communication skills in a courtroom to mock trials and hearings (Courts and Tribunals Judiciary, 2022). There are also programmes, though, which focus on the realities of life inside a prison (Canadian Judicial Council, 2019). In Canada, the National Judicial Institute manages the Judges to Jails programme. First offered in 1991, the programme brings together judges from across Canada (approximately 15 to 25 judges at a time) who, for a week, visit prisons of different security levels to meet with both staff and prisoners. The aim of the programme is ‘to provide judges a better understanding of what happens once a prisoner is removed from the courtroom’ (Ontario Court of Justice, 2020). The programme is tailored to post-sentence custody, but offers judges the opportunity to visit institutions housing remand prisoners. This programme reflects the view that the distribution and administration of punishment are not entirely divorced. In addition to this initiative, correctional law provides that every judge of a Canadian court has the right to enter and visit a penitentiary or, with consent, visit a prisoner (Corrections and Conditional Release Act, 1992). The efficacy of these initiatives in helping judges consider the administration of punishment is not known, as neither has been formally studied. However, they create an opportunity for judges to witness, first-hand, the realities associated with life in a carceral environment and to become more familiar with the spaces in which punishment (and punitive tendencies) take place. It intends to make the experience of the punishment less abstract; to bring the pains associated with living life in prison to the forefront of sentencing judges’ minds.

These potential initiatives are only part of the solution, though. Amongst its contributions, this research highlights the disparate approach to responding to the pains of remand at the end of the criminal process (see Chapter Three, Figure 3.1). Pains inflicted by pre-trial and pre-sentence custody are not treated equally. The silence on potential injustices resulting from the circumscribed credit scheme in application today, where pains inflicted on individuals acquitted of their charges or on persons sanctioned to a non-custodial sentence are overlooked, is deafening. The continued justification for excluding time served on remand from non-custodial sanctions is unclear. Administrative objections to incorporating remand into non-custodial penalties were made 60 years ago (i.e., it would be too time-consuming, see Chapter One, Section 2), but offer no robust rationale to reconcile the glaring contradiction that remand is part of punishment proper, save for any punishment other than a custodial sentence. Either remand is part of the punishment or not. The *ad hoc* approach in existence today is unjust. While it may be tricky to imagine the conversion of time spent in pre-trial or pre-sentence detention into a fine or a restitution order, these difficulties are not a sufficient justification for

ignoring the incoherence of the existing scheme. Developing a State response to credit time served on remand for all forms of punishment (i.e., from fines to probation) could begin by acknowledging that the severity of punishment is less of a continuum (i.e., fines on one end, imprisonment on the other) than originally thought (see, for example, Crouch, 1993; Hayes, 2016; Spellman, 1995; Wood & Grasmick, 1999). Research exploring subjective experiences of State sanctions has found that intermediate penalties, such as probation, can feel more punitive than those objectively considered to be the harshest sanctions amongst the State's punishment options (i.e., prison: Crouch, 1993; Spellman, 1995). Experiences of probation and a suspended sentence are punitive, and no less so than a term of imprisonment (Crouch, 1993; Spellman, 1995; Wood & Grasmick, 1999). These non-custodial forms of punishment are deserving of being reduced by time served on remand, and crediting these intermediate sanctions would recognize their punitiveness. If, however, the State was unwilling to incorporate periods of time on remand into other penalties it could explore other forms of reparation for the harms it inflicted. Compensation is one option, and one the State has experience developing and administering (e.g., for miscarriages of justice). Such a scheme could also be applied to individuals who were forced to spend time in pre-trial detention, but were later acquitted of the charges against them. Across both groups, the acquitted and those punished by non-custodial sanctions, similar opportunities for recognition of time served, and/or compensation for time lost, ought to be made available. While the method of crediting time owed or lost has yet to be determined for these groups, a step in the right direction would be an acknowledgment from the State that something is owed to those it preventively detained.

6. Limitations

Like any programme of research, this study has several limitations. For one, it is based on a sample of men, mostly white. As such, this study does not capture experiences of women and minority ethnic populations. Given the demographic make-up of the sample of this study, there are risks that the findings ignore critical differences in remand prisoners' experiences and how these experience may be shaped by gender and/or ethnicity. Moreover, the socio-economic background of the sample differs from existing data on remand populations. Remand prisoners tend to be from poorer social and economic backgrounds (Irwin 1985; Open Society Foundations 2011). Their lives are generally ones of struggle with finding and maintaining employment, weak bonds with family, and lower levels of educational attainment (Irwin 1985; Open Society Foundations 2011). This sub-population within prisons has been described as the

‘rabble’, defined as the ‘disorganized’, ‘disorderly’, and the ‘lowest class of people’ (Irwin, 1985: 25). The sample in this study was different. As highlighted in Chapter Four (Section 3), the majority of participants were educated, with occupational histories involving employment in professional fields. Further, nearly all participants had supportive family members, indicating a further divergence from research pointing to remand prisoners’ ‘fragile family backgrounds’ (Open Society Foundations 2011). The sample, as a whole, was not the ‘rabble’ (Irwin, 1985: 25) in prisons.

In part, the socio-economic make-up of the sample is likely owed to the recruitment strategy. As described in Chapter Four, the COVID-19 pandemic resulted in significant adaptations to the intended methodology of this study. Given pandemic restrictions, recruitment relied on assistance from Unlock, a third-sector organization whose mission is to support individuals living in the community with a criminal record. Ultimately, the recruitment process relied on a self-selecting sample. The use of purposive sampling was necessary to meet the challenges presented by the pandemic and the criteria for participation. Relying on a community strategy to recruit participants likely contributed to the exclusion of groups from lower socio-economic positions. Research exploring recruitment amongst members of marginalized communities identifies several recruitment barriers, including the ‘fear of being exposed or stigmatized, challenges in understanding the study’s purpose, cultural beliefs about and mistrust of research, low literacy and communication skills, and the perception that the research would not benefit the individual or community’ (Rancorolo et al., 2022). Moreover, individuals from marginalized communities may have limited time, both to respond to invitations to take part in research (e.g., read a research poster and participant information sheet; reply to the research poster) and participate in academic studies (Rancorolo et al., 2022). It is possible that the shift to community recruitment influenced the social and economic status of participants. Finding community members to engage in the study required individuals to read emails from Unlock, to quickly grasp the nature of the study and the task it would involve, and who, ultimately, had the time to reach out to a PhD candidate, ask questions about the study, set up a time to meet, and participate in the interview. Time is a luxury not all can afford to spend participating in research. In addition to the above, relying on Unlock to recruit participants likely increased the risk of sampling bias by constraining the potential pool of participants (i.e., to adult men who are members of Unlock). A self-selecting sample may include those with strong opinions on the topic being studied, in this case remand and the harms it inflicts, which may result in bias. However, as described in Chapter Four (see Subsection 3.1), this study makes no claim that

the sample is representative. In spite of the different ways in which selective sampling may be critiqued, it was one of the few options available to pursue the research question (i.e., How is remand experienced in England and Wales?) during a global pandemic.

Almost all participants in this study were recounting their first experience with the criminal justice system. Stories were those of a first arrest, a first experience of police investigations, and a first time being detained on remand. The findings of this study may therefore be shaped by the ‘newness’ of the experiences being described. It is not possible to identify the extent to which the findings are influenced by this factor, as the relative lack of empirical studies with remand prisoners precludes any determination of whether the pains of remand evolve or change depending on the number of times a person is detained. For example, to what degree are the feelings of uncertainty shaped by a first encounter with remand versus a second or third? Are the pains of remand dulled by multiple stints in pre-trial or pre-sentence detention? Questions such as these must be answered in further research that extends the scope of this exploratory study, potentially also including studies that use more generalizable research methods to build upon the rich descriptive detail provided in this study.

As highlighted already, the findings of this study were drawn from participants’ recollections. In some cases, participants were describing events which had transpired years or decades before the research interview. The gap between participants’ experience of remand and the research interview is a double-edged sword. On the one hand, the timing of the interviews contextualized remand by placing it within the entirety of participants’ engagement with the criminal justice system—from being arrested by police, detained on remand, sentenced by a court, and the punishment experienced after sentencing. Participants who served custodial sentences after being detained on remand, who were the majority of the sample, were able point to differences between the experience of formal punishment (e.g., a term of imprisonment) and quasi-penal measures (i.e., time in custody on remand); differences which would not have been an option to discuss if the interviews had occurred at the time of participants’ detention. On the other hand, it is possible that the nature of remand and the experiences of those subjected to it have changed in the time between the experience itself and the date of the research interview. A similar limitation was noted in research exploring the effect of long-term imprisonment and the potential challenge resulting from drawing conclusions based on participants’ recollections (Crewe et al., 2017: 538):

We cannot rule out the possibility that the nature of long-term imprisonment, and of those sentenced to the terms in which we are interested, have changed in ways that might threaten our conclusions, although the consistencies between the accounts of participants at different sentence stages gives us confidence that this is not the case.

A similar conclusion should be made with respect to this study. Across the sample, there were consistencies between narratives provided by participants who were remanded to custody at different locations and decades apart, lending credibility to the validity of the findings. The similarities can be viewed in the excerpts of participants' stories included throughout Chapters Five and Six. The detail of participants' narratives, coupled with the consistencies across the sample, instil confidence that the findings in this study are robust.

7. Future research

This study opens the possibility to important and exciting future research opportunities. In future, studies could explore the bail process, the pains of remand, and the role of pain at various decision-making points in the criminal process.

7.1. Bail

This thesis addresses the outcome of a judicial decision to deny bail, highlighting that remand is connected to this decision-making point in the criminal justice system. Limited research has been carried out to explore the practice of bail decision-making and the factors which lead judicial office-holders to either grant or deny bail (although see, e.g., Crijns et al., 2016; Dhami, 2010; Smith, 2021). Future research could engage with the bail process, exploring the factors considered in bail decision-making and the evidence used to support judicial decisions. By, for example, monitoring bail hearings, future studies could allow researchers to gain insight into bail procedures as well as evidence provided to the court by the CPS and defence counsel. Interviews with judicial office-holders, members of the CPS, and/or defence counsel could explore their respective roles in the bail decision-making process and factors influencing their recommendations and/or decisions. Moreover, future studies could investigate whether prospective assessments of pain are incorporated into recommendations made by the Crown and/or defence counsel at the time, or in advance of, a bail hearing, and the extent to which, if any, evidence on the pains of remand are incorporated into bail decision-making by judicial

office-holders. In light of growing evidence of the harms caused by remand custody, future research could investigate the role of pain in bail decisions with a view to establishing the relevance of these pains at this particular decision-making point in the criminal justice system.

Future studies could also focus on alternatives to remand, such as the use of bail support and supervision programmes, and their efficacy in contributing to public safety. As highlighted above, reducing the use of remand requires considering its alternatives, and instilling confidence in these alternatives amongst actors in the criminal justice system (e.g., judicial office-holders, the CPS). Further, future studies could explore the use of the ‘no real prospect’ test and outright bans on the use of remand, as little is known about the effect of these legislative restrictions on the use of custody before trial or sentencing.

7.2. Pains of remand

The findings of this study demonstrate the disempowering effect of being detained in pre-trial and pre-sentence custody. Future research could focus on further exploring the relationship between remand and the experience of navigating the criminal process. As highlighted in Chapter Two (see Section 5) and Chapters Five and Six, remand prisoners face barriers trying to access justice. Future studies could explore the coercive power of the State resulting in the pressure amongst some unconvicted prisoners to plead guilty or, conversely, factors which result in their decision to maintain a plea of not guilty. Future research could also explore remand prisoners’ experiences of applying for and relying on legal aid or approaches used to find legal representation from within the prison. Remand prisoners’ access to justice is inhibited by their confinement to a prison, but the subtleties of this reality are far from known. In addition, future research into the pains of remand could extend further to explore transitions out of remand, and how different outcomes (e.g., acquittal, imprisonment, non-custodial sentence) may shape an individual’s reintegration back into the social structure (Turner, 1967) and their perceptions of the legitimacy of the criminal justice system.

Research could also examine the impact of remand on families and networks of support in the community. The financial and emotional toll on dependent children, adult children, and partners, as reported by participants in the current study, was devastating. Families were required to move homes. Partners had to find new employment opportunities to balance their budgets or make ends meet. Remand, as recollected by participants, had several adverse

impacts on their families and those they cared about in the community. While research has been conducted with families of those serving or who have served a term of imprisonment (see, for examples, Dixey & Woodall, 2012; Grieb et al., 2014), it was not possible to find a single study involving the families of unconvicted and/or unsentenced prisoners.

Finally, future research could incorporate the original plans for this study, namely investigating the pains of remand across jurisdictions. As mentioned in Chapter Four, the original research design intended to explore remand in both Canada and England and Wales. These two locations were originally selected for this study due to their shared legal historical foundations and adherence to similar international human rights instruments, but also for their separate approaches to crediting time served on remand (see Chapter Three, Subsection 5.1). Comparative research has shown that the more relevant constants between jurisdictions, the more surprising and instructive the findings of difference can be (Nelken, 2010). To date, no comparative study on experiences of remand has been conducted.

7.3. Sentencing

This study initially sought to investigate the extent to which, if any, judges in England and Wales considered remand in the assessment of penal severity. For reasons explored in Chapter Four, it was not possible to explore this question. The findings of this study, however, highlight conflicts between theory and practice. Examining different systems' approaches to retroactively incorporating remand into punishment may offer insights into whether judicial office-holders in England and Wales consider subjective experiences of remand and, if so, to what extent. It may also offer a glimpse into personal mitigation in practice and to broader questions about the relationship between mitigation and the principle of proportionality. In addition to exploring sentencing in England and Wales, future research could also examine practices in Canada and New Zealand, where sentencing judges routinely apply credit for time served in pre-trial and pre-sentence detention. Research could investigate the qualitative features of remand considered by sentencing judges within these jurisdictions and the quantum of credit applied.

8. Conclusion

This study had two objectives. The first was to explore experiences of remand in England and Wales. The second, to investigate how, in sentencing schemes grounded in the principle of proportionality, judicial office-holders should engage with remand. In answer to the first question, this research conveyed the harms inflicted by pre-trial and pre-sentence custody; State practices which have historically been under-explored. It developed a conceptual framework through which to analyse the pains of remand, identifying three overarching pains surrounding experiences of pre-trial and pre-sentence detention in England and Wales: the pains of disruption, the pains of disempowerment, and the pains of uncertainty and liminality. Given the adverse consequences stemming from a decision to deny bail, it is essential to establish a framework to convey the breadth of pains inflicted on individuals in advance of a conviction and formal punishment. As the literature advances with further evidence demonstrating the pains inflicted across the criminal justice system, it becomes increasingly difficult to turn a blind eye—or fail to respond—to these punitive experiences. The challenge becomes finding a method which allows the pains of remand to be incorporated into punishment proper, and to identifying values which allow for this exercise to take place within sentencing frameworks grounded in the principle of proportionality. A new and potentially better way of doing things (“The Accommodation for Unconvicted Prisoners”, 1887), as proposed above, is to introduce values of compassion, humanity, and mercy into the calibration of punishment, permitting members of the judiciary to fully engage with the punitive experience of remand custody. In a society where the use of quasi-penal measures shows no sign of slowing down, it is incumbent on the State to develop coherent responses to the harms it inflicts, intentionally or not, on its citizens who are unconvicted or unsentenced, yet find themselves living within the confines of a prison. To do anything less is patently unfair.

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Appendix A: Interview Schedule

Interview Schedule for Qualitative Interviews

Topic 1: Prison

- When you went into custody were you awaiting trial or sentencing?
- When were you detained on remand? How long did you spend on remand? Was this your first time on remand?
- What was a typical day like for you in prison on remand?
- What about your day did you find the most difficult?
- Was there anything you found positive?
- What five words would you use to describe your experience of remand? [spend a few minutes exploring the words used to describe remand, such as why did you choose 'x'?]
- How did you cope with being detained on remand?
- How did the experience of being detained on remand affect you?

Topic 2: Relationships

- How would you describe your relationship with other prisoners?
 - Follow up: What about that relationship makes you describe it as 'x'?
- Did you notice any differences or similarities between remand and sentenced prisoners (e.g., comparison of activities, daily routine, interactions with staff)?
 - If yes, what did you notice?
- Can you tell me what relationships were like between staff and remand prisoners?
- Which staff made the most difference to your life in prison on remand? (follow-up: why?)
- How did remand affect your relationships in the community?
 - Prompt: for example, with your family or your friends or other networks of support.
- Did remand have any other impact on your life the community?
 - Prompt: for example, did remand have any impact on your job? Or on your home?

Topic 3: Navigating the criminal process while on remand

- How did being detained in prison pending [trial or sentencing] affect your criminal case?
 - Prompt: How did you find a lawyer? Did you have access to any legal information in prison (e.g., in the prison library)?
- Did you feel in charge or in control of the direction of your case?
 - If yes: what made you feel you were in control?
 - If no: anything specific that made you feel like you weren't in control?
- Do you feel as if you were being punished by being detained on remand?
 - Follow up: can you explain why?
- Do you know if the sentencing judge took into account the time you spent on remand?
 - If yes, do you know what he/she considered?

Warm-down

That brings us to the end of my questions about your experiences:

- Is there anything else you think I should have asked?
- Would you like to say more about any topic we discussed today?
- Do you have any questions you would like to ask me?

Appendix B: Unlock Mailout, February 2021



Exploring men's experiences of remand in England and Wales Request for participants (paid)

PhD research at the University of Sheffield is aiming to explore men's experiences of remand to learn about its effects on individuals and their families. The research is being conducted by Emma Trottier, PhD candidate.

If you are an adult male who has previously been detained on remand in England or Wales, I would like to hear from you. I am looking to arrange an informal interview that will last about 1 hour. Financial compensation provided (£10). The interview can take place over the phone or through a video call (Zoom), depending on your preference. Your identity will remain anonymous and the information you share is confidential.

If you are interested in taking part in a phone or video interview, or you know others who might be interested, please contact Emma Trottier: ejtrottier1@sheffield.ac.uk or call/text/WhatsApp 07787 751388.

Appendix C: Unlock Mailout, June 2021



Seeking your help: Looking for participants (paid) with experience of remand custody

My name is Emma Trottier and I'm a PhD student at the University of Sheffield. My research focuses on men's experiences of remand custody. I hope to be able to learn about how remand impacts individuals.

If you're an adult male who has previously been remanded to custody in England or Wales, I'd be keen to hear from you. If you'd like to participate, we can arrange an informal interview that would last about 1 hour. Financial compensation is provided (£10). The interview can take place on the phone or through a video call (Zoom), depending on what you prefer. Your identity will remain anonymous and the information you share with me is confidential.

If you're interested in taking part in a phone or video interview, or you know others who might be interested, please contact Emma Trottier: ejtrottier1@sheffield.ac.uk or text/WhatsApp 07787 751388.

Appendix D: Participant Information Sheet

Participant Information Sheet

Title of Study: Exploring the experiences of remand in England and Wales and Canada. This study is being done by Emma Trottier, PhD candidate, School of Law, University of Sheffield, and is supervised by Dr. David Hayes, Lecturer in Law, and Dr. Gwen Robinson, Reader in Criminal Justice, School of Law, University of Sheffield.

What is the purpose of this research? This study is trying to learn about men's experiences of remand. You are being approached because you have previously been held in prison on remand while waiting for your trial or sentencing date.

Do I have to take part? It is up to you to decide if you would like to participate. Participation is entirely voluntary. If you do participate, you can withdraw at any time up to six months after the date of the interview. There will be no consequences to you if you withdraw and you do not have to give me a reason for your decision to withdraw.

What will happen if I take part in this study? If you choose to participate, I will ask you to take part in an interview which will last about one hour. Given the COVID-19 pandemic, the interview will happen either by telephone or online (Zoom). Before beginning the interview, I will provide you with a consent form.

During the interview, I will ask you questions about your experience of remand. Almost all of the questions are open-ended, meaning you can choose how much or how little you would like to share about your experience of remand. The topics focus on your experience as a person detained on remand, such as the features of a typical day in prison. The interview questions also focus on relationships, including with other prisoners, prison staff, as well as any impact remand may have had on your relationships in the community. The final topic of the interview focuses on your experience navigating the criminal process while you were detained on remand.

Are there any disadvantages to participating in this study? There are no identified disadvantages to participating in this study. While the interview questions do not seek to draw out upsetting information, you may experience discomfort speaking about your life during the time you were remanded to custody. If you begin to feel any discomfort, the interview can be paused or stopped. If you feel distressed, I can share information on available networks of support.

What are the possible benefits of taking part? You will be compensated for your participation. Following the completion of the interview you will be paid £10. It is hoped that this research will contribute to policy discussions on the treatment of individuals detained on remand, and to courts' understanding of remand prisoners' experiences of custody. It is also hoped that your contribution, and the contribution of other participants, can shed light on the lived experiences of remand.

Will my taking part in this project be kept confidential? All of the information you share in the interview will be kept strictly confidential. Any names or places you mention will be replaced to protect your identity. That said, if you were to share information that creates a risk

of harm to other individuals or information related to undisclosed offences, I would have to share that information with others.

What will happen to the data collected, and the results of the research project? Only I will have access to the information (data) from the interview. After the interview, I will transcribe the interview myself. While transcribing the interview, I will remove all identifiable information, such as your name or specific events you mentioned, to ensure the transcript is anonymized.

The results of the study will be used in my PhD thesis. The thesis is likely to be completed in 2023. The results may also be published in academic journals. All published results will only use anonymized data. You will not be identifiable in any published materials.

It is common practice in England and Wales and in Canada to keep PhD research data for a period of at least seven years following the completion of a PhD program. For data integrity purposes, all data collected during the course of this study will be destroyed in January 2031, eight years after the anticipated completion of the researcher's PhD thesis.

What is the legal basis for processing my personal data? Your personal data will be collected as it will ensure you receive compensation. According to data protection legislation, I am required to inform you that the legal basis I am applying to process your personal data is that it is 'necessary for the performance of a task carried out in the public interest'¹¹. If you are interested, further information can be found in the University of Sheffield Privacy Notice, which you can find here: <https://www.sheffield.ac.uk/govern/data-protection/privacy/general>

For this study, the University of Sheffield will act as the Data Controller. This means the University of Sheffield is responsible for looking after your information and using it properly.

Who has ethically reviewed this project? This study has been ethically approved by the University of Sheffield's Ethics Review Procedure, as administered by the School of Law.

What if something goes wrong and I want to complain about the research? If you have any concerns or questions during the research, you should feel free to contact me using the details below. You can also contact my supervisors, Dr. David Hayes (D.J.Hayes@sheffield.ac.uk) and/or Dr. Gwen Robinson (G.J.Robinson@sheffield.ac.uk), who will investigate your concern(s). If your concern stems from how your personal data has been handled, you can contact the University of Sheffield Data Protection Officer dataprotection@sheffield.ac.uk.

Thank you for taking the time to read this. I hope that if you do choose to participate in this study it will be insightful to you. Your contributions will help me to develop a more accurate understanding of remand and how it impacts people.

Emma Trottier

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Winter St. Sheffield S3 7ND

¹¹ Article 6(1)(e) of the General Data Protection Regulations.

Appendix E: Consent Form for Participants

Consent Form: Exploring the experiences of remand in England and Wales and Canada

<i>Please tick the appropriate boxes</i>	Yes	No
I have read and understood the participant information sheet.		
I have been given the opportunity to ask questions and they have been fully answered.		
I agree to take part in the project. I understand that this will include an interview.		
I agree to the recording of the interview.		
I understand that my participation is voluntary and that I can withdraw from the study up to six months after the interview. I do not have to give any reasons for why I no longer want to take part and there will be no consequences if I choose to withdraw.		
I understand my personal information will not be shared with anyone outside the research project.		
I understand the researcher's duty of confidentiality does not cover any mention of undetected criminal acts or threats to the safety and wellbeing of any person.		
I understand and agree that my words may be quoted in publications, reports and other research outputs. I understand that I will not be named in these materials.		
I agree that all information collected in this project will be stored securely until January 2031, when it will be destroyed.		
I agree to assign the copyright I hold in any materials generated as part of this project to The University of Sheffield.		

Name of participant [printed]

Signature

Date

Name of researcher [printed]

Signature

Date

Project contact details for further information:

This research project is being done by Emma Trottier, PhD student, School of Law, University of Sheffield.

This research is supervised by Dr. David Hayes, Lecturer in Law, and Dr. Gwen Robinson, Reader in Criminal Justice, School of Law, University of Sheffield.

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