

Crime, Courts & Confidence

Report of an
Independent Inquiry into
Alternatives to Prison

Executive Summary
and
Recommendations

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Executive Summary

The Problem

There is a lack of confidence in the criminal justice system. Even though the levels of most crimes have fallen significantly in the last few years, the vast majority of the public thinks that crime has gone up.

This has resulted in pressure for increased severity in sentencing from, amongst others, the government.

Our prisons are overcrowded and the number imprisoned is projected to continue rising over the next few years. The number of women and black offenders in prison has risen particularly steeply.

The probation service is overstretched because the volume of community penalties has also increased, and its morale is low following two major changes in structure since the millennium.

Many of those subject to community penalties, and some of those who are in prison, present a low risk of reoffending and an even lower risk of causing significant harm.

The Solution

We do not propose any simple or dramatic solutions. There are promising approaches which demand investigation and support, for example, improved sentencing guidelines might be able to assist in reversing the trend in increased length and severity of both custodial and non-custodial sentences. However, the difficulty encountered by the Sentencing Advisory Panel and Sentencing Guidelines Council in defining terms such as "serious enough to warrant custody" reinforces our belief that the control of the use of custodial sentences does not depend on formal definitions. Instead, it requires a shared understanding of the proper approach to sentencing in marginal cases, and on real knowledge of and confidence in the alternatives.

The principal challenge to the criminal justice and offender management systems is therefore not dramatic, but much more demanding. It means working with persistence and determination to make and build upon improvements each of which may be small but, when taken together, make a real impact on the problem.

Some of the key factors which have led to this conclusion are summarised below.

The Use Of Custody

It is fundamental, in a free society, that loss of liberty should not to be inflicted beyond what is necessary. We believe the evidence supports the following assertions.

- Imprisonment is appropriate for serious crimes and for cases where the offender poses a danger to the public or a part of it.
- Beyond that, it is essential to bear in mind that increasing sentence severity has only a limited, marginal effect in reducing crime.
- Short custodial sentences do very little to control crime.
- It seems unlikely that short sentences have a significant deterrent effect (even with supervision added): they certainly have no rehabilitative value.

All this points to a sentencing framework which restricts the imposition of custody and which embraces alternatives whenever possible. It also suggests that the government should reconsider the value of the new "custody plus" sentences to be introduced under the Criminal Justice Act 2003, which are inherently short sentences albeit followed by supervision in the community.

Sentencing

The evidence on what has driven the increasing severity of sentences shows that it is not due to an increase in the level or seriousness of crime coming before the courts. Judges and magistrates are sentencing more harshly – albeit not consciously. We believe that this trend should be reversed and have identified the following factors as requiring attention.

- The increasing use of sentencing guidelines (which we support in principle) has clearly played a part in the upward pressure on sentencers. This needs to be redressed by the Sentencing Guidelines Council (SGC).
- The SGC also needs to ensure that sentences remain proportionate to the offence in the case of persistent offenders.
- The government should develop a new system of unit fines to encourage courts to make greater use of what is often the first rung of the sentencing ladder.
- The government sends out mixed messages to the public and the courts about sentencing. It wants to reduce the prison population but, at the same time, introduces policies and legislation which have the opposite effect. These often fail to take account of the research evidence, which the government itself has sponsored.
- Public opinion, or rather public opinion as perceived by the mass media and politicians, is presented as considerably more punitive than research shows it to be – this should be recognised when developing policy.

Increasing Confidence in the Criminal Justice System

The decline in confidence in the criminal justice system has developed over a number of years. It is therefore likely to take some time to reverse the situation. We have identified the following features as possible ways forward.

- There is a lack of clarity about the true length of custodial sentences as a result of parole and executive release. The public would certainly find it much easier if sentences “meant what they said”. We accept that changing the current system would not be straightforward. There is clearly a place for early release as an incentive for good behaviour and a need for assessing risks to the public when considering the release of dangerous offenders. But these are not reasons for failing to make the system more transparent.
- There is a perception within the probation service that bureaucratic objectives take primacy over practical achievements, for example, the requirement to meet targets for throughput on programmes - irrespective of whether those attending match the profile of offenders shown to benefit from them. We believe that the best ways of measuring performance relate to achievements known to have positive effects on offenders, for example the number of offenders retained in programmes (which is usually associated with greater success in rehabilitation).
- There needs to be more sophisticated ways of measuring the effectiveness of sentences than two-year re-offending rates. Reduction in frequency and seriousness of offending are also relevant, as is the acquisition of skills which will enable offenders to obtain employment – which is associated with reduction in offending.
- All parts of the criminal justice system need to be honest between themselves and with the public about what can and what cannot be achieved both by prison and by community penalties. Overcrowded prisons and short sentences do not permit constructive work towards rehabilitation.
- For community penalties there are positive benefits which could be usefully emphasised for example they are demanding:
 - in requiring offenders to undertake work in the community in what would otherwise be their own time;
 - in requiring offenders who have dropped out or otherwise failed in the educational system to learn how to read, write, develop numeracy or undertake training which will enable them to find work;
 - in requiring an offender to develop discipline by adhering to a timetable for appointments etc. and the community can benefit:
 - directly, through the 8 million hours of unpaid work undertaken by offenders each year; and
 - indirectly by producing beneficial changes in behaviour including, but not limited to, reducing reoffending.
- Parts of the media portray crime as rising and serious. Alarmist reporting of high profile cases gives a distorted picture. However, it is not solely the media's responsibility to ensure that the public knows the

real facts – that rests with the government and individual parts of the criminal justice system. We believe that they should all supply more information to the public in a readily understandable form (i.e. not just complex statistical tables but what courts take into account in sentencing and what sentences really involve).

- This improved information and education on sentencing should include the role and benefits of tagging and satellite surveillance as part of community penalties.
- Education about the criminal justice system should form part of the national curriculum.

Delivery of Community Penalties

Successful delivery of community penalties is crucial to increasing confidence in them by the public, politicians, judiciary and the probation service. We have made a number of explicit recommendations on this which can be summarised as follows.

- Community penalties and programmes should be delivered locally and the local community should be much more closely involved in their delivery. For example, members of the community should play a key part in deciding on the work which offenders will undertake as part of community punishment orders. The projects identified should be delivered by local people including local businesses to maximise the possibility of longer term employment for offenders.
- Community penalties and associated programmes need to be properly targeted. The research evidence shows that improperly targeted programmes can worsen rather than improve reoffending. The programmes need to be developed with realistic expectations of offenders' learning abilities.
- It follows that judges and magistrates need fully to understand what the various programmes and projects used in their area involve. They should be required regularly to visit these initiatives. This will enable them to make better use of the pre-sentence reports (PSRs) prepared by probation staff.
- There needs to be improved communication between the probation service and the courts and vice versa. We have recommended that formal liaison arrangements be reinstated at both national and local levels. The courts need to ensure that the probation service is aware of their needs in relation to PSRs and the probation service needs to improve its service to the courts for example by ensuring that properly qualified staff attend court to provide information and answer queries.
- The best structure for delivering community penalties effectively, is local rather than regional. This will aid reintegration of offenders into the community.
- While some interventions designed to reduce offending and support rehabilitation must clearly focus on issues to do with offending behaviour, not all interventions need to be delivered in a penal context. For example drug treatment, parenting skills, literacy and numeracy can usefully be delivered in the mainstream.
- The needs of specific groups of offenders should be given a higher priority. We have made recommendations on developing more appropriate community penalties for women, establishing why

there has been a disproportionate increase in the imprisonment of black people and women and on ensuring that the courts get better information about the mental health of offenders.

The prevention of crime and reduction of reoffending cannot be left entirely to the courts, the police or the correctional services. It also requires the cooperation of local authorities, mainstream services such as health and education, voluntary organisations and the active interest and participation of members of the public generally.

Recommendations

Sentencing

The government should:

- review the need for short custodial sentences because these have little or no deterrent or rehabilitative value. The review should include the new “custody plus” sentence (page 47);
- review the “intermediate estate” as a matter of urgency (page 55).

Courts should:

- see a fine or a community sentence as the first option for most non-violent offences (page 47);
- when they impose a custodial sentence for non-violent offences, identify and record the specific reasons and should state the purpose of the custodial sentence, in accordance with current principles or in accordance with the purposes of sentencing as set out in the Criminal Justice Act 2003, when this comes into effect. The record should be available to the public (page 47);
- if they decide to impose a short custodial sentence, state why a community sentence would not meet the identified purposes (page 47);
- avoid progressive increases in sentences in cases of repeat offending where there is no increased severity of offending and no public danger (page 47).

The Sentencing Guidelines Council, in conjunction with the Home Office, should develop robust methods of measuring effectiveness of interventions, over and above the two-year reconviction rate. For example the achievement of recognised qualifications of literacy, numeracy, training or education; reducing harm to themselves and others in relation to substance misuse; reducing frequency and seriousness of offending (page 47).

Legislation

The government should legislate:

- to introduce a new unit fine system. This should include elements of proportionality to permit the court to adjust the results of the calculation to fit the full circumstances of the offence, for example by placing upper limits on fines for certain minor offences (page 59);
- so that prison cannot be a penalty for non-payment of a fine when it could not have been imposed for the original offence (page 59);

- to prevent courts imposing custody following breach of a community order, where the original offence did not merit it (page 63).

Court Procedure

Offenders receiving community sentences should be “sent down” in the same way as those receiving custodial sentences to reinforce the message that they have not been acquitted (page 60).

Best practice would be that breaches of community orders are reported to and dealt with by the judge or magistrate who originally passed sentence on the offender (page 57).

Communication and Education of the Public

The government should:

- ensure that information and education about community sentences and work undertaken in the community is widely available (page 34);
- require schools to include education about the criminal justice system as part of the citizenship module, in the personal, social and health education part of the national curriculum (page 34).

Communication between Courts and Probation Services

Probation services should give high priority to service to the courts by ensuring that qualified and informed staff are available to the courts to advise on the reports and programmes for which the probation service is responsible. Best practice would be for the authors of the pre-sentence reports to attend (page 62).

The Home Office and Department for Constitutional Affairs should establish a national forum for liaison between probation services and the courts. This should oversee local liaison forums at both magistrates’ and Crown Court level. Clear guidance should be given for NOMS probation staff, the magistrates’ courts and the senior resident judges as to what should be expected from these forums. Annual reports should be provided on their work. Training issues should be covered and relevant recommendations should be sent to the Judicial Studies Board (page 62).

Local Involvement in Community Sentences

The Home Office should require:

- the plans of the Local Criminal Justice Board and the Crime and Disorder Partnerships to be integrated (page 66);
- local community-based forums to be established with the aim of identifying projects, schemes and services which could be undertaken or provided by offenders on community punishment order placements. Such forums would consist of local voluntary organisations, community and faith groups as well as local businesses (page 66).

- The Home Office should study the Justice Reinvestment initiative as a matter of urgency (page 64)

Local authorities should be pro-active in acquiring information about services and projects which might be of use to those serving community sentences. This should include voluntary, not-for-profit and private sector organisations. The information should be given to offender managers (page 66).

Delivery of Community Sentences and the National Offender Management Service (NOMS)

The government should require:

- judges and magistrates to have ongoing training and first-hand knowledge of the community sentences, programmes and projects used in their jurisdictions (page 56); and
- that judges and magistrates receive regular feedback on the effectiveness of programmes, completion rates and outcomes (page 56).

Those responsible for delivery of community sentences should:

- ensure the offender management structure is driven by the need to work closely with the courts and local services (page 69);
- ensure offender managers make better use of local facilities, mainstream services, projects and programmes (page 70);
- encourage small service providers from the voluntary and not-for-profit sectors to participate in procurement arrangements (page 70);
- be structured so as to give priority to local, integrated, services (page 70);
- require accredited programmes to be used in conjunction with, not instead of, case management. Case management should address not only offenders' behaviour, but also their other needs such as housing, health care, literacy, numeracy and training in skills needed to obtain a job. To this end offender managers should be closely involved in integrated work with offenders and their progress on community orders (page 71);
- require accredited programmes to be used only for the groups for which they have been developed (page 72);
- resist judging successful performance by measuring inputs rather than outcomes (page 72);
- simplify accreditation and make it less bureaucratic (page 73);
- take particular care to see that smaller local organisations with limited resources are encouraged and helped to offer to provide services (page 73);
- as part of introducing contestability, encourage pilot schemes for new interventions or programmes which should be independently evaluated (page 73).

Specific Groups

The government should:

- look at the offending characteristics of 18-21 year olds and consider running pilot projects in high crime areas. The aim would be to establish whether the concept of a multi-disciplinary team operating on a statutory basis would be more effective for these young people than adult arrangements (page 77);
- immediately commission research into the causes of the disproportionate increase in the numbers of black offenders in custody and develop a strategy to deal with it (page 79);
- produce regular reports on the progress of the Home Office's Women's Offending Reduction Programme initiative (page 81);
- evaluate programmes developed specifically for women offenders to establish more clearly "what works" for them (page 81);
- develop a national strategy for assessing and treating mentally disordered offenders by having dedicated forensic psychiatrists and community psychiatric nurses working with probation services (page 83).

Probation services/NOMS should provide or purchase, community work projects and accredited programmes developed specifically for women offenders. These should take account of women offenders' characteristics and family responsibilities (page 81).

The courts should record all instances where information relating to offenders' mental health is not available to inform sentencing when they have requested it, and report these to the government for action to be taken (page 83).

