Crime, Courts & Confidence

Report of an Independent Inquiry into Alternatives to Prison

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Foreword

This report, which is the result of the deliberations of a Commission of Inquiry chaired by Lord Coulsfield, is the largest single piece of work which has been funded by Rethinking Crime and Punishment (RCP).

In 2001 a strategic grant making programme called RCP was set up by the Esmeé Fairbairn Foundation, with the aim of raising the level of debate in this country about the use of prison as the principal sanction imposed by society - and its alternatives. This has involved making over 60 grants, which have sought to improve public understanding of, and involvement in, criminal justice and to inject fresh thinking into the debate about crime. It became clear to the Esmeé Fairbairn trustees during 2002 that some focused work on the specific issue of community based penalties as an alternative to prison was necessary – over and above the funded research, campaigns and events which had already been making considerable impact. In particular, given the sharply rising use of imprisonment, we felt there was an urgent need to establish whether the existing and planned range of community-based sentences were providing the courts with what they needed; to examine what works and why, and what doesn't work and why; and finally whether there might be improvements to the way such sentences are imposed, implemented and organised.

Lord Coulsfield, a distinguished and newly retired Scottish judge, generously agreed to chair the Commission, and the Police Foundation agreed to provide the necessary research and administrative support. It was agreed that the Commission's work would be strictly independent and therefore its views and recommendations are entirely those of Lord Coulsfield and his colleagues. At the outset the Inquiry comissioned an impressive body of research work by Sir Anthony Bottom on which they were able to draw, and which is being published at the same time as this Report. Submissions from a wide range of organisations and individuals have also been considered, including evidence from many RCP projects.

I believe that the result is a major contribution to this most complex and controversial area. It makes some important recommendations for practical action by government, the courts and the new National Offender Management Service, which could make a real difference. In a field where there are no simple answers, we have here a thorough analysis of the problems facing those involved in this aspect of criminal justice, with some significant recommendations for their resolution.

Many of these resonate strongly with the findings from the wider work of RCP, such as those relating to greater sentencer and community involvement in alternatives at court and local level. These can be seen in the Report of the wider work of RCP with all its findings and recommendations, which will be published in December 2004.

I, and all my colleagues are deeply grateful to Lord Coulsfield and his fellow Commissioners for their commitment, dedication and enormous hard work over the past 18 months. They have produced a significant and important report to which I hope and expect all those involved in this fascinating and difficult area of criminal justice will pay serious attention and act accordingly.

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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).

Chapter 1
Introduction

This Inquiry into Alternatives to Prison was set up because of concern about the impact of crime on society and the number of persons kept in prison, which appeared to be rising out of control.

Terms of Reference

Our terms of reference were to:

"… examine, against the background of continuing increases in the prison population in the U.K., the adequacy and limitations of the current provision of alternatives to prison for adults and children convicted of crimes in the U.K., and the administration and levels of effectiveness of such alternatives, and make recommendations.

The Inquiry will examine in particular:

- *the specific provision of alternative sentencing options available to the courts;*
- *the factors which influence the use of alternatives in particular situations;*
- *the success of alternatives in protecting the public, reducing offending and punishing offenders;*
- *the current responsibilities for making alternative provisions available;*
- *the adequacy of the resourcing of alternative provisions;*
- *public confidence in alternatives;*
- *the adequacy of current data on alternatives and their outcome; and*
- *any other matters the Inquiry may think fit."*

It quickly became apparent that focusing on "alternatives" to custody was too narrow an approach, suggesting that imprisonment should be the first response to criminal behaviour. Our aim has been to examine the evidence available, without preconceptions, to assess what should be the proper contribution to the criminal justice system of sentences other than imprisonment.

We have not attempted to resolve issues which are highly controversial among experts, but to see how policy might be shaped, taking account of these areas of uncertainty and controversy. However, there are some indisputable facts and it seems to us that discussions and policy development often proceed without an exact understanding of them. For that reason, we have set out, as objectively as we can, our understanding of these basic issues, even though they may seem elementary to experts in the field.

Evidence Collection

In June 2003, we wrote to over 500 organisations and individuals with an interest in this field of work, inviting them to make submissions. We received some 120 responses (see appendix A). Copies of the letter and most responses are available on our website[1]. We also held consultation events in London,

Nottingham, Cardiff and Edinburgh to obtain views from members of the public, as well as professionals, in these areas. In addition, we have held meetings and made visits to gain a more detailed understanding of work and initiatives being undertaken (see appendix B). We have also studied several important reports, notably those by Halliday[2], the Social Exclusion Unit[3] (SEU) and Carter[4].

We are most grateful to all those who have given their time to assist us, particularly the Home Office, the Scottish Executive and the Northern Ireland Office.

Research

We commissioned a research programme, directed by Professor Sir Anthony Bottoms of the Institute of Criminology at Cambridge University. This has provided us with a comprehensive and up to date review of published research findings on the topics relevant to our Inquiry. The research volume "Alternatives to Prison: Options for an Insecure Society"[5] is published separately, but abstracts are at appendix C. In addition, we commissioned a field study to explore perceptions about the treatment of offenders in two high crime areas of Sheffield. This is discussed in chapter 4 on public attitudes.

The research review is an essential background to our report and many of our conclusions and recommendations derive from it – but we must emphasise that the researchers themselves may not subscribe to our opinions.

Scope

The Inquiry was set up to examine alternatives to custody on a United Kingdom basis. We have attempted to do so, taking account of differences between England, Wales, Scotland and Northern Ireland. However, there is much more material relating to England and Wales. This is because of legislative and policy changes, and because the amount of research information available is considerably greater. We have tried to take care that the material from the larger jurisdiction does not swamp discussion of the smaller ones. We decided with some regret, that we could not examine the Scottish Children's Hearings system, which deals with children under16, adopting a broadly welfare-based approach. Much of what we say about the use and delivery of programmes and other interventions may be capable of being applied in the Hearings, but investigation of the system would have required us to deal with issues well beyond the primary focus of our inquiry.

Northern Ireland, with a much lower crime rate, is somewhat different from the other jurisdictions. Because of its very different cultural context and recent political activity, we have found rather less to say about circumstances there. Nevertheless, we benefited greatly from our meetings with judges and magistrates and administrators in Belfast.

The Plan of the Report

Chapter 2 covers the factual background. We conclude that the increases in the prison population and workload of the probation service are due to the increasing severity of sentencing and not increases in the level or seriousness of crime.

Chapter 3 deals with factors which affect sentencing decisions, and may be helpful if there is a question of trying to change existing practice.

The important question of what the public really think about questions of crime and punishment is taken up in chapter 4.

Chapter 5 deals with the effectiveness of prison and non-custodial sentences in meeting the objectives of sentencing.

Chapter 6 looks at substance misusing offenders.

Chapter 7 discusses whether the prison population can and should be controlled.

In chapter 8, we suggest how the practice of working with offenders could be improved and better integrated into communities, with advantages both for offenders and for the public.

Chapter 9 contains recommendations relating to offender management.

Chapter 10 considers, briefly, the needs of specific groups of offenders.

The final chapter summarises our broad conclusions.

The Chairman and Commissioners would like to put on record their appreciation of the very great amount of work done by the Secretary, Valerie Keating, and their gratitude for her exceptional contribution to the composition of this report.

Chapter 2
Background

It is important that we should be clear about the information which forms a background to our Inquiry. Given our terms of reference, it is also important to be clear about the relationship between movements in levels of crime and those in the prison population and probation workload.

The Level of Crime in the United Kingdom

The trends in crime in the United Kingdom from 1980 to 2003 are examined by Lewis in Chapter 2 of the research volume[6]. The key points are.

- Crime has risen in the UK since the Second World War.
- Property crime[7] (including vehicle related theft) accounts for 78% of all crime in England and Wales.
- Property crime recorded by the police, reached a peak in 1992, and fell through the rest of the 1990s. It has been stable since then. The pattern in the British Crime Survey (BCS)[8] is similar – falling by almost a half (46%) between 1995 and 2003/2004.
- Violent crime recorded by the police rose quickly between 1980 and 1997 and has continued to rise since, but much of the change since 1997 is the result of new counting rules introduced in 1998 and 2002. In the British Crime Survey (BCS) (which has not been affected by changes to the counting rules), violent crime has fallen overall by 36% between 1995 and 2003/2004.
- Drug trafficking offences have continued to rise.
- In Scotland crime is much lower but is now little higher than it was twenty years ago.
- Northern Ireland has very low levels of crime overall but crime has increased steeply since 1995. It has a high rate of serious crime and vehicle theft.
- Crime which is detected by the police (clear up rate) is low - 23% for England and Wales in 2003/04[9] but somewhat higher at 47% for Scotland in 2003[10].
- Although crime, as measured in the BCS, has fallen consistently in the last few years, public perception, measured in the same survey, shows that in 2003/04, two thirds of the public thought crime had risen in the previous two years, with a third of those surveyed believing it had gone up "a lot". Although high, these figures are lower than the corresponding figures in 2002/03 (73% and 38% respectively).
- People's perception of crime in their local area is a little more accurate with just under half believing it has risen and one in twenty believing it has increased "a lot".

Who makes up the Criminal Population?

The criminal population[11] is mainly young (about 50% of sentenced prisoners and of those serving community sentences are aged between 18 -29), male (only about 6% of prisoners and 16% those serving community sentences are female) and disproportionately from minority ethnic groups (22% of males and 29% of females in England and Wales compared with about 7% in the general population).

The Social Exclusion Unit (SEU)[12] carried out a detailed survey of the characteristics of the prison population which, we believe, are largely shared by those sentenced to community penalties. They found that offenders were considerably more likely than the general population to have grown up in care or poverty and to have family members who had been convicted of criminal offences. Offenders also had very disrupted education mainly leaving school early, with no qualifications and with very poor literacy and numeracy. Unsurprisingly most were unemployed before conviction. Offenders had poor physical health, high levels of smoking and much higher levels of mental health problems than the general population.

Prison

The male prison population has been rising since early in the 20th century. In England and Wales, there was a dip between 1990 and 1993, possibly due to the introduction of a new parole system, but thereafter there was a sharp rise. It rose from almost 43,000 in 1993 to just over 70,000 in September 2004. The number of women prisoners rose even more sharply, from 1,561 in 1993 to 4,420 in September 2004.

In Scotland, the rise over the ten years to 2003 has not been so sharp but is still significant. The male population rose by 15% over the period and the female population by 67%[13].

One important effect of this rise in the prison population is a significant level of overcrowding in prisons. In 2002, 20% of prisoners were held two to a cell designed for one.[14] We do not intend to deal with this at any length, since prison conditions are outside our remit, but we simply note some of the consequences:

- staff are overstretched. This reduces the time for contact with individual prisoners resulting in a more unstable atmosphere and fewer opportunities to undertake constructive work with them;
- prisoners are often housed at a distance from their home areas. In their submission, the Prisoners' Families Association stressed the destructive effect this has on family ties (known to be important in rehabilitating prisoners);
- training and education programmes aimed at tackling offending behaviour are difficult to arrange and at risk of disruption if prisoners are likely to move.

Community Penalties

"Community sentences" and "community penalties" are used to describe a number of orders which do not involve sending offenders to prison. The orders which can currently be made in England and Wales and Scotland are listed at Appendix D. Probation orders first became available under the Probation of

Offenders Act 1907. The original focus of probation was "advising, assisting and befriending". In the course of the twentieth century, it has developed to include elements of compulsion and restraint.

Table 1[15] illustrates the number of people sentenced to the major community penalties (community rehabilitation order (CRO), community punishment order (CPO) and community punishment and rehabilitation order (CPRO)) between 1992 and 2002. It also shows the gradual reduction in the use of fines over the ten-year period compared with the increase of 92% in the use of prison and the increase of 82% in the major community penalties.

Table 1 Offenders Sentenced by Major Sentence Type in England and Wales
Number of Persons (thousands)

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Number sentenced to:											
CRO	43.9	43.8	50.5	49.4	50.9	54.1	58.2	58.4	56.5	58.9	63.8
CPO	44.1	48.0	49.5	48.3	45.9	47.1	48.6	49.6	50.0	49.8	50.8
CPRO	1.3	8.9	12.4	14.6	17.3	19.5	21.2	20.7	19.2	14.7	15.5
All community sentences	102.4	114.8	128.9	129.9	132.6	140.0	149.4	151.6	155.5	165.0	186.5
Prison	58.1	58.7	69.6	79.5	85.2	93.8	100.6	105.3	106.2	106.3	111.6
Fine	1,183.8	1,091.5	1,055.2	996.7	1,073.0	998.7	1,060.7	992.4	1,013.3	930.1	972.7
All sentences	1,1519.9	1,425.0	1,407.1	1,354.3	1,437.8	1,384.7	1,468.9	1,408.0	1,424.3	1,348.5	1,419.6

Source: Home Office Probation Statistics England And Wales 2002. Table 1.1

Reasons for the Increase in the Prison Population and Probation Workload

One obvious question is whether the recent rises in the prison population and the probation workload are the result of an increase in the level of crime. Analyses of prison sentences by Professor Hough and colleagues[16] demonstrate that the number of convictions over the 10-year period from 1991-2001 was down by approximately 11%. The authors examined whether this might be because the distribution of offences had altered in such a way as to drive up the prison population: for example, if the overall downward trend masked a rise in cases involving serious crimes. However, they found that the breakdown of convictions had not altered in a way that suggested a direct relationship with the increased use of custody. Indeed, the number of convictions for violence against the person, sexual offences and burglary had fallen substantially. The one notable exception was a very large increase in the number of convictions for drug offences, a sizeable proportion of which would have resulted in custodial sentences.

The authors also considered whether changes in the seriousness of offending within offence groups might have made custody more likely. This is not a point which can be tested by looking at statistics. They concluded from discussions with judges and magistrates and correspondence with the Home Office, that

it is also not an explanation for the rise. A parallel piece of research is being carried out in Scotland and provisional results tend to indicate a similar pattern.

An analysis carried out for the Inquiry by Lewis[17] confirms that picture. He points out, in particular, that the percentage of offenders sentenced for indictable offences who received immediate custodial sentences was 14% in 1980 and 25% in 2000 to 2002. Similarly, the average length of sentence, particularly for those given immediate custody, has increased.

In the case of community penalties, a similar pattern has been observed. Many offenders who would once have received a fine now receive a community sentence and many of those who would once have received a community sentence are now imprisoned. Professor Rod Morgan,[18] until March 2004 the Chief Inspector of Probation, has pointed out that in 1990, 26% of probationers had violence against the person, a sexual offence, burglary or robbery as their principal current offence and slightly more, 28%, had been convicted of a summary offence. By 2002, the equivalent figures were 18% and 45%[19]. Community service offenders display a similar pattern. He also remarks that less serious offenders who are subject to probation do not have a more serious offending history than was previously the case. This trend is confirmed in our research volume where Bottoms[20] points out that the use of community orders for summary offences has increased by 170% between 1992 and 2002 whilst their use for indictable offences during the same period was 50%.

Fines are discussed by Mair in chapter 5 of the research volume[21]. The decline in their use is important because they are often the lowest rung of the sentencing ladder (although they can be for very substantial amounts of money). Removing them means that more use has to be made of higher penalties. Historically, in times of high unemployment, judges and magistrates have been reluctant to impose fines on those who would be unable to pay and for whom breach would mean imprisonment. But with recent low levels of unemployment that is unlikely to be the explanation for their decline in use. Some possible reasons are that:

- judges and magistrates may have lost confidence in the fine because, even where payment would be possible, many fines remained unpaid because there was no effective means of collection;
- where once the pre-sentence reports (PSRs) prepared by probation staff would have focused on the crime committed, probation staff are now required to use systems designed to measure the risk of future offending;
- there may also be an increasing expectation that "treatment" should be made available to address offending behaviour even though most first-time offenders never re-offend.

We discuss this further in Chapter 8.

The Real Length of Sentences

The actual level of the prison and probation populations is affected not only by the number and length of sentences but also by what happens after they have been imposed. Prison sentences may be increased by additional days to be served because of misconduct in prison. Community sentences may be increased by the courts because of breach of the terms of the order. However, the most important factors which affect

the time actually served in prison are parole and executive early release under home detention curfew (HDC).

Parole

From at least 1898, it has been the practice to allow early release from prison. The original objective was to reward good conduct and so facilitate control. The decision whether or not to release prisoners is currently taken by the Parole Board. New arrangements will be introduced under the Criminal Justice act 2003. Both are briefly summarised in the box below.

Current Parole arrangements

Those sentenced to

- Less than 12 months imprisonment are normally released automatically after serving one-half of the sentence.
- 12 months or more but less than four years also released automatically after serving one half of their sentence, but when first released are subject to a compulsory period of supervision, which normally lasts until three-quarters of the original term has elapsed.
- Four years or more, but not to life imprisonment, would be eligible to apply for release after serving one half of their sentence and would normally be released after serving two thirds.

New arrangements for early release months under Criminal Justice Act 2003

- Sentences of less than 28 weeks are effectively abolished. The court will have to determine the amount of time to be spent in custody (a minimum period of two and a maximum of 13 weeks) and then impose a "custody plus order" during which the offender will be released on licence under supervision.
- The minimum licence period is at least 26 weeks and various conditions can be attached to these orders.
- All prisoners sentenced to a fixed term of imprisonment over twelve months are to be released automatically on licence under supervision at the halfway point of their sentence, except where an "extended sentence" has been imposed by the court because the offender might pose a risk of serious harm.

Home Detention Curfew

Early release on home detention curfew (HDC) was originally introduced under the Crime and Disorder Act 1998 and has been re-enacted in the 2003 Act. Prisoners serving sentences of six weeks or over can be considered for release up to 135 days earlier than would normally occur, provided they have served at least four weeks of their sentence or passed the halfway point of the custodial period (i.e. one quarter of

the sentence). Those released are on licence and subject to conditions which include a home curfew for at least nine hours per day, enforced by electronic monitoring.

In practice, the decision whether or not a person should be released on HDC is taken by the prison governor based on a risk assessment carried out by prison and probation staff (although the Home Office makes the final decision in the case of high profile prisoners). Currently some 3,500 released prisoners are subject to HDC.

The effects of automatic release, parole and executive release in reducing substantially the length of sentences served is a question of some importance in relation to public confidence in the criminal justice system. In their submission, the Bar Council pointed out that these arrangements bring into sharp relief the fact of actual, as opposed to nominal, term. They also say it is arguable that the public is being seriously misled by, for example, the fiction that a sentence is one of 24 months when in fact the prisoner will only serve 26 weeks. We will discuss issues arising from early release later.

Costs of Prison and Probation

One of the advantages most frequently claimed for community penalties, as opposed to custody, is that they are cheaper. The average cost of keeping a person in prison for a year is now put at just over £37,000 in England and Wales[22] and at just under £30,000 in Scotland[23]. In England and Wales[24] the estimated annual cost of a community rehabilitation order was about £3,000, a community punishment order £2,000 and a pre-sentence report £500.

The actual annual costs vary depending on the security level of prisons and the costs of interventions in both prisons and the community. In his submission to us, Paul Kiff[25] points out that the average custodial sentence in a magistrates' court, where the great majority of short custodial sentences are passed, is less than 2.5 months. Taking into account automatic remission, this will entail about 4.5 weeks or one calendar month actually in custody, not allowing for the effect of time served on remand. Therefore, at a maximum, the average magistrates' custodial sentence costs no more than £3,000 in total and this is almost certainly an over-estimate.

Kiff stresses that in making the calculation he does not wish to use it as an argument against the use of community sentences rather than short custodial sentences. He simply wishes to point out the importance of ensuring that the arguments on which any policy change is based are sound.

Chapter 3
Sentencing

The last chapter showed that sentencing has become more severe across the board, with significant increases in both custody rates and sentence lengths for almost all types of offences. It also showed that there is no evidence that changes in the level of crime or seriousness of crime lie behind the increased severity of sentencing, and no evidence that the mix of offenders coming before the courts has changed. This has led us to conclude that the greater use of prison and community sentences and their increasing length must result from sentencing decisions made by judges and magistrates. We therefore need to consider what might have driven these changes.

There are many different opinions about the moral and social justifications for punishment. In the practical working of a criminal justice system, however, sentences have to be imposed and administered by people whose opinions about the purposes and objectives of sentencing may differ. Sentencing also has to be acceptable to general public opinion. In practice, what judges and magistrates have to do, for most of the time, is to pass the sentence which is correct in terms of the law and practice of the court in which they sit.

Sentences are arrived at by reference to:

- rules of law defining the permissible range of sentence for particular offences;
- precedent, including guideline judgements; and
- experience of the level of sentence usually thought appropriate for the case in question.

Although these provide a framework there is considerable scope for judicial discretion.

Statutory Regulation

Maximum and, in a few cases, minimum sentences for many offences are defined in statute. For England and Wales, the Criminal Justice Act 1991 attempted to provide some general regulation by defining a threshold for community penalties and a threshold for custody. Briefly, the Act provided that the court must not pass a community sentence on an offender unless it considered that the offence, or its combination with associated offences, was serious enough to warrant such a sentence. Similarly, the court must not pass a discretionary custodial sentence unless the offence was so serious that neither a fine nor a community sentence could be justified. These thresholds are carried forward in sections 147 and 152 of the Criminal justice Act 2003. However, the terms "serious enough" and "so serious" are not defined.

The situation in Scotland is similar. There has never been any attempt to legislate for general regulation of the factors to be taken into account in sentencing. Section 204(2) of the Criminal Procedure (Scotland) Act 1995 provides that the court shall not pass a sentence of imprisonment on a person of or over the age of 21, who has not previously been sentenced to imprisonment or detention, unless the court considers that no other method of dealing with him or her is appropriate. Section 207 of the 1995 Act makes similar provision about sentences of detention on persons under 21, and requires the court to state its reasons for holding that no other method of dealing with the offender is appropriate.

Precedent and Guidelines

The courts in the United Kingdom have always taken into account decisions reached in similar previous cases when deciding the sentence to impose. The judgements of the courts of appeal have been of particular significance. Appeals against the severity of sentence have been relatively common in both Scotland and England and Wales but, as a rule, in both jurisdictions appeal courts allowed the sentencing court a wide discretion and did not interfere unless the sentence was manifestly excessive. It was not until 1988, in England and Wales, and 1993 in Scotland, that the prosecution could seek review of a sentence on the ground that it was too lenient.

Relatively few decisions on sentence appeals were reported until recently and the guidance available from previous decisions was limited. It seems likely that the system tolerated quite wide divergences in the level of sentencing in different courts.

More recently, in England and Wales, the Court of Appeal has issued a substantial number of guideline judgements designed to regulate the exercise of discretion. In addition, under the Crime and Disorder Act 1998, the Court of Appeal came under a duty to issue new sentencing guidelines and to revise those already existing. A Sentencing Advisory Panel was set up to assist it in that task. This development was taken further by the 2003 Act which established a Sentencing Guidelines Council (SGC) chaired by the Lord Chief Justice. In England and Wales, the Magistrates' Association provides guidelines, which are not mandatory, but which are used as an important guide to practice. In future, guidelines for magistrates will also be produced by the SGC.

The courts in Scotland and Northern Ireland have been much less inclined to issue general guideline judgements. The Scottish Executive has set up a Sentencing Panel, chaired by a High Court judge, but so far its function is limited to advising on whether a commission or panel should be set up to provide guidelines and on the form which such a panel might take. The purpose of guidelines is to bring about greater consistency in sentencing. This is not as easy as might appear on superficial consideration. The difficulty is most intense in trying to devise a way of defining with precision the level of seriousness at which a custodial sentence becomes necessary.

In theory, they could be used to encourage either an increase or a reduction in the length of sentences. There are instances in American states in which sentencing guidelines appear to have been used successfully as a deliberate policy measure to ease pressure for increased prison sentences[26]. In practice, in the United Kingdom, there is accumulating evidence that guidelines tend to create upward pressure on sentences. This is discussed by Wasik in chapter 12 of our research volume[27].

The effect of guidelines can be illustrated in the case of domestic burglary. This offence is taken regularly as a sort of litmus test of the severity of sentencing in a criminal justice system. Guidelines have been given by the Court of Appeal in the well-known case of R. v. McInerney 2003 Cr. Ap. Rep. 627 and the case is also dealt with in guidelines issued by the Magistrates' Association (see case study box). This example illustrates the extreme care which is required in devising and presenting guidelines if they are to have a predictable, consistent effect.

CASE STUDY

Sentencing Guidelines for Domestic Burglary

In the case of R. v. McInerney, the Court of Appeal sought advice from the Sentencing Advisory Panel. The advice of the Panel was that:

- for a low level domestic burglary committed by a first-time burglar, where there was no or little damage to or theft of property, the starting point should be a community sentence;
- for one involving theft of electrical goods or personal items, damage caused in the break-in, some turmoil in the house and some trauma for the victim, the starting point should be a custodial sentence of nine months for a first- time burglar and three years for one with two or more convictions; and
- for one displaying, in addition, factors described as "medium level aggravating" such as a vulnerable victim, a victim present at the time, theft of high value goods or burglars working as a group, the starting point for a first-time burglar would be twelve months, with higher sentences for those with previous convictions.

The court did not accept the approach of the panel in the latter two cases. It said that in cases in which the courts would otherwise be looking to a starting point of up to eighteen months' imprisonment the initial approach should be to impose a community sentence subject to certain conditions to ensure its effectiveness.

It is interesting to compare that approach (controversial as it was) with the Magistrates' Association guidelines. These list the possible aggravations in a way similar to the Panel's advice in McInerney, but the guidance states:

"If ANY of the above factors are present, you should commit for sentence". That message is reinforced by the way in which the mitigating factors are set out. The guidance instances, among possible mitigations, "First offence of its type AND low value property stolen AND no significant damage or disturbance AND no injury or violence" and adds "ONLY if one or more of the above factors are present AND none of the aggravating factors listed are present should you consider NOT committing for sentence".

All three approaches to sentencing a first-time burglar prescribe very much the same factors to be treated as aggravations and mitigations. Nevertheless, it is clear that the approach of the Magistrates' Association will send the most burglars to prison and that of the Court of Appeal the fewest. Indeed, it is hard to see that the Magistrates' Association leave much real room for community penalties.

Judicial Discretion

Sentences have to be imposed and administered by persons whose views differ individually. They must also be acceptable to a public whose views likewise differ. The research carried out for the Halliday Report[28] identifies some of those differences, as does the work of Rex[29] in our research volume.

In practice, there are some underlying principles which have traditionally been regarded as guiding judicial discretion. For England and Wales, these are set out in statute for the first time in the Criminal Justice Act 2003[30] and are:

- punishment;
- reduction of crime (including deterrence);
- reform or rehabilitation;
- protection of the public; and
- reparation by offenders.

The same general principles govern sentencing tradition in Scotland, though not so precisely articulated in any one court decision.

There are no fixed rules to govern the way in which these principles should be applied or on their order of priority. The judges' or magistrates' discretion is very wide, even where there are relevant guidelines or guideline judgements. This is because it is virtually impossible to set out guidelines which allow for all the variables in relation to the crime or the circumstances of the offender.

In passing sentence, the judge or magistrate will usually mention the features of the case which have been taken into account. But, in the United Kingdom, it is not normal for him or her to give a judgement in which particular factors, whether of aggravation or mitigation, are identified and given specific values or weights. The sentence is normally based on an assessment of all the factors taken together[31]. Neither is it usual for the individual sentencer to consider broader issues such as the relationship between sentences passed in different kinds of cases, for example, how a sentence of three years' imprisonment for aggravated burglary might relate to one of two years for street assault.

In any event, for much of the time the various objectives of sentencing are not seriously in conflict. When they may seem inconsistent, this is often resolved by a working understanding that the primacy of any one objective of sentencing over others is not fixed, but varies from case to case. For example, most people would accept as a working assumption that proportionality has an important role and therefore that a trivial offence should not lead to a severe custodial sentence even if the offender is rated as very likely to re-offend.

There has been one relatively recent attempt to subject the exercise of discretion in sentencing to a governing principle. The Criminal Justice Act 1991 set out a new policy framework for sentencing in England and Wales, a key element of which was the "just deserts" or proportionality principle. The object was to make the seriousness of the offence the governing factor in deciding on the appropriate level of punishment, particularly when deciding between custody and some lesser penalty. The Act also sought to

downgrade other traditional elements of sentencing such as deterrence and the previous conduct of the offender. These provisions remained in force until the 2003 Act came into effect, but the attempt to regulate discretion in this way is regarded as a failure and deterrence and previous conduct remain as material considerations in sentencing. The failure has been attributed to a number of reasons, including obscurities and inconsistencies in the Act itself.[32]

Judicial Independence

It is of prime constitutional importance that the decision of a judge or magistrate in an individual case should not be directed by the executive or any other non-judicial authority. On the other hand, it is clear that penal policy as a whole cannot be determined by judges and magistrates alone. It is, for example, a question for a democratic government to determine the resources which can be spent on prisons rather than on, say, hospitals. The consequence of such decisions imposes practical limits on what the freedom of the courts can achieve and, if there is a conflict, there must be a means of resolving it.

The Carter Report[33] envisages some attempt to resolve the problems in this area by talking of a new role for the judiciary. It states:

"Judges and magistrates need to recognise their responsibility to ensure the effective use of prison and probation.

This includes:

- *greater consistency of sentencing practice in relation to sentencing guidelines;*
- *greater provision of information on individual sentencing practice and its impact on re-offending;*
- *sentencing guidelines informed by evidence of what reduces offending and makes cost effective use of existing capacity."*

These observations are obviously intended to make the minimum impact on judicial sensitivities about interference with their independence. Carter sees the guidelines developed by the Sentencing Advisory Panel and the Sentencing Guidelines Council as an important way of achieving this change in sentencing practice. A possible reason is, perhaps, that they might be seen as developed by judges and magistrates themselves, and therefore less liable to the perception of interference with judicial independence.

There may also be uncertainty, not touched on in the Carter Report, about the relationship between the Sentencing Guidelines Council and the government, particularly the Home Office. It has always been open to Parliament to prescribe sentences by legislation. On the other hand, the courts have resisted suggestions that the executive branch of government should influence them in the exercise of their discretion because that would infringe the principle of judicial independence. There has been some concern that the involvement of persons other than judges in drawing up guidelines might affect judicial independence. It might provide a means by which political or executive influence might be brought to bear without either primary or secondary legislation.

What has Driven the Increasing Severity of Sentences?

We suggest that there are a number of factors which are inevitably present in the minds of judges and magistrates and which, either consciously or subconsciously lie behind the rise in the use of custody and community penalties. These can be grouped under five headings.

Awareness of Context

The fact that, until comparatively recently, crime had risen so dramatically, its high media profile and the priority given to its reduction by political parties.

Direction of Political Intervention

With some exceptions, much of the political intervention in the criminal justice system in the last ten years has been in the direction of increasing severity, for example, the raising of maximum sentences and the introduction of the three-strikes rule[34].

Structure of Penalties

As discussed in chapter 2, the sentence announced by the court is almost invariably longer than the time which will actually be served. The judge or magistrate may therefore be tempted to fix a sentence by deciding how long he or she wants the offender to stay in prison. This tendency may be encouraged because judges and magistrates are required to explain how long will actually be served which may be puzzling to victims and other interested persons.

Unintended Effects

Earlier in this chapter, we discussed the pressure to reduce discrepancies in sentencing, for example, by the development of guidelines. Though desirable in itself, there is a growing consensus that the effect has been to increase the average length of sentences.

Pressure of Expectations

Where sentences have to be seen as punitive, there is pressure to escalate both custodial and non-custodial penalties. A further consequence of this need to be seen as punitive could be a move to the strict enforcement of non-custodial sentences, which may result in the use of custody where breaches occur.

Diversion from Court

There are a number of ways by which a person who has been arrested or charged, can be released without the full process of prosecution. These are grouped under the heading of diversion and are described in the box. Our interest lies in measures which avoid the full criminal process but involve some recognition of a breach of the criminal law. In England and Wales the power of diversion lies largely with the police rather than the court, but in Scotland it is the responsibility of the procurator fiscal.

There has been relatively little research on the exercise and effects of diversionary measures, and much of that which has been done in England and Wales has been directed to inconsistencies between police forces in the exercise of their powers. But the figures available suggest that cautions and warnings are effective in terms of reconviction rates[35]. The problem with cautions in the future, both for adults and juveniles, may well be to prevent overuse of the power to impose conditions or to draw up intervention programmes, with the consequent risk of escalation towards custody[36].

In Scotland there does not appear to be any readily available information as to the success of warnings or fiscal fines in terms of reconviction rates.

Diversion From Court

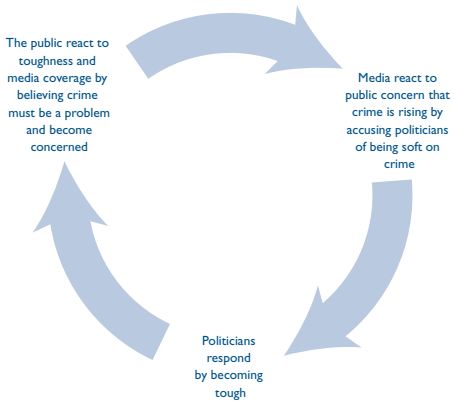
Police officers have probably always made a practice of issuing informal warnings in cases where they thought that further action was not required. In England and Wales, a police officer may issue a formal caution to a person over 18 who admits an offence, and who consents to being dealt with in this way. The 2003 Act will enable a conditional caution to be given, that is, one subject to conditions with which the offender must comply. For those under 18, the police may issue a reprimand, where the offence is admitted and the person has not previously been convicted, reprimanded or warned. A warning is the next, more serious, step and can be given only where the offender has not been given a warning within the previous two years. A young person issued with a warning is also referred to a YOT. Formal cautions are not convictions but may be cited in court if the offender offends again within three years.

In Scotland, the power to issue warnings is in the hands of the procurator fiscal, and appears to be exercised in about 5% of the cases reported by the police. The fiscal also has power to propose a fine for relatively minor offences. The proposal operates in a way similar to a fixed penalty notice. Neither a warning nor a "fiscal fine" counts as a conviction. The procurator fiscal can also offer diversion to one of a number of programmes including social or psychiatric assistance or mediation/reparation, but this power is exercised in only a very small proportion of cases.

Chapter 4
Public Attitudes

General

Explanations put forward in our consultation as to why the prison population has increased can be summarised as in the diagram below. This shows a vicious circle, with public attitudes stereotyped as punitive, the media, especially the tabloid press, as stimulating public and political concern by unbalanced reporting and politicians reacting to both by becoming tougher with each emerging crime problem.



This is, of course, an oversimplified description, but it illustrates the reality of all actors in the criminal justice system who do their best to ensure that legislation and practice reflect the concerns of the democratic society in which they are functioning. However, determining the public's real attitudes to issues of crime and punishment is difficult. In chapter 4 of the research volume, Maruna and King[37] discuss the approaches that have been tried, with varying success. The difficulties include the fact that the attitudes of many members of the public are not necessarily clearly articulated and thought out. Even if they are, they may not be consistent. The public's response to any particular issue of crime or penalty may be highly dependent on the context. Further, people can hold attitudes which, logically, might be thought contradictory. It is not therefore surprising if surveys of public opinion appear to show that public attitudes are inconsistent between different groups, between different individuals and even within the same individual.

The Rethinking Crime and Punishment briefing paper[38] on media and the shaping of public knowledge and attitudes includes the observation:

"Statements made in focus group discussions and in questionnaires are often contradictory and ambivalent views emerge when the details of specific cases are discussed."

That comment was made with reference to attitudes to sentencing in television crime stories, but it seems to be capable of general application.

This lack of consistency and ambiguity about crime and punishment by most members of the public is quite understandable given that they are not aware of what may be involved in a particular prison sentence, the wide range of community penalties, the amount of crime and the effect of sentencing.

In considering public attitudes, it is also important to bear in mind why public opinion is being canvassed in any particular study. Politicians, policymakers, journalists and academic researchers may be looking for quite different things. Put at its simplest, academic researchers may be interested in the ways in which different groups form and express their opinions and how those opinions may be affected by circumstances. Politicians, on the other hand, may be interested in what propositions or programmes the members of the public will, or may be brought to, support.

There may well be substantial differences between what people may judge acceptable on a small-scale study basis (as a matter of criminological assessment) and what they are likely to support publicly (political judgement). Yet a further complication for our purposes is that, as the Prison Reform Trust point out in their submission, the attitudes of the public towards crime are often formed by reference to striking or dramatic cases - murders, rapes, robberies and child abuse - and are not easy to relate to the kind of cases in which community penalties might well be considered.

However, we suggest that there are some basic elements in public attitudes which are unlikely to vary. That:

- there is too much crime (even if crime has reduced);
- crime should be reduced;
- criminals should be made to stop; and
- criminals should be punished.

Level of Punitiveness

One of the suggestions frequently made in the discussion of public attitudes towards crime is that the public is considerably less punitive than tends to be suggested by the tabloid press and politicians. A considerable number of studies have been carried out to assess this.

One major study took the form of a civic participation event organised for the Scottish Parliament's Justice 1 Committee[39]. The report of the outcome is extremely instructive, but it does not produce a simple, easily formulated conclusion. Participants included people who were active in a wide variety of roles within their communities. Some had seen close relatives murdered and sons and daughters become drug takers. The event entailed participants completing a series of activities relating to short case studies prior to their attendance. These were used to benchmark their initial judgements regarding the aims of

sentencing and the appropriateness of sentencing options. Throughout the event, these case studies were returned to, each time with added details, to assess whether and why a participant's judgement would change. Two types of additional information were provided. Firstly, briefings provided by expert speakers on trends in crime, prosecution policy, imprisonment and alternatives to imprisonment and, secondly, extended case details were provided, describing context and the guilty party more fully. At the end, there was no consensus on some topics, but clear trends and majority opinion emerged. For example, a number of participants raised the importance of education, schools and communities, stressing that there is a wider aspect to the justice system. It was also notable that preferences changed considerably in the light of detailed case information.

The Justice 1 Committee concluded that once members of the public are aware of the full circumstances of the offence and the offender, they begin to see that community disposals can be more effective than imprisonment and that, with the right information, the public can support greater use of community sentences.

Similar propositions are supported by work carried out by the Centre for Social Marketing at Strathclyde University for Rethinking Crime and Punishment (RCP) published in November 2002[40]. Researchers found, not surprisingly, that crime was an emotive issue. It produced feelings of anger, bewilderment and frustration that there is not a better way of dealing with offenders. People found the idea of non-custodial sentences hard to grasp and a soft option, but the high financial and humanitarian cost of prison and the rising prison population did not lead them to think that prison should be used less. People wanted the state to do what is necessary to keep them safe. In addition, statistical arguments about the effectiveness of non-custodial sentences had much less impact than arguments about the values and principles underlying them; paying back, making good and learning "how good people live" resonated strongly. The researchers concluded that, despite appearing superficially punitive, public views and needs regarding sentencing are complex and sophisticated.

This research demonstrates the importance of understanding what punishment and the language surrounding it really mean to people, and the importance of getting beneath the opinion polls. Most importantly, there is a need to ensure that non-custodial sentences really are capable of delivering the benefits valued by the public. In marketing terms, it is pointless to focus on promotion if the product is poor. For the public to be persuaded emotionally that non-custodial sentences work, they must work in reality. However, although this supports the idea that the public is not necessarily as punitive as is sometimes thought, the research results are also very much consistent with the idea that the public is interested in the reduction of crime by whatever means.

Maruna and King[41] explore the complications of judging both the punitiveness of the public and the degree to which these attitudes are open to change. They begin by drawing attention to the fact that public confidence in the criminal justice system has recently been given a central role as appears in both the Halliday and Carter reports. They find that, nonetheless, the relationship between recent policy developments and public wishes has been anything but direct. A considerable amount of "penal populism" defined as allowing "the electoral advantage of a policy to take precedence over its penal effectiveness" seems to take place with only a caricatured understanding of the public's real views regarding crime and justice.

The authors review a large body of research which tends to indicate that the public are systematically misinformed or under-informed about many aspects of the criminal justice system, indeed they say:

"Research on public opinion suggests that the public is rather dubious of official crime statistics, whether they are collected by the police or through the British Crime Survey, and to some degree, of course, this scepticism is completely warranted."

They also observe that it is certainly misleading to characterise public attitudes as indiscriminately punitive. Research shows conclusively that, although the public largely supports harsh punishment for serious offenders, there is a great deal of opinion in favour of rehabilitation. Members of the public do not see any contradiction in valuing both retribution and rehabilitation, a factor which complicates both the designing and the assessment of research studies. More generally, what emerges is that the question of whether the public is punitive may not be capable of a meaningful answer. It follows that simplistic studies of where the public stands may be futile.

With particular regard to community penalties, the most common finding is that the public is largely unfamiliar with this aspect of the criminal justice system. From what little they do know about these penalties they are anything but inspired and excited about their potentialities but, despite this, the research literature does not find that the public strongly oppose non-custodial sentencing.

Maruna and King go on to consider the usefulness of providing education and information about sentencing to the public. They quote evidence which finds that it is irrefutable that information has some effect and that, in particular, explaining the variety of restitution and compensation alternatives has the immediate effect of reducing punitive tendencies. They also cite evidence which shows that respondents who express punitive views in the abstract, often moderate those views when presented with more information about the offenders themselves. One of the most promising findings regarding education is that the active participation of citizens in the criminal justice process increases satisfaction with the service and decreases punitiveness. Apparently, easy slogans like "hang 'em high" or "lock 'em up" become less tenable when individuals are assigned the responsibility of actually trying to turn such general notions into practice.

As a cautionary note, however, Maruna and King point out that it appears that the impact of education on attitudes may be short-term in its effect. Care also needs to be taken in the research design to limit the tendency for the public to respond in a way they feel will please the researcher.

Community Study

In addition to our research review, we commissioned a community study to explore a gap in the literature on public attitudes to crime and punishment. Communities with high crime rates are often areas where many known offenders live. Nevertheless, relatively little is known about what the residents in these areas think about the offenders who live among them. To explore this question, we commissioned a community study by Bottoms and Wilson[42]. It took place in two areas in of Sheffield. The results (see box) were interesting and surprising and require further analysis, but several points emerge which are immediately relevant to our inquiry.

COMMUNITY STUDY

The two areas of Sheffield are of approximately the same size and are both in the top 10% of areas of social deprivation in the city. Area A, is a multi-cultural, inner-city, mixed housing area. Just under half the population describe themselves as "white British". Area B originally consisted mainly of local authority housing with some cheaper owner-occupied property. However, demolition and the effects of right to buy legislation have led to near equality between owner-occupation and social housing.

Recorded crime runs at similar levels in the two areas but there are significant differences in the types of crime. Violence, with some gun crime, is higher in area A, which is known to be a drug-dealing area. Criminal damage and vehicle crime are higher in area B. A survey carried out as part of the research project tended to confirm the picture shown in the official statistics. It also brought out signs of a greater sense of insecurity in area B, such as complaints of "youths hanging about".

The survey also explored residents' levels of punitiveness, their support for community sanctions and views on the scope for rehabilitating offenders. The methods used were chosen to permit comparisons with the results of surveys of these issues from other areas. Surprisingly, area B turned out to be significantly more punitive and less supportive of community sanctions than area A. Indeed, the two areas were at opposite ends of the range of results from the other areas in the country which were surveyed. Both, however, showed similar and quite high levels of support for rehabilitating offenders and showed interest in community reparation as a form of sanction.

The more punitive approach in area B is consistent with other research findings which suggest that residents are more likely to express anxiety about disorder than about some other crimes which are, objectively, more serious. This points to the importance of initiatives such as the National Reassurance Policing Project. The researchers observe that the probation service is invisible in both of the areas, a point which is relevant to our discussion of the delivery of offender management services. It is also the case that a number of special initiatives have led to an enhanced sense of social control in area A, which may well have led to reduced punitiveness.

The results of the study, showing high levels of support, in principle, in both areas for rehabilitation and community reparation are very important and significant for the use and development of community penalties. So also is the apparent conclusion that disorder in an area might lead to a more punitive public response, and a perception of enhanced social control might lead to a greater willingness to contemplate an enhanced use of community penalties. The results suggest that these realities of daily living need to be taken into account by the probation service and others.

Conclusions

The evidence about public perceptions does not present a clear picture. But the following points are relevant:

- it is misleading to say either that the public demands severe penalties and nothing else or that public punitiveness is completely exaggerated;
- where punitive attitudes are expressed, they are liable to be modified by the provision of information about possible methods of dealing with offenders other than imprisonment and about the nature and circumstances of the offences and the offenders themselves;
- the extreme importance of trust and confidence in the system and the fostering of that trust by means of public and community involvement, both in the operation of the system and in the carrying out of sanctions for criminal behaviour, particularly sanctions other than imprisonment.

RECOMMENDATIONS

The government should

- **ensure that information and education about community sentences and work undertaken in the community is widely available;**
- **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.**

Just before the Report was finalised, the Home Office announced a drive to promote community sentences. It appears that the drive is to be carried out with the assistance of a public relations company and that the intention is to provide information and publicise success stories. We welcome any attempt to improve public understanding. We would however add a cautionary note. There does seem to us to be a risk that a campaign seen as a public relations exercise will not do much to alter entrenched attitudes and a campaign of this sort is not a substitute for a prolonged and determined effort to increase public understanding by promoting public involvement in the actual carrying-out of community penalties.

Chapter 5

How Prison and Non-custodial Sentences Meet the Objectives of Sentencing

The majority of the 120 or so submissions we received, for example, APEX (Scotland), the Religious Society of Friends, the YMCA (England) and the Inside Out Trust, recognised that statistical evidence on reconviction rates was ambivalent as to the superiority of community penalties over prison. Nevertheless, they emphasised the benefits of community penalties and made suggestions as to how their use could be extended and improved. A small number, including Civitas, argued strongly that the proper response to crime was to be found in greater severity involving, if necessary, an increase in the use of custodial penalties.

In order to assess the place of community penalties in sentencing we need to consider how they meet the five main objectives of sentencing set out previously This is not easy because, as we discussed in the last chapter, the objectives overlap and do not have an order of priority.

Punishment and Retribution

Theoretical analyses of the justification of punishment are discussed by Rex in chapter 5 of the research volume. These fall into two broad groups, those which look backwards, punishing and/or confronting offenders with the consequences of their crimes, and those which look forward, to find ways of encouraging desistance from crime in the future. These approaches are not mutually exclusive. Indeed, they tend to support the traditional approach to sentencing.

Clearly, the deprivation of liberty and stigma of imprisonment are punishments and send out a powerful message about society's disapproval of criminal acts. But other sentences also contain punitive messages in different degrees. Fines are perhaps, apart from custody, the most obviously punitive sentence. Despite the recent decline in their use they are still one of the most widely used punishment – over 972,000 were issued in England and Wales in 2002 and 77,636 in Scotland. Home detention curfews (HDC), enforced by electronic monitoring, deprive offenders of liberty, although clearly less so than prison. Probation orders are less obviously retributive but, when combined with other requirements such as attendance at offending behaviour programmes and electronic tagging, have a punitive message marking what the offender has done as wrong. Finally, community service/punishment, attendance centre orders, Drug Treatment and Testing Orders (DTTOs), anti-social behaviour orders and so on are punitive insofar as

they remove offenders' freedom of choice about how they use their time and, in the case of DTTOs, their freedom to take drugs.

Rex[43] describes the findings of a survey she undertook of stakeholders' (magistrates, probation staff, victims and offenders) views on the purposes of punishment. She found widespread support for community penalties as opposed to custody as a means of punishment, largely because of their scope for achieving the other objectives of sentencing. She also found:

- all groups expressed little support for "pure" retribution as a purpose of sentencing;
- offenders were less keen to identify and receive messages of disapprobation than the other groups were to transmit them;
- offenders were reasonably positive in accepting what was required of them in the way of response (try and avoid offending in the future, change behaviour, show remorse);
- probation staff and offenders rated rehabilitation as the top aim in preventing crime – but magistrates and victims gave this a lower ranking.

These findings reflect similar outcomes in relation to the attitudes of the public which we discussed earlier and demonstrate that the majority of people think that punishment or retribution, for the most of offences, should be combined with more positive initiatives to try to prevent reoffending.

Reduction In Crime

Custody as a means of reducing crime has two main aspects – incapacitation and deterrence. These are often put forward as justifications for high levels of imprisonment in this country and, particularly, in the USA. One of our largest submissions, from the think-tank Civitas, argued such a case. As can be seen below it is not one we consider borne out by the research evidence.

Incapacitation

It is obvious that while prisoners are in custody they cannot commit crimes in the community. This is the effect known as incapacitation. The problem is to work out the size of that effect and the consequences of increasing the use of custody.

In chapter 3 of the research volume, Bottoms[44] surveys more recent research on incapacitation, particularly in the U.S.A.. There, a higher proportion of known offenders are in custody than would have been the case before the increases in the use of imprisonment in recent decades. He concludes:

- increasing the number of people in prison often has an incapacitative effect;
- the extent of this is exceptionally difficult to measure, especially using data from large geographical areas (e.g. national level data, upon which most of the existing research has relied);
- after a time diminishing returns set in. This is a point of significance because studies of the criminal careers of young men, who commit a very large proportion of all crime, show that their rate of offending rises very sharply to a peak at about the age of nineteen and thereafter falls again rapidly. The

great majority of offenders stop offending by about the age of twenty-five – almost irrespective of how they are dealt with. Therefore, lengthy custodial sentences may be an expensive way of housing those whose criminal careers are at an end;

- other factors, such as the economy, are also important in influencing local crime rates. These must be properly taken into account if research estimates of incapacitative effects are to be meaningful.

These conclusions are consistent with the findings of the Halliday and Carter Reports. They found that the prison population would need to increase by around 15% for a reduction in crime of 1%. If offenders who commit high numbers of crimes were targeted, such as those with drug problems, a 1% reduction in crime might be achieved with a 7% increase in the prison population. Much the same conclusion was also reached by Cavadino and Dignan,[45] based on older estimates.

Deterrence

The deterrent effect of prison has been widely studied. Research findings by von Hirsch and others[46], supported in both the Halliday and Carter Reports, indicate that the evidence, although limited, provides no basis for making a causal connection between variations in sentence severity and differences in deterrent effects. However, the increased likelihood of detection and conviction **is** statistically associated with declining rates of crime.

Halliday[47] recommended further research in this area. There has been no further Home Office funded research and little research in the UK, but there has been a detailed review by Doob[48] of published research, including studies of the effects of the "three-strikes" legislation in some American states. This study concludes unequivocally that it is a reasonable assessment of the research to date, and particularly in the last decade, that sentence severity has no effect on the level of crime in society.

The Economist on 3 June 2004 reported on research relating to the USA. In summary it said:

Comparison of the experience of states which have adopted the "three-strikes" law with that of states which have not, signally fails to support a simple relationship between severity of punishment and deterrence. The fall in crime has occurred across the whole country. Some researchers have calculated that crime fell 11% more in the 24 states which did not adopt a "three-strikes" law than in those which did. Even in the states which did adopt it there are differences between counties in the extent to which the law is used, with the result that there are examples of crime falling more rapidly in the counties which make less use of the law than in those which use it more.

Protecting the Public

It is not easy to separate completely, public protection from measures aimed at reducing offending more generally. Custody clearly protects potential victims from dangerous, violent offenders. Within recent years, systems have been developed for assessing the risks posed by these offenders, who include sex

offenders. These systems have proved valuable in decisions on parole and early release from prison. Once in the community, multidisciplinary police and probation teams may also monitor the most serious offenders and keep them under surveillance. They are often used in conjunction with electronic monitoring which is discussed by Nellis in chapter 9 of the research volume[49]. The Home Office is also undertaking pilot satellite tracking programmes. These would enable the police to be alerted if offenders approached a place from which they were banned – such as a victim's home.

For less dangerous offenders there are other protective measures in the community. These are largely orders whose conditions limit offenders' freedom, for example restraining orders, anti-social behaviour orders (ASBOs) and HDCs. Again, these are used in conjunction with electronic monitoring.

Electronic Monitoring and Satellite Tracking Technology

In England and Wales electronic monitoring became available, to a limited extent, under the Criminal Justice Act 1991 and was progressively extended to early release schemes, curfew orders and bail orders for juveniles. Under the 2003 Act it is available as part of the single community order. In Scotland, provision was made for restriction of liberty orders supported by electronic monitoring by the Crime and Punishment Act 1997.

In England and Wales in the financial year 2003/04 there were 46,472 new starts under electronic monitoring. The service and all related equipment is provided by private sector contractors. There are obvious and substantial advantages in the use of electronic monitoring. As a sentence in itself, a restriction of liberty order imposes a distinct penalty by limiting the offender's freedom in a way which may be quite material. In connection with other orders, it provides a guarantee that the terms of the order are not being breached. In both cases, it provides reassurance to the public that the offender's behaviour is subject to some control. Stand-alone curfew orders were estimated to be a cost effective alternative to probation and custody with an average order being costing the equivalent of six weeks in prison (see chapter 9 of the research volume by Nellis). However there is evidence that in 2003 only 20% of the adult curfew orders replaced custody, 32% other community sentences and 43% replaced fines and discharges.

In England and Wales a pilot programme to evaluate the use of satellite tracking technology began in three probation areas in September 2004. The technology permits offenders' whereabouts to be monitored in conjunction with exclusion orders which require offenders not to enter specific geographical areas. Offenders who will be included in the pilots are prolific offenders suitable for intensive supervision and monitoring, offenders convicted of domestic violence and sex offenders. The pilots include adults and juveniles.

Rehabilitation and Reform

Work designed to aid rehabilitation and reform is incorporated in most sentences, in both prison and the community. Only fines, extremely short prison sentences and HDC, when used without any other intervention, have no such element. In both prison and the community, this work now centres on

accredited programmes which have to meet tough bureaucratic requirements. Both the Halliday[50] and Carter[51] Reports had considerable expectations (which have not been entirely met) about the success of these programmes. We deal specifically with interventions relating to drug misuse in the next chapter.

Those who made submissions to us about this, for example the Probation Managers' Association and the Thames Valley Partnership were almost unanimous that it is virtually impossible for effective programmes to be delivered in prison, unless offenders are serving reasonably long sentences. The prime reason for this is that the organisation and delivery of the programmes cannot be carried out in less than about six months. In addition, and as we explained in chapter 2, an offender subject to a six month sentence may actually be in custody for as little as six weeks. The high prison population and the consequent need to put prisoners where places can be found, rather than where the most suitable programmes are available, is a further factor which seriously affects rehabilitation programmes in prisons.

Rehabilitative and Re-Integrative Penalties

The effectiveness of interventions designed to reduce re-offending is dealt with in two chapters of our research volume. In chapter 8, Raynor reviews the contribution of rehabilitative and re-integrative penalties. He points out that research on the process and effectiveness of rehabilitation has generally concentrated on its narrowest meaning, the reduction of re-offending[52].

Studies in the 1970s concluded that "nothing works" and there was no appreciable difference in outcomes between different sentences. Raynor observes that the effect was virtually to close down UK government research on the effectiveness of probation for some time. He then surveys more recent meta-analytic reviews (meta-analysis is a set of statistical procedures designed to combine experimental and correlational results across independent studies that address a related set of research questions) and concludes that these estimate a difference in reconviction rates of 9% or 10%. This is modest but, if achieved, has considerable policy significance in a field accustomed to results showing no difference.

He goes on to explain that, when interventions are restricted to those thought most likely to be useful, effect sizes tend to rise: for example, a meta-analysis of 68 studies of the effectiveness of cognitive/behavioural methods with offenders, shows an average effect size approaching 13%[53] while another, reviewing a range of effective projects in Europe, reports a 21% difference in re-offending (measured in various ways) between groups subject to the interventions and comparison groups who were not[54]. Lipsey and Wilson[55] report on even larger effect sizes from effective work with young offenders.

Raynor draws attention to the problems of repeating the results of successful pilot projects when they are transferred to mainstream provision. There are clearly several factors at work. One is the staff – those who have developed programmes and believe in them may deliver them more charismatically. Motivation to succeed is also likely to be high amongst staff handpicked for the pilot. In addition, pilot programmes are likely to be carefully targeted at those offenders most likely to benefit, they, in turn, may be better motivated to succeed in a "special" rather than ordinary programme.

Intensive Supervision and Surveillance

Chapter 11 of the research volume by Worrall and Mawby[56] focuses on intensive community projects for prolific/persistent offenders. In this, they survey the history of intensive supervision initiatives and identify three "generations" of approaches.

The first two generations, in the 1970s and 80s, respectively were not a great success. In a well-known project in the 70s[57] participants were more, rather than less, likely to offend than non-participants. Programmes undertaken in the 1980s proceeded more on the philosophy of deterrence and incapacitation rather than rehabilitation. They also included elements of surveillance. Evaluations of these were consistently discouraging in terms of their impact on re-offending. In the USA, it was found that they did not alleviate prison overcrowding and, in some states, exacerbated it because of increased revocations of orders for technical violations. In their favour, offenders themselves spoke very positively of the projects, enjoying the additional attention. The projects were also successful in providing greater control or structure for offenders and thus making it more likely that they would persevere with – and possibly benefit from – treatment programmes.

Although the projects failed to meet their stated goals, they did have some effect in enhancing the credibility of probation by demonstrating a change of culture and a reduced tolerance of crime and disorder. This, in turn, attracted more resources and raised the esteem and self-esteem of probation officers.

The third generation of programmes in England and Wales includes intensive supervision and surveillance programmes (ISSPs) for under 18s and intensive control and charge programmes (ICCPs) for older offenders (see appendix E for description). Both use multi-disciplinary teams to target the most active repeat offenders and those who commit the most serious crimes. These programmes show a major departure from previous projects by avoiding the pitfall of relying on offenders to reduce their own rates of re-offending. Increased intelligence and monitoring due to the inclusion of the police in the supervising teams make the detection of offending more likely. Offending is followed by prompt re-arrest. Worrall and Mawby comment that although arrests are seen as a sign of success the logic is flawed. The possibility that a project could claim success entirely based on arrests and breaches of orders seem to be somewhat at odds with the spirit of the exercise and this conundrum is central to any understanding of the impact and contribution of such projects.

CASE STUDY

Worrall and Mawby spent 18 months evaluating a recent prolific offender programme at Stoke. They conclude that projects of this kind have benefits beyond that which can be measured easily by quantitative performance indicators (of conviction rate and cost). They found the project participants and their families had experienced the following benefits:

- stopped or reduced their offending whilst they were on the project;
- kept them occupied;
- provided them with a sense of purpose;
- helped with their drugs problems;
- built their confidence in doing everyday things, e.g. finding accommodation, dealing with the utility companies, social interaction; and
- helped the rebuilding of relationships with families (partners, children and parents).

The authors accept that participants might be inclined to talk up the benefits of a programme which had taken interest in them but suggest that from their observation these were, nevertheless, genuine benefits.

Evaluations have not provided overwhelming evidence of reduced offending or cost effectiveness. However, prolific offender projects are complex in terms of their multi-agency nature and the needs of their clientele and need to be judged on more than two year reoffending rates and cost effectiveness, although these are of course important.

The Home Office is currently evaluating ISSPs. Interim results were published in September 2004. These show:

- about half the young people who began ISSPs completed them – which is viewed as good for this group of offenders;
- 85% were reconvicted;
- the principal aim of ISSPs is to reduce the rate and seriousness of offending. They achieved this, with the frequency of offending down by 43% and seriousness by 16% in the twelve months after starting on an ISSP compared with the twelve months before. However, the comparator group, young people eligible for an ISSP but who instead received a Drug Testing Order (DTO), supervision order or Community Rehabilitation Order (CRO), performed as well, or slightly better;
- a cost benefit analysis showed that the value of benefits of ISSPs was three times as high as their costs – but this was not compared with a similar calculation for the comparator group.

Clearly, these initial findings are somewhat disappointing – but final judgement needs to be suspended until the full report is published in 2005.

Because of differences between Scotland and England, particularly in relation to the Children's Hearing System, such schemes have not precisely been made available in Scotland. However, two programmes of intensive supervision, although not explicit surveillance, were set up in the 1990s.

Reparation

Reparation in the UK takes two broad forms – community service/punishment and restorative justice initiatives of varied kinds. Chapter 7 in our research volume by Gill McIvor deals with this issue.

Community Service

McIvor[58] points to a number of studies which find that community service may have a positive impact upon recidivism even though it has not traditionally been regarded as an explicitly rehabilitative sentence. She also highlights evidence which suggests that the quality of the community service experience for offenders may be associated with reductions in recidivism[59 60]. This includes:

- when community service is seen as "fair", offenders are more receptive to opportunities to re-integrate into society;
- more positive experiences are associated with placements which have high levels of contact with the immediate beneficiaries of the service;
- opportunities to acquire new skills and work that is seen as having some intrinsic value for the recipients are both part of quality placements.

Community Punishment Pathfinders were established in 2000 under the Home Office's Crime Reduction Programme. Seven Pathfinders were set up across ten probation areas and, like the other Home Office Pathfinders, they have been subject to evaluation.[61] The projects have focused upon the use of pro-social modelling (setting a good example), skills accreditation and addressing the problems underlying offending behaviour in various combinations. In some projects, attempts were also made to improve the quality of work placements and, hence, their perceived value to offenders.

One project focused specifically upon enhancing the integration of the community service and probation elements of combination orders through improved induction and supervision planning. The short-term outcomes were encouraging, with offenders showing reductions in perceived problems and pro-criminal attitudes. Two-thirds of offenders on orders were viewed by staff as having undergone positive change and as having good prospects of future change while three-quarters were thought by staff to be unlikely to re-offend (no doubt because they were relatively low risk in the first place). A similar proportion of offenders considered that their experience of community service had made them less likely to re-offend. Importantly, the features of community service that were most strongly linked with changes in offenders' attitudes were whether they perceived the work to have been of value to themselves and to the beneficiaries. The next phase of the pathfinder evaluation will examine whether these positive attitudinal changes are translated into reduced rates of reconviction.

CASE STUDY

In West Cheshire Probation Service area the Meadow Farm Playbus which was used heavily by children in Ellesmere Port, was in desperate need of renovation. Community Punishment was asked to refurbish it during the summer holidays. No building available was large enough to house the bus so the work took place outside the Community Punishment premises. Health and safety issues, as ever, had to be overcome but the offenders working on the project saw it through within the deadline. They took enormous pride in completing it and many expressed how good it was "to be doing work for kids" and that "the kids would be well pleased when they saw the new bus".

Restorative Justice

Many of the submissions we received, for example from the Restorative Justice Consortium, SACRO and the Churches' Criminal Justice Forum, were both optimistic and enthusiastic about the potential of restorative justice. Restorative justice brings an offender and victim together with the aim of holding the offender to account and allowing him or her to repair the harm done while, at the same time, enabling the victim to explain to the offender the impact of his or her actions and to seek answers to questions about the offence. Restorative Justice takes a variety of forms but three common varieties are:

- direct – where offender and victim meet face-to-face, perhaps with others who have a stake in the offence, as well as a facilitator;
- indirect – the offender and victim do not meet face-to-face but communicate through a facilitator;
- family group conferencing - offender and victim meet with their families and the meeting focuses on the family as a support structure for the offender.

The output of the meeting is usually an "outcome agreement" in which the offender agrees to carry out further actions to address the harm he or she has caused. This can involve work in the community or for the victim should he or she wish it.

The benefits attributed to restorative justice are that the offender may gain an insight into the effect of the crime on the victim which may cause him or her desist from further offending. The victim can also benefit by understanding what led to the offence, explain how she or he felt making it possible to "move on" and come to terms with what has happened to him or her.

The provision of restorative and reparative initiatives is currently uneven across the country and is characterised by the inclusion of a number of disparate initiatives. Perhaps because of this, there is also evidence that the practice of restorative justice is somewhat removed from its underlying theory[62].

Making reparation and restorative justice are important aspects of the work of the Youth Offending Teams (YOTs). Aidan Wilcox with Carolyn Hoyle evaluated 42 projects[63]. However, this national level evaluation was "bolted on" to local evaluations with no control groups which meant that it was difficult to draw any firm conclusions about effectiveness. It found a tendency to over-rely on community reparation and a low level of direct involvement of victims in meeting with their offenders (14%). The pressure to ensure that

offenders were 'fast-tracked' was believed to have affected adversely the quality of assessments and preparatory work with victims.

CASE STUDY

Wandsworth YOT – Graffiti

Ian received a reparation order for criminal damage - doing graffiti on London Underground. He viewed this as an art form rather than offence. His supervisor contacted London Underground who were keen for direct reparation to take place. The Hammersmith depot presented a risky environment as it was surrounded by moving trains, live rails and overhead cranes. However, the YOT and the health and safety team at Wandsworth Council drew up an extensive risk assessment. It was decided that it was possible to minimise the risk to a safe level.

Ian underwent health and safety training and was issued with protective clothing. He toured the depot examining graffiti in trains and discussing the cost and consequences to Metronet and the public with the team leaders responsible for removing it.. He then removed graffiti from the inside and outside of trains using, chemicals, cloths and grinding machines. Metronet were very enthusiastic about the project and believed the cost in terms of manpower and kit was well worthwhile and are committed to continue working with the YOT. Ian learned a lot, especially about the jobs of the cleaners who have to remove the graffiti which is poorly paid, dirty and boring. He found the experience changed his outlook. He is now involved in various legal graffiti projects for youth organisations and is applying for an art and design course.

At the moment, much of the evidence about restorative justice for adult offenders is based on overseas experience and no definitive research has been completed in the UK. However, the Home Office is currently evaluating restorative justice initiatives and expects to report on these in 2007, although there will be interim reports before then. The research methodology takes account of the deficiencies in much criminological research by assigning offenders randomly between restorative justice initiatives and none. This research is also examining the use of restorative justice conferencing at different points of the criminal justice system e.g. before and after sentencing. In a further exercise, the Home Office and the Metropolitan Police Service are supporting a pilot programme which will divert adult offenders who admit their guilt from court into a restorative justice programme. This will also be independently assessed.

Conclusions

Like most of the public, we accept that punishment is an important element of sentencing when people offend against the rules of society. We also accept that prison is an appropriate place for violent and dangerous offenders – although not those who are mentally ill and who should be in secure hospitals. However, we believe that imprisonment should always be accompanied by interventions which are designed to enable offenders to live law-abiding lives when they are released.

We therefore believe that the government should re-assess the role of short prison sentences, including the new custody plus sentence which seems designed to encourage short periods in prison. These short sentences provide little or no opportunity for work which is likely to reduce re-offending such as learning to read, write, do sums, receive training in useful skills and address offending behaviour or addictions. Indeed, in some prisons drugs are more readily available than in the outside world. In assessing the role of short sentences the government should consider the effects imprisonment has, not just on the prisoner him or herself, but also on society and their families.

As spelt out in the SEU Report[64] many offenders' backgrounds and circumstances are deprived and difficult, making it hard to for them to form long-lasting relationships in the first place. Once in prison their families can suffer. Children lose contact with their fathers, placing a greater burden on the mother who may find it difficult to cope alone. Where it is the mother who is imprisoned, children are often put into "care" with all the negative aspects that are known to be associated with this, such as poor schooling, truancy, emotional problems and themselves becoming more likely to drift into criminality. In many cases, the burden of imprisonment leads to breakdowns in relationships with consequent emotional effects particularly on children. Many families also lose out economically leading to the loss of their accommodation and dependence on state benefits. We therefore need to question whether a civilised, modern society should continue to use a model of custody developed in the 19th century – indeed not just to use it but expand it - particularly as it does not seem to be particularly effective in preventing re-offending.

This review of how custody and non-custodial penalties meet the objectives of sentencing shows that.

- In terms of reconviction rates, no general superiority of community sentences over prison emerges.
- In some instances, with some groups of offenders, community penalties (including intensive programmes) produce good results. Often they produce excellent results, well superior to the generally anticipated rate of reconviction. In other cases they do not.
- By their nature, community penalties depend for their results on the detailed content of particular programmes, the character and qualities of those administering them and the selection of offenders for the particular intervention in question. That manifests itself particularly in the recurrent experience that programmes which work well in pilot form do not work so well, or at all, when made more generally available.
- What the studies also seem to show is that, while there is no simple answer such as a finding of a general intrinsic superiority, it would be wrong to conclude that efforts to develop and adapt community penalties should be downgraded.
- Even if they do not immediately eliminate reoffending, they can contribute to long-term desistance from crime.
- In many cases, community penalties have a cost advantage, though that should not be exaggerated. In cost benefit terms, therefore, there is a strong argument for using community penalties where reasonable.

- Criminal justice responses that are reparative or restorative offer some promise over approaches that are more explicitly concerned with punishment.
- Whether approaches of this kind are more effective in reducing recidivism has not yet been clearly established but there is evidence that they often achieve other (and some would argue equally or more important) aims such as enabling victims to come to terms with what happened to them.
- How these approaches are implemented is likely to be of critical importance. In particular, how offenders' experience restorative or reparative approaches and how well they are able to promote their reintegration in the community seem, on the admittedly, as yet, rather limited data available – to be related to their success.

Finally, we have concluded that one of the problems of assessing the effectiveness of community penalties, and indeed prison, is that virtually the only measure of success used is the reconviction rate. However, it is a blunt measure because:

- about 50% of first offenders are not reconvicted, whatever the their sentence;
- only a small percentage of crime results in conviction;
- the great bulk of crime is committed by young men and their rate of offending tends to decline as they reach their late 20s or early 30s;
- there are obvious difficulties in tracing offenders and their reconvictions over any extended period;
- reconviction rates do not reflect any reduction in the seriousness or frequency of offending;
- reconviction rates do not reflect any improvement in lifestyle or capabilities which may follow upon an intervention.

RECOMMENDATIONS

The government should review the need for short custodial sentences because these have little or no deterrent or rehabilitative value. The reveiw should include the new 'custody plus' sentences.

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

The courts should:

- **see a fine or a community sentence as the first option for most non-violent offences;**
- **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;**
- **if they decide to impose a short custodial sentence, state why a community sentence would not meet the identified purposes;**
- **avoid progressive increases in sentences in cases of repeat offending where there is no increased severity of offending and no public danger.**

In early drafts of this report, we proposed to recommend that the SGC should give guidance as to the inter-relationship of the objectives of sentencing, the meaning of "seriousness" as a justification for custodial sentences, the importance of proportionality and the application of the new generic community sentence.

Just before the completion of the final draft of the report, the Sentencing Advisory Panel (SAP) published advice to the SGC on these topics and the SGC published draft guidelines. We had only a brief opportunity to look at these documents, which examine the issues and problems in depth, and are not in a position to comment on them properly in this report. We would only make two brief observations. Firstly, as we understand it, the SAP takes the position that it is not possible to give a definition of "seriousness" which is applicable across the whole range of criminal conduct. Instead, the definition of the custody threshold is a matter for guidelines on individual offences. We fully understand the difficulty which the SAP has encountered, but we doubt very much whether it will prove any easier to define "seriousness" for individual offences.

This difficulty reinforces our belief that the control of the use of custodial sentences does not depend so much on formal definitions as on a shared understanding of the proper approach to sentencing in marginal cases and on real knowledge of and confidence in the alternatives.

Secondly, we welcome the SAP's recommendation that there should be three bands of seriousness within the new generic community sentence and that they have given indications of the level of requirements which might be included in each band. This is consistent with what was said in the Halliday report and goes some way to meet our concern that there will be a tendency to overload the new form of sentence with conditions and requirements. The SAP does not think it sensible to make detailed recommendations about the way in which requirements should be packaged and are content to rely on the experience of the probation service and the common sense of sentencers. Again, we fully understand the difficulty of any other approach. However, unless there is some change in the tendency towards increasing severity in community sentences as well as custodial sentences the commonsense of sentencers may prove ineffective as a barrier to overloading. At the risk of being tedious, we repeat that shared understanding and confidence are critical.

Chapter 6
Substance Misusing Offenders

In the UK, about four million people use at least one illicit drug each year, one million of whom use the most dangerous Class A drugs, such as heroin and crack cocaine[65]. However, not all experimentation with drugs leads to long-term, problematic use and drug use declines with age. And, as the submission from Drugscope points out, not all substance misusers are offenders.

Prisoners have much higher levels of drug and alcohol use than the general population[66 67]. 66% of male sentenced prisoners had used drugs in the year before imprisonment compared with 13% of men in the general population. The figures for women were 55% and 8% respectively. 63% of male sentenced prisoners had a record of hazardous drinking (defined as use which confers risk of physical or psychological harm) compared with 38% in the general population. For women the figures are 39% and 15% respectively. This high level of drug and alcohol consumption is also a feature of those given community sentences.

The government has invested heavily - £1,344 million per annum in 2004 and £1.5 billion in 2005 – in strategies to reduce the damaging effects of drug trafficking and misuse on individuals and communities[68]. The difficulties of delivering these strategies on the ground are illustrated in a forthcoming article by Howard Parker[69] which describes a drugs intervention strategy in Derbyshire.

Drug Treatment Programmes

In Chapter 10 of the research volume, Judith Rumgay surveys the literature dealing with offenders who misuse drug and alcohol. We intend to focus on her findings which relate to the treatment of misuse. On this, she makes the following observations both of which have implications for policy relating to programmes for drug misusers:

- like criminal activity, drug and alcohol misuse tend to diminish with maturity;
- the energy to change lies within the individual; it can be elicited and enhanced but cannot be imposed externally. Hence, motivation to enter treatment can be prompted by external factors (such as risk of custody) but it is not the same as motivation to change behaviour.

Since the Criminal Justice Act 1991, it has been possible to insert several types of residential and non-residential treatment programmes for substance misuse into probation orders. Local probation services have used this facility according to their particular priorities, opportunities and constraints.[70] More recently, in 2000, the government introduced a specific community penalty – the Drug Treatment and Testing Order (DTTO). The DTTO has fundamental differences from treatment delivery through requirements in probation orders. It contains:

- a mandate for compulsory drug testing;
- loss of total confidentiality assurance within treatment;
- relegation of the role of the supervising probation officer to monitoring, enforcement and reporting progress; and
- the inclusion of direct court oversight of the management of orders and progress of individuals.

Evaluation of the DTTO pilot schemes[71] shows disappointing results. Only 30% of offenders completed the programmes and 60% had their order revoked. Against this, there was a statistically significant difference in the two-year reconviction rate for programme completers (53%) as against 91% for those whose orders were revoked.

The review of DTTOs by the court is a novel introduction apparently liked by both offenders and judges and magistrates. But Rumgay draws attention to the interim report on the programmes which illustrates that it is often not the original person who passed sentence who undertakes the review so the "personal interest" is not always available, which may be self-defeating.

Rumgay also expresses concern that DTTOs which, in line with current probation practice, must be accredited by a centralised board, may restrict the options available locally. There are some programmes which may better meet the needs of individual offenders. In addition, the onerous conditions of DTTOs may not be a proportionate response to the offences committed by some substance abusers. She also points to the UK National Treatment Outcome Research Study[72] which followed users for four to five years after treatment. This found reductions in criminal activity as a result of the programmes even though they were not aimed specifically at offending behaviour.

All of this suggests that confining offenders entirely within distinctive penal programmes may not be wise or necessary. It may be that expansion in the accessibility of treatment services and forms of outreach (such as arrest-referral schemes and prison after-care), may be particularly important in raising offenders' awareness of and confidence in opportunities for help.

Conclusions

- For offenders who are dependent on drug or alcohol, diversity of treatment opportunities including both voluntary and compulsory opportunities, may be better than a limited range of specifically accredited programmes.
- Treatment for drug or alcohol dependency might capitalise on the opportunity for reducing social and health risks alongside a focus on offending, particularly given offenders' poor access to mainstream advisory services.
- A further reason for diversifying treatment opportunities lies in the need for tariff management. It is tempting to focus on offenders' needs for treatment as a justification for intervention, but any intervention must reflect the seriousness of their offence.

CASE STUDY

Members of the Inquiry met a number of offenders undergoing DTTOs in the Bolton Office of the Greater Manchester Probation Service. Clearly these were offenders who had not dropped out. They spoke highly of the programme and mentioned in particular:

- its associated arrangements for addressing "welfare" needs such as housing and benefits;
- being able to turn to a consistent figure who was assisting them;
- the necessity for the personal motivation to change you had to be "ready to stop" or you would not succeed;
- it was encouraging that the orders were not immediately revoked by the court at the first relapse, rather that the judge or magistrate recognised this as a facet of recovery;
- that immediate abstinence was not the only measure of success but that reduction from a seven bag a day heroin habit to two bags a day was also a measure of achievement.

Chapter 7

Controlling the Prison Population: Balancing the Arguments

Our terms of reference explicitly require us to consider alternatives to custody against the background of the rising prison population. We have so far examined evidence about the level of crime, the size of the prison population and probation caseload, the rules which govern sentencing and evidence as to the effectiveness of prison and community penalties. We have established that the sharp rise in the prison population is the result of increased severity in sentencing rather than an increase in the number of cases coming to court or the gravity of the offences involved. In this chapter, we therefore propose to deal with two main issues:

- are we right to be concerned at the numbers of people in prison?
- can the rise in the prison population be controlled?

Are We Right to be Concerned at the Numbers of People in Prison?

Most of the submissions we received approached the issue broadly from the point of view that there are now too many people in prison, and that the number should be reduced. They emphasised the advantages of community penalties and made suggestions on how their use could be extended and improved. However, a small number argued strongly that the proper response to the increase in crime since 1945 should be even greater severity in sentencing involving, if necessary, an increase in the use of custody.

This is an important viewpoint on the proper use of custody and its alternatives because it underlies many of the opinions about crime and punishment in the media and in political debate. In addition, perceptions of the level of public punitiveness are highly relevant to the formation of public policy. We therefore believe it is important to examine carefully the case made in its support.

The essential thrust of the argument in favour of increasing the use of imprisonment is that:

- the penal system has become lax and lenient to which the rising prison population is a reasonable response;
- imprisonment reduces crime and protects society;
- people are responsible for themselves and are capable of being influenced by rewards and punishments. They therefore base their behaviour upon calculations taking account of the probability of reward and punishment;

- concern for the offender as a victim is misplaced and leads to inefficient policing, inadequate punishment and inadequate protection for law-abiding citizens;
- evidence and experience, much of it from the USA, show that the incapacitating effects of imprisonment (particularly if coupled with zero tolerance policing) can materially reduce crime levels;
- the evidence does not bear out any argument that community penalties have any advantage over imprisonment as a means of reducing re-conviction or that prison is a school of crime;
- crime in the United Kingdom has risen dramatically over the period from 1945 to at least 1995 in spite of the availability of a bewildering range of sentences other than imprisonment designed to reduce re-offending;
- even if crime is currently falling as compared with the levels reached between 1990 and 1995, the rate of crime is historically very high as compared with pre-1945 levels;
- international comparisons of incarceration rates based simply on population are misleading;
- if crime rates are examined, the UK is highly crime-ridden. There is a higher risk of robbery and there is more likelihood of being burgled, particularly while actually at home than there is in the USA.

We have tried to give proper weight to this argument, but have decided that we reject it because:

- it exaggerates the effectiveness of prison as a means of controlling crime. As discussed in chapter 5, although prison incapacitates offenders while they are there, research evidence shows that increasing the severity of sentences does not have a deterrent effect – although increasing the likelihood of detection does;
- it underrates the damaging effects of imprisonment on both individuals and their families and contributes to the cycle of deprivation and crime in high-crime areas;
- its theoretical or philosophical basis does not fit with the reality that much of the prison population is young, underprivileged, illiterate and mentally ill;
- it involves abandoning some members of society and treating them as, in effect, outlaws with whose rehabilitation or reform society need not be concerned and who can simply be dealt with by straightforward punishment;
- overcrowded prisons can do little or nothing for reform or rehabilitation;
- whatever uncertainties there may be about the costs of some interventions, prison is vastly expensive compared with the alternatives;
- whatever the difficulties and limitations of the evidence about alternatives, it suggests that if properly targeted and resourced they can, at least sometimes, produce better results than imprisonment.

Can the Increase in the Use of Custody be Controlled?

It is a commonplace observation in criminology that there is no way of fixing a single "right" level of imprisonment in any society. However, there are legal and constitutional principles which are critical in a free society. The main principle is that citizens should not be deprived of liberty without compelling necessity. Whatever incidental benefits might be gained by training and educating persons in custody, overcrowded jails are not capable of delivering them. So far as the evidence is concerned, we have already explained the results of research on deterrence and incapacitation, and the conclusion is, we think, clear. In the U.K., increased severity of sentencing could only produce minor gains at very high financial cost, apart from any other bad consequences. On the contrary, the numbers in prison could be significantly reduced without any significant harm.

It follows that there is a need to develop a much wider shared understanding of the objectives and capabilities of the penal system and, as part of that, the cases which do and do not require the use of custody. We referred earlier to the various forms of words in statute which have been employed to place limits on the use of custodial sentences. These have not been altogether ineffective, but they have been shown to be capable of widely differing applications. It is not possible to produce a form of words which could be used in a statute or in guidelines which would avoid the problem of differing interpretations. What is needed is something more akin to adherence to a common principle or philosophy.

Is there then any way of controlling the pressures which, as we previously argued, are driving the increases in severity of sentencing, particularly in the use of custody? In some jurisdictions, attempts have been made to impose controls on the use of custody by laying down quotas for the use of imprisonment by the courts. We would not support any such proposal. Trust in the system requires, in our view, that judges and magistrates should be free to impose the sentence which they think right, free from artificial constraints. A quota or similar restriction would tend to destroy the value of the judicial contribution. It would inevitably be unfair, in much the same way as discretionary release can be unfair. It could create a situation in which one offender could receive a prison sentence but the next, having committed exactly the same crime, could not.

The only way to bring about a reduction in the prison population in the reasonably near future is to convince the judges and magistrates that there is a real necessity to cut the number and length of custodial sentences. There are two main ways of doing so. The first is to stress the ineffectiveness of prison, an argument which we have already dealt with. The second is to increase confidence in community penalties and this is dealt with in detail in the following chapters.

There are perhaps four subsidiary approaches. Firstly, it would be desirable to find a means of defining with more clarity the level of seriousness of criminal conduct which justifies a prison sentence. This is not an easy thing to do. It is not too difficult to explain what sort of factors tend to make any particular crime more or less serious. In assault, for example, matters like the degree of force used, whether or not a weapon was involved, whether the assault was premeditated or arose out of a spur of the moment quarrel, and the injuries caused to the victim are all obviously relevant. All these factors, however, may be present in greater or less degree and may point in different directions. As we discussed in chapter 5, what is difficult is to find a test or formula which will help to fix the level at which the seriousness is such that

custody becomes appropriate. We would suggest that the formulation of the test for the imposition of custody in the Scottish legislation (only if no other method of dealing with the offender is appropriate) is preferable to that in the English legislation (neither a fine nor a community sentence could be justified) since it makes the point that it is custody, not an alternative, which requires to be justified.

It might be possible to go further and lay down very strict guidelines defining the sentences which can be imposed. In some American jurisdictions, for example, the guidelines may prescribe that for a given offence the sentence must be between, say, 36 and 48 months. Even in such cases, however, the judge is likely to have some discretion to depart from the prescribed limits if he or she finds "compelling reasons" or something similar. Professor Hough's research[73] and other similar investigations have found that judges and magistrates in any event take the view that they only impose custodial sentences when it is necessary to do so. And we doubt whether changing and strengthening the wording of rules or guidelines will have much effect unless the judges and magistrates are convinced that the right thing to do is to move towards less severity in sentencing.

Secondly, more care needs to be taken to eliminate the accidental factors which tend to push up custody. It ought to be possible to devise guidelines which do not run the risk of putting sentences up and it ought to be possible to restrain the tendency to overload community sentences with multiple requirements and so set up the risk that the offender will fail to comply with some of them. It ought to be possible to insist on strict compliance with the requirements of a community sentence without excessive use of custody as the sanction for breach. But none of these things is likely to happen unless those responsible are convinced of the need to avoid driving up the rate of custody.

Thirdly, it is important that both the sentencing process and the treatment of sentenced offenders should be transparent. We would re-emphasise the importance of the issue of confidence and trust. If trust in the system is to be preserved, it is necessary to keep the factors which may increase or reduce it in mind. Lack of clarity about the true effect of sentences, for example as a result of the use of executive release, may produce mistrust. This is the reasoning which gives rise to our doubts about the whole system of discretionary early release on home detention curfew and underlies our reservations about the likely public attitude to the extension of automatic release, whether or not on strict supervision.

Fourthly, the vexed issue of what facilities could be used which lie between community supervision and imprisonment. The Halliday Report recommended a review of the "intermediate estate" including probation centres that then existed. We believe that the Home Office should ensure that this review is now undertaken as a matter of urgency.

RECOMMENDATION

The Home Office should review the "intermediate estate" as a matter of urgency.

Chapter 8

Courts and Community Penalties

In this chapter, we propose to consider the contributions of three parts of the criminal justice system to the management and delivery of community penalties and interventions:

- the courts;
- the probation services (in England and Wales now part of the National Offender Management Service (NOMS)) and the Youth Offending Teams (YOTs); and
- local involvement and partnerships.

The Courts

We are not here considering how courts should decide between a custodial sentence and community penalty. Instead, we make some practical suggestions aimed at improving sentencing and court procedure.

Training for Judges and Magistrates

The plethora of orders and programmes available to the court is constantly changing. Judges and magistrates receive training about these, but it is clear to us that communicating information by leaflets, seminars and videos, however good they may be, is unlikely to be sufficient. It is extremely important for judges and magistrates to know the programmes which are available in their local area and who delivers them. We believe that judges and magistrates should regularly visit local programmes so that they have a clear idea of what the community sentences they impose will expect of offenders and what they will deliver to them. This will be particularly important for the new community order with its various options. In addition, judges and magistrates should also receive regular feedback on the effectiveness of programmes, the completion rates and outcomes.

RECOMMENDATIONS

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; and**
- **that judges and magistrates receive regular feedback on the effectiveness of programmes, the completion rates and outcomes.**

Judicial involvement in monitoring sentences

Submissions from among others the Bar Council Reform Committee and Criminal Bar Association, the Prison Reform Trust and SACRO drew attention to the greater judicial involvement in the monitoring and reviewing of community sentences. Robinson and Dignan also addressed this[74] in chapter 13 of our research volume. They identified three recent developments:

- a tendency to encourage sentencing courts to review sentences and monitor the implementation of them;
- a more routine use of review hearings;
- collaboration between the sentencer and those responsible for implementing the sentence leading to a more personalised form of procedure in which the sentencer and offender are expected to work together towards a successful outcome.

These have been exemplified in the development of youth offender procedures and, particularly, in Drug Treatment and Testing Orders (DTTOs). The evaluation of DTTOs (discussed in chapter 6) is at an early stage and so far, as with so many aspects of the criminal justice system, the picture that emerges is not clear or unambiguous. Nevertheless, there has been a general, if sometimes cautious, welcome from the courts for the opportunity of participating in the review of sentences and the operation of DTTOs. Offenders too seem to welcome closer involvement of the courts. Our own experience showed that offenders value the consistency of approach in the management and review of sentences, including the consideration whether or not breach proceedings are justified. In particular a high value is placed upon contact with the same person, be it a probation officer or judge, when important decisions are taken. Unfortunately, early evaluations[75] show that offenders do not always appear before the same judge or magistrate which diminishes the sense of continuity and personal interest.

Arranging for offenders always to come before the same judge or magistrate in connection with their sentence would pose a considerable burden upon court administrations. In the case of benches of magistrates, it would be difficult. But there is everything to be said for ensuring that difficult and sensitive cases should, wherever possible, come back to the same judge or magistrate. Breaches should certainly be reported to the person who imposed the sentence. This has advantages in dealing with the offender and can save time for the court because the original judge or magistrate is already familiar with the case.

RECOMMENDATION

Best practice would be that breaches are reported to and dealt with by the judge or magistrate who originally passed sentence on the offender.

The government intends to establish a community court in Merseyside modelled along the lines of the Red Hook project in the USA[76] which has pioneered judicial involvement in the progress of offenders in the local community. We enthusiastically endorse this initiative so that greater judicial involvement in following the progress of offenders in the UK can be evaluated.

Fines

As discussed in chapter 2, one of the most striking features of the changes in recent sentencing practice is the reduction in the use of fines and a parallel increase in the use of community penalties. We think that it is essential to reverse this trend. There is no justification for the use of more expensive community penalties rather than fines for many less serious offenders, particularly as the outcome in terms of re-offending is no better while placing additional burdens on the already overstretched probation service.

We believe that day fines, as used in many European countries, are the way forward. These aim to achieve equal impact on offenders by depriving them of a sum representing so many days pay. They have, of course, been tried before in England and Wales under the Criminal Justice Act 1991. After a series of pilot experiments, the unit fine system for magistrates' courts came into force on 1 October 1992. In chapter 5 of the research volume, Mair[77] discusses the assessment of the pilot schemes. He found that the results were unequivocal; unit fines were viable and likely to achieve savings in enforcement costs. He observes that, although there was dissatisfaction among practitioners when the unit fines scheme was introduced, the principle was generally accepted by magistrates. The fines were also achieving what they were intended to, in that their use among unemployed offenders rose and the average fine imposed on the unemployed fell.

However, Cavadino and Dignan[78] draw attention to a significant difference between the successful pilot schemes and the general scheme introduced. Following a general increase in the standard scale of fines, the value of the units was changed from a range of £3 to £20 in most of the pilot schemes, to a range of £4 to £100. This led to a much greater differential in fines imposed for similar offences and to a hostile reaction by parts of the media at the high level of fines imposed on the well off in some high profile cases. The system was abandoned very quickly after implementation, largely because of this media concern and the lack of political support. Unit fines were finally abolished in the Criminal Justice Act 1993.

In retrospect, the system introduced in 1991 may well have been too rigid and may have unduly limited the discretion of judges and magistrates. Any rigid system of calculation is exposed to the risk that in some cases it will produce a result which seems wholly out of proportion to the offence, either because it is outrageously large for a trivial offence or absurdly small for a serious one. We therefore think that any new system would need to 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.

In addition, for fines to be credible with the public as well as with judges and magistrates there must be efficient and effective collection and enforcement. Historically, imprisonment for very short periods of 2-3 days was the penalty for fine defaulters. Such short periods of imprisonment are doubtfully efficient as sanctions and are absurdly wasteful of resources. Some progress has been made, at least in England and Wales. Ashworth[79] observes that great strides have been made towards acceptance of the principle that someone whose offence was only judged serious enough for a fine should not be sent to prison for non-payment. The Crime (Sentences) Act 1997 introduced two alternatives to the use of custody for fine defaulters – short community service orders and curfew orders (with a further alternative of an attendance centre order if the offender is under 25). Since then, the use of imprisonment for fine default

has declined dramatically. Whereas in 1994 almost 24,000 fine defaulters were committed to prison, the number was little over 5,000 by 1998. In 2002 the average daily number of fine defaulters in prison in England and Wales, was 32 men and 3 women. The comparable figures in Scotland were somewhat higher – especially given the smaller prison population – at 62.

In her submission to the Inquiry, Nicola Padfield observes that it is not sufficient simply to impose the burden of a fine on those who find it difficult to pay. She suggests that money payment supervision orders have been badly under-used and that it would make sense that there should be a person to help the offender structure his or her financial life.

Apex Scotland drew our attention to the use of supervised attendance orders, which they deliver along with three local authorities. The components of the orders are designed to provide education and training, including offending-related issues such as debt, lack of employment, needs-related education and training and a placement reflecting the offender's interests and skills. Evaluation of these orders has so far been positive and it is currently proposed that there should be a pilot scheme for such orders as a first sentencing option in fine default cases.

Finally, the process of collection of fines has been improved. In their submission to us in February 2004, the Home Office[80] set out the various initiatives, both legislative and otherwise, which have been put in place to this end. Latest data from the Department for Constitutional Affairs shows that in 2003/04 fines to the value of £290 million were imposed of, which £213 million have been collected.

RECOMMENDATION

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;**
- **so that prison cannot be a penalty for non-payment of a fine when it could not have been imposed for the original offence.**

Court Procedure

One of the features of current sentencing procedure in courts is the difference in treatment of offenders who receive custodial as opposed to non-custodial penalties. The former are "sent down" from the dock to be transferred to prison whilst the latter "walk free" frequently leaving the court by the front door often accompanied by joyful friends and relations. Bright's[81] submission to us pointed to this anachronism and the message it sends - reinforcing public perceptions that a non-custodial sentence means the offender has "got off". They suggest that a change to the arrangements should be made whereby after sentence, all defendants who are found guilty should leave the dock by the same exit i.e. not through the front door. We would add that, if possible, offenders should not be released until practical arrangements, such as for paying fines or their first probation appointment have been made.

RECOMMENDATION

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.

Probation and Youth Offending Teams

The probation service has undergone continuous development and several significant changes of direction, most recently, in England and Wales, with the establishment of National Offender Management Service. Because this is such a significant development, we will discuss it separately in the next chapter and focus here on a more limited number of practical proposals.

Perceptions of Service Delivery

There have been several recent studies of services delivered by the National Probation Directorate and Youth Justice Board in England and Wales:

- Hough[82] and colleagues' research on sentencing and the prison population indicates that judges and magistrates express a reasonable level of satisfaction with the probation service;
- a survey of magistrates' perceptions of probation carried out for the National Probation Services in 2003[83] shows general satisfaction including a reasonable level of satisfaction with the content and form of reports. There are references to the timing of reports but the criticism is not serious;
- a survey carried out by Henley Management College[84] for RCP of 694 magistrates from three areas in England likewise does not demonstrate any real level of dissatisfaction. However, it also shows that magistrates would appreciate a higher level of communication, both in the sense of receiving information and of being listened to by those concerned with the provision of non-custodial penalties;
- a survey of youth justice carried by the National Audit Office did not indicate any concern about the adequacy of services;
- the 2002/03 Her Majesty's Inspector of Probation report is not wholly complimentary, but it does record improvement in a number of areas. This could indicate that the consequences of the major reorganisation needed to establish the NPS, for example the unsettling of staff, were being overcome. The NPS response to that report additionally claims that there are encouraging signs, including some reduction in re-offending, compared with predicted re-offending rates;
- a Home Office research study[85] which reviews advantages and disadvantages of various case management models from the point of view of offenders, points to the importance of avoiding fragmentation.

However, we received repeated complaints that the probation service in various parts of England and Wales, particularly in parts of London, appeared to be seriously understaffed and short of resources and

that this is leading to quite unacceptable delays in the provision of reports and recommendations to the courts. Hough[86] also found that many sentencers thought that the probation service was under resourced. This perception was based largely on the delay in receiving pre-sentence reports (PSRs) and that, on occasion, supervision of community orders was not as intensive as it should be.

Service Delivery in Scotland

In Scotland, criminal justice social work services are funded centrally but provided by local authorities. In 2003, the Scottish Executive published proposals for consultation on a single agency to deliver custodial and non-custodial sentences. These provoked much discussion and disagreement and, at the time of writing, the consultation process is continuing. As regards resources, the Justice 1 Committee of the Scottish Parliament conducted an inquiry into alternatives to custody which reported on 16 June 2003. The Committee had evidence from the Scottish Consortium on Crime and Justice, which comprises the main voluntary sector providers that the provision of alternatives was patchy but that proper information was hard to obtain. It found that, although assured by the Scottish Executive that a full range of community penalties was available in courts throughout Scotland (apart from DTTOs which were still in the process of development), it was difficult to establish the exact level of provision of programme. They recommended that the Executive should map and publish annually details of the extent and costs of services and identify any gaps.

The Executive is in the process of consulting on proposals to introduce a centrally organised probation service, possibly combined with the prison service, along lines similar to the NOMS in England and Wales. However, although the current organisation of probation services in Scotland is different from that in England and Wales we believe that most of the comments in this and the next chapter about service delivery are also relevant in Scotland.

Communication between the Courts and the Probation Service

The prime source of information for courts in dealing with offenders is the PSR prepared by the probation service. These are now based on assessment systems such as the Offender Assessment System (OASYS). OASYS is designed to assess the offender's risk of re-offending, the likely seriousness of the offence and the risk of harm to him or herself and others. Judges and magistrates have told us that, as a result, reports tend to become formulaic. That, we appreciate, should not occur if the systems are being used properly, but the complaint is an indication of the kind of problem of communication between the courts and the probation service. And it is important to emphasise that the courts should have a distinct role in deciding what sort of reports and information they need. Their point of view on this is not necessarily the same as that of the probation services.

Another area where there is concern is in the information available to the court apart from or arising from PSRs. While once the probation officer who had compiled the report would be on hand to supply information this is no longer the case. More often than not, the probation presence in court is a duty member of staff unfamiliar with the accused, the report or the services which might be appropriate for the offender. We would like to see the re-establishment of a professional service to the courts being given a priority.

RECOMMENDATION

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.

The National Probation Directorate (NPD) submission to us drew attention to the fact that a sentencer communications strategy has been operating for over 12 months. It pointed out that they had identified a sentencer liaison contact in each of the 42 probation areas and is using these as the principal communication conduit between the centre and local sentencers, whether judges, district judges, lay magistrates or a secondary audience of court workers/users (justices clerks, defence solicitors etc.). However, we are not convinced that this is as effective as earlier communication arrangements.

In the 1970s and 1980s Probation Liaison Committees were established in which magistrates and probation staff met to discuss general issues of probation practice. These committees also sponsored probation training for the wider bench. In some areas similar forums existed at Crown Court level overseen by the senior resident judge. In the eighties and nineties, this liaison at local level was mirrored at national level with the establishment of the Probation Forum, a group of senior representatives from the Magistrates' Association, the Justices' Clerks Society, the Home Office (Probation Unit), the Association of Chief Officers of Probation and the National Association of Probation Officers. This Forum led to the publication of joint guidance on liaison.

When the NPS was established, these formal liaison arrangements ended. The argument was that the Probation Liaison Committees no longer tackled the issues relevant to the whole bench. Whilst some benches and probation areas maintained liaison arrangements, this was patchy and liaison withered at perhaps the most important time when a strong structure was needed. The new NOMS has signalled that formal sentencer forums will be legislated for and our Inquiry would endorse the urgent need for such forums at local bench level and at Crown Court level.

RECOMMENDATION

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.

Enforcement of Community Penalties

It is essential to the success and acceptability of community penalties that they should be demanding, disciplined and enforced. In the past, there was some laxity in picking up and reporting breaches of community orders, but national standards for reporting have now been laid down, both in England and Wales and in Scotland. The ultimate sanction for an offender who fails to comply is for the case to be reported to the court. What then happens depends on the nature of the breach and what it shows about the offender's willingness to comply with the order in the longer term. The court can vary the order or impose some other penalty.

Most courts appreciate that, given the life-style of many offenders, perfect compliance cannot be expected, at least in the early stages of an order. In fact, in many cases reported to the court, the order is allowed to continue, perhaps with modifications. On the other hand, repeated breaches may well make it obvious that the offender will not respond, so that some other sentence becomes inevitable. However, it is notable that although the number of offenders breaching orders has increased over the last ten years the use of immediate custody as a response has declined. In 1992,[87] 18% of those sentenced to community rehabilitation orders breached them, compared with 25% in 2002. However, immediate custody followed in 45% of cases in 1992 compared with 22% in 2002. For community punishment and rehabilitation orders, the respective figures are, for breaches, 40% (in 1997) and 50% in 2002 and consequently sentenced to immediate custody, 36% (in 1997) and 19% in 2002.

The more demanding the requirements of the order, the greater the risk of breach and consequent escalation becomes. Particular concern has been expressed to us that the new form of order under the 2003 Act will encourage courts to load the order with conditions and requirements which will make failure more likely. Because of this, it has been suggested that the court's power to impose custody should be restricted so that a custodial sentence could not be imposed where the original offence did not merit such a sentence. We support that suggestion.

RECOMMENDATION

The government should legislate to prevent courts imposing custody following breach of a community order, where the original offence did not merit it.

Local Involvement and Partnerships

In the late 1960s and early 1970s the implementation of the Kilbrandon Report in Scotland, and the Seebohm Report in England and Wales led to major reorganisation of social services. In Scotland, the probation service was integrated with the new social work departments and became the responsibility of local authorities. In England and Wales, after much heated debate, the probation service remained independent from the new departments of social services. Instead, they reported to local probation committees consisting mainly of magistrates, and concentrated on the development of court services and "alternatives to custody" (such as community service, day training centres, approved hostels etc). The links with local authorities were tenuous and work with the voluntary and independent sector was very limited.

In the 1980s and early 1990s the local probation services in England and Wales were expected to allocate 5%, and later 7%, of their local budgets to commissioning services from local and national voluntary/independent organisations (e.g. drug and alcohol services, specialist services for black and ethnic minority offenders, supported accommodation, employment and training services). Annual Partnership Plans had to be published by each service. When the National Probation Service was created in 2001 this requirement to spend 7% of their budgets on 'partnership' developments was abandoned, although many Boards continued to contract with the voluntary/independent sector to provide specific services.

Submissions to our Inquiry, for example that from the Local Government Association, show that local authorities feel they have a significant contribution to make to the operation of community penalties and the associated provision of services to offenders. (In Scotland, of course, they have the primary responsibility for the delivery of probation services.) The need for their involvement is supported by evidence from our visits, (including those in Northern Ireland and Scotland) and the research we commissioned. This is because local authorities and services, such as primary care trusts, have a key role in delivering mainstream services such as health, drug treatment, employment, education, training, benefits etc. These services are a prerequisite for re-integrating offenders into their local communities.

Justice Reinvestment[88]

Justice Reinvestment is an American initiative. We have not been able to investigate it fully, but it is an idea which clearly has attractions and possibilities. The initiative came about in reaction to the enormously high cost of maintaining the current unprecedented level of imprisonment in the U.S.A. In an experiment in Oregon, the state government turned over to the county funds equal to the cost of keeping youths in state institutions.

The county, not the state, then became financially responsible for each juvenile placed in custody but was allowed the alternative of supervising them in community programmes. The county could also use the funds to create neighbourhood improvement projects and to invest surplus funds in crime prevention programmes.

The arrangement therefore gave the county a powerful incentive to cut down on youth custody. As a result a very impressive reduction of the number of juveniles in custody has been claimed.

Some of the details of the initiative need to be explored further. It is not clear exactly how the sentencing courts and the county authorities interact in determining how a particular offender should be dealt with.

In the U.K., the approach would involve substantial transfer of funds from central to local authorities, and there might be questions about how local authorities could be equipped and staffed to perform the functions required of them. Nevertheless, a move of this kind would fit well with our strong view that local communities should have a much greater involvement with the criminal justice system.

RECOMMENDATION

The Justice Reinvestment initiative should be studied as a matter of urgency.

However, there is a wider dimension of local involvement. This is through public participation in the activities of voluntary organisations and faith groups, using local business expertise and through the involvement of individual people. We believe there is scope for much more imaginative use of all local resources in reintegrating offenders into communities for example:

- local community-based forums should be established to identify 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;
- local community members and businesses could provide the management skills necessary to carry out such projects;
- probation could work with local employers, as already happens with some prisons – for example Reading Prison and National Grid Transco - to identify skills shortages so that training offered to offenders could match these needs. This would help offenders to gain employment;
- local organisations can provide services for offenders not catered for by statutory providers – see case study.

CASE STUDY

Tony Walsh Associates Limited, are specialist providers of advice and guidance in connection with all aspects of employment, training and education to a wide variety of socially excluded, disadvantaged groups including young/adult offenders, substance misusers, long term unemployed. They work in partnership with the National Probation Service in Cheshire and other areas in the North West and North East. They contract to help deliver the employment, training and education element of the service, whether as part of Drug Treatment and Testing Orders or accredited programmes. They have undertaken research with Cheshire Probation on providing basic skills for offenders, piloting the Bridges to Employment method of work.

Similar arguments apply to individual volunteers. There are already about 5,000 people who take part in youth justice in England and Wales by becoming members of referral panels. In Scotland, the Children's Panels have depended on voluntary support since they were instituted and there are, at present, about 2,700 serving panel members. It is not, therefore, unrealistic to suppose that there may be many people who would be prepared to involve themselves in other ways if they were given the opportunity. Mentoring is one way in which individuals could give service but there are others, for example, the GalGael Trust boat-building project on the Clyde at Govan succeeds by calling on retired shipyard workers to teach skills to the young people on the project.

Two further points can be made. A sense of ownership by local communities could contribute very materially to confidence in the operation of the system of community penalties and the criminal justice system generally. This is supported by the findings of the Henley Management College[89]. Secondly, local

service provision has a critical role to play in ensuring that the needs of minority groups in the criminal justice system, such as women and ethnic minorities, are met. This is discussed further in chapter 10.

RECOMMENDATIONS

The Home Office should require:

- **the plans of the Local Criminal Justice Board and the Crime and Disorder Partnerships to be integrated;**
- **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.**

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.

Chapter 9
Offender Management

As we explained in the previous chapter, there are different arrangements for the delivery of probation services in England and Wales and Scotland. We do not intend to comment on whether a centralised model, as in England and Wales, or a decentralised one, as in Scotland should be adopted. We do, however, strongly believe that, whatever the overall organisation, the delivery of these services has to have a strong local element and to be very sensitive to local needs and opportunities. In discussing matters arising from the new National Offender Management Service (NOMS) in England and Wales, we hope that our recommendations will be helpful in considering the future of the services in Scotland.

In January 2004, the government accepted[90] the broad thrust of Patrick Carter's (now Lord Carter) report "Managing Offenders – Reducing Crime" and announced that a National Offender Management Service (NOMS) for England and Wales would be established in June 2004. NOMS would be formed by merging the prison and probation services and would be responsible for punishing offenders, protecting the public and reducing re-offending. The background to this decision can be briefly summarised as follows.

Background

In the twentieth century, probation services were the responsibility of local probation committees, funded 80% by central government and 20% by local authorities. By the end of the century, central government had become concerned about the efficiency and effectiveness of these autonomous services and how they engaged with other parts of the criminal justice system. The relationship with the Prison Service with whom they shared many "clients" - including those released from prison under supervision - was under particular scrutiny. The government initiated a review of the two services[91] which considered a number of options for merging them. The outcome was reported in 1998 but, in the event, the government decided not to proceed with a merger but instead to restructure the probation service.

In 2001, the Home Office took over direct responsibility for probation services and set up the National Probation Directorate (NPD) to manage a new national service. The Home Office provided 100% funding centrally. The local structure was streamlined, moving from 54 local probation committees to 42 area probation boards (with smaller membership and a higher proportion of independent members as opposed to magistrates). This centralisation was a massive change for the sixteen and a half thousand probation managers and staff. Like all such re-structuring, it was unsettling and not universally welcomed. For example, Jenny Roberts, a retired Chief Probation Officer, says in her submission to us:

"By the turn of the millennium the probation service was not only demoralised, it had become totally distracted from its key relationship with the courts and this again was caused by two factors: the nationalisation of the

probation service and the accreditation, from the centralised National Probation Directorate (NPD), of probation programmes. It is not easy to deal separately with these two issues, because they have, in reality, had a convergent effect. The decision to nationalise the service (with the dismantling of probation committees largely composed of magistrates) can be seen as policy aversion to local links and to the influence of local courts upon the service."

Between 2001 and 2003, considerable energy and additional resources were invested in the new National Probation Service (NPS). This was in response to both the increasing number of offenders receiving community sentences and the increasing number of prisoners released under their supervision. Meanwhile the government was becoming increasingly concerned about the rising prison population. Statistical projections showed a continuing upward trend which would be exacerbated further by measures to be introduced when the Criminal Justice Act 2003 came into effect. Clearly either more prisons would be need to be built a cost of at least £100,000 per new prison place or fewer offenders would have to receive custodial sentences. This would result in an increase in the use of community penalties and place greater strain on the NPS.

The Home Office made substantial bids to the Treasury to fund this expansion of prison and probation services. The Treasury was anxious to explore ways of reducing costs. Patrick Carter, who had previously undertaken a review of privatisation in the Prison Service[92], was commissioned to undertake an independent review of what were now referred to as "the correctional services". The outcome was the establishment of NOMS.

Delivery of Community Penalties through NOMS

There are two strands to this major policy development. Firstly, the commitment to integrate more closely the work with offenders in prison and work with the same offenders on release into the community. The intention is to ensure, what is referred to by the Home Office as "a seamless sentence". Secondly, the separate and independent need to promote community penalties, with which both courts and community can have confidence, and with the intention of reducing the inexorable increase in the prison population.

We have concerns about the impact of yet another major re-organisation only three years after the establishment of the National Probation Directorate. However, despite this reservation, we would like to make a number of suggestions about how NOMS might be organised to improve the delivery of community penalties discussed in the last chapter.

Regional versus local organisation

The original structure proposed for NOMS was highly centralised with a National Offender Manager and 10 Regional Offender Managers, as well as a separate National Director of Interventions dealing directly with locally based interventions staff. It also proposed the abolition of local governance by removing the 42 locally based probation boards and replacing them with 10 regional boards.

There had been no consultation on these proposed changes to the structure prior to their announcement in the Carter Report and Home Office response. Widespread concern was voiced by many in the probation services and the criminal justice system, arguing that services to offenders should

be delivered locally. In addition, it was stressed that the government had only just established the Local Criminal Justice Boards with responsibility to coordinate services to deliver specific targets at local level of which probation services were an integral part. Following these representations the Home Office decided to keep the 42 local Probation Boards for the time being, with an expectation that they will help deliver some of the "contestability" which is a central part of the NOMS reforms.

Clearly, in a merged service it is sensible to try to bring tiers of management together. In the Prison Service, area managers have line management responsibility for the performance of a number of prisons in the same locality. The model proposed for NOMS seems to be based on this arrangement, with offender managers relating to a particular geographical distribution of prisons. No doubt the reason for this is because the Regional Offender Managers will be charged, not only with managing the front line offender managers, but also with purchasing prison places and interventions to prevent re-offending in both prisons and the community. Because of the much larger sums of money involved in purchasing prison places, the decision for a regional structure is understandable – although not inevitable. However, the proposed structure does not seem geared to one of NOMS' underlying objectives, which is to encourage greater use of community penalties.

The key to increasing the use of community penalties lies with the sentencing decisions of judges and magistrates. This is why some of our main recommendations aim to improve the service provided by probation to local courts, to improve communication between courts and probation and vice versa and to improve judges' and magistrates' knowledge about locally-delivered programmes. To achieve these improvements, the priority for the organisation of the new offender managers must be their relationship with the courts, locally delivered programmes and services such as housing, health, education and training.

RECOMMENDATION

NOMS (in England and Wales) and probation services elsewhere should ensure the offender management structure is driven by the need to work closely with the courts and local services.

The Carter Report envisages that Regional Offender Managers (ROMs) would be responsible for end-to-end management of offenders in their own region. Again, this model seems to work in relation to purchasing prison places and programmes (insofar as current overcrowding enables any choice). It would, for example, enable an offender manager to specify interventions to be provided in prison and so eliminate a further needs assessment when the offender arrives in custody. It would also allow a prison to be selected which had the capacity to deliver the intervention. If prisoners were housed nearer to their homes, it would enable improved resettlement and support on release, for example in relation to drugs, housing etc., all of which would help to reduce re-offending. However, it is uncertain whether this proposal about purchasing prison places, which was an essential ingredient in the Carter Report and the Home Office response to it - will ever become a reality – at least in the foreseeable future.

Where purchasing at a regional level might not work so well, is in relation to community penalties. Many community interventions and initiatives are provided by the local probation service but a significant number of services, for groups not included in the mainstream, are delivered by small local organisations usually in the voluntary or not-for- profit sector. These small organisations are already vulnerable under existing arrangements and there is a danger that contracting at a regional level (and one of the reasons for this purchasing arrangement is, presumably, to ensure that contracts are of a sufficient size to provide clout in the negotiation of prices) would mean that these small providers would not be seen as cost effective. The providers themselves might also decide not to compete for contracts because of the bureaucracy that the tendering process in the public sector inevitably involves. Finally, regional procurement might affect the availability of services that meet the needs of minority groups in the criminal justice system such as women and ethnic minorities, where small local provision is often the preferred option.

RECOMMENDATION

NOMS (in England and Wales) and probation services elsewhere should:

- **ensure offender managers make better use of local facilities, mainstream services, projects and programmes;**
- **encourage small service providers from the voluntary and not-for-profit sectors to participate in procurement arrangements.**

As an Inquiry, we have no view on the place of the private sector in providing criminal justice services and do not disagree that there is a place for contestability in stimulating innovative thinking in service delivery and cost effectiveness. We believe that the main issue is that interventions and programmes should be properly targeted, be shown to be effective for the target group and be easily accessible to offenders. Elsewhere we have discussed measurements of effectiveness and would disagree with Carter that two year reconviction rates should be considered as an effective way of assessing performance of offender managers[93].

We would, however, point to our recommendations on community punishments or work in the community. These do not sit comfortably with the "pure" Carter model of contestability. The evidence suggests to us that local communities need to be more directly involved in deciding on projects and initiatives which would benefit them and offenders. We are also attracted to the involvement of local businesses on a voluntary basis, because of the possibility they might provide training and employment in the longer term. This would seem to preclude Regional Offender Managers from having the key role in deciding, through a competitive tendering process, which projects should be selected.

RECOMMENDATION

NOMS (in England and Wales) and probation services elsewhere should be structured to give priority to local, integrated, services.

Programmes versus people

Under the proposed structure for NOMS, offender managers would be responsible for supervising offenders but not for delivering services. There is already an increasing trend towards specialism in delivering accredited programmes, and there are obviously benefits in this, say for drug treatment programmes. But this inevitably changes the relationship with the supervisor who sees less of the offender. We have been very impressed by the high value which the majority of those who have made submissions to us or met us have placed on consistency and regularity in contacts between offenders and probation staff, on access to local services, on adaptability to individual circumstances and on contact with and visibility to local communities. The Home Office research paper[94] on case management goes some way to recognise these demands when it states:

"Whatever type of model is in operation, the research indicated several core principles which can improve the ability to engage and motivate the offender. These can be summarised as "continuity of contact" and carefully managing the transition points between teams and at different stages of supervision to "minimise a fragmented experience" for offenders".

RECOMMENDATION

NOMS should 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.

Targets versus targeting

The public sector as a whole has a battery of key performance indicators (KPIs) against which performance is judged. These may be useful in driving up standards in specific areas, however, they often lead those responsible for delivery to focus exclusively on the aspects of service which are measured, and to meeting the letter, rather than the spirit, of the indicator e.g. in the NHS manipulation of waiting lists. The Prison Service already has a vast array of KPIs and it seems likely, although not mentioned explicitly in the Carter Report, that a similar approach will be developed towards the assessment of performance of offender managers in NOMS. This may exacerbate the trend towards the imposition of national targets on which many practitioners expressed concern to us, reflected also in the Chief Inspector of Probation's Annual Report for 2003/04:

"The target driven focus given to programmes and specialist initiatives suggest to them [probation staff] that their work has been marginalised and is little appreciated."

A particular bone of contention has been the centrally imposed targets for throughput on accredited programmes. This seems to have resulted in a failure to target the programmes on offenders with the specific offending characteristics for which they were designed. This inappropriate selection may account for the disappointing results once some programmes entered the mainstream following the original, successful, pilots - see for example, the Home Office evaluation of cognitive behavioural programmes[95]. The proposed purchasing arrangements could also contribute to this problem, with offender managers being required to fill quotas of places in order to produce "cost effective" delivery.

In passing, we would also comment that the design of such programmes needs to take account of the actual literacy and numeracy levels of those likely to attend. This has not, apparently, always been the case.[96]

RECOMMENDATION

NOMS (in England and Wales) and probation services elsewhere should:

- **require accredited programmes to be used only for the groups for which they have been developed;**
- **resist judging successful performance by measuring inputs rather than outcomes.**

Rigidity versus improvisation

The local structure of probation services prior to 2001 had led to problems in delivering a consistent service across England and Wales. For example, in our research volume Raynor[97] comments that, in 1998, a survey showed that probation services claimed to be operating 267 effective programmes - of which only four could actually produce evidence of effectiveness. At the same time, central government funding was made available through the crime reduction programme, tied to demanding targets requiring evaluation of effectiveness, and even cost-effectiveness, of all initiatives. It is therefore quite understandable that the NPD sought to reverse that situation and focus services on "what works". This led to a requirement that all programmes and courses had to become accredited by the Prison and Probation Accreditation Panel (now the Correctional Services Accreditation Panel).

Unfortunately, one of the problems of large organisations, particularly in the public sector, is an excessive fondness for elaborate and obscure documentation. We have examined, for example, the guidelines for the submission of programmes for accreditation in the prison and probation services and can only say that they strike us as obscure and daunting. They also require an undue amount of attention to minor detail. We have seen other documents on which similar comments could be made. Even the statement of standards for Community Sentences and Supervision in the Community is far from being a model of clarity and simplicity.

Where programmes are precisely defined, there is a risk that the individual needs of offenders may be overlooked and that forms of intervention which lend themselves to building structured and definable programmes may be overvalued in comparison with those which do not.

RECOMMENDATION

NOMS should:

- **simplify accreditation and make it less bureaucratic;**
- **take particular care to see that smaller local organisations with limited resources are encouraged and helped to offer to provide services;**
- **as part of introducing contestability, encourage pilot schemes for new interventions or programmes which should be independently evaluated.**

Chapter 10
Specific Offender Groups

Many of the submissions we received, including, Rethink, Mencap, the Youth Justice Board, the Fawcett Society and the Prison Reform Trust referred to specific groups of offenders as warranting particular attention. In a report whose primary focus is to consider whether there is scope to use non-custodial penalties to reduce the prison population overall, it is not possible to deal with the specific needs of these groups in any detail – they each warrant, and in some cases already have had, reports dealing with them exclusively. In this chapter, we will therefore only briefly look at the special needs of these groups, as far as sentencing is concerned.

In Chapter 14 of the research volume Kemshall, Canton and Bailey[98] consider the provision of non-custodial measures for women, ethnic minorities and mentally disordered offenders. To these groups we will add young offenders.

Young People

The number of young people under 21 serving custodial sentences and supervised by the probation service under the three main community orders in England and Wales (community rehabilitation orders, community punishment orders and community punishment and rehabilitation orders) in 2002 compared with 1992 (1995 for under 18 serving custodial sentence) is shown in Table 2. This shows considerable increases in the use of custody for all young people but particularly for female offenders. In contrast, the use of the main community penalties has fallen for all groups except for males aged 18-20 where they remain stable. The figures disguise an increase in the community penalties for under 18s peaking in the late 1990s.

Table 2 Number of young people in England and Wales serving custodial and the main non-custodial sentences in 2002 compared with 1992 (1995 for under 18).

	Custody			Community Penalty		
	2002	1992	% change	2002	1992	% change
Male 18-20	8,368	5,443	58	21,306	21,386	-0.3
Female 18-20	487	139	250	2,999	2,165	38
Total	8855	5582	58	2,4305	23551	3
		1995				
Male under 18	2510	957	162	4,549	6,514	-30
Female under 18	100	31	222	309	552	-44
Total	2610	988	164	4858	7066	-31

Sources: Home Office Prison Statistics 2002 tables 3.4 and 3.5. Home Office Probation Statistics 2002 table 3.3

Young people and children under the age of 18 are already subject to special arrangements in the criminal justice system. The Youth Justice Board (YJB) for England and Wales was established in 1998 as a non-departmental public body (NDPB). It monitors the youth justice system, identifies, and disseminates best practice with the aim of preventing offending by children and young people. As an NDPB, it is funded to purchase custodial places.

The youth court, which is a section of the magistrates' court, deals with most young people and children under the age of 18 charged with offences. Specially trained youth panel magistrates and district judges hear cases. Youth courts are less formal than magistrates' courts, are more open and engage more with the young person and their family. They are essentially private places and members of the public are not allowed in. Victims of the crime, however, can request to attend the hearings.

Youth Offending Teams (YOTs) are a key part of the delivery of the YJB's work. There is a YOT in every local authority in England and Wales. They are made up of practitioners from the police, probation service, social services, health (covering mental health and substance misuse), and education although other staff may be included. This wide involvement enables YOTs to respond to the needs of young offenders in a comprehensive way.

The community penalties available for under 18s are listed in appendix D. In addition, reprimands and final warnings were introduced in 1998 as pre-court options for dealing with young people, as diversions from prosecution. When a young person, who has not previously been convicted, is arrested and admits responsibility for an offence, a reprimand can be given by the police and subsequently a final warning, unless the offence is serious and merits prosecution. Final warnings may be accompanied by a programme of interventions, delivered by the YOT, that is intended to reduce the risk of further offending. The YJB has overseen and promoted a number of innovative developments, one of which, the Intensive Supervision and Surveillance Programme (ISSP), we have already considered. The ISSPs delivered by the Youth Advocate Programme (UK) are an imaginative method of supporting young offenders in their community.

The Youth Advocate Programme UK was established in 2001. It runs three programmes in London and works with Leicester and Sunderland YOTS. It recruits young "advocates" from the communities where the young offenders live. The "advocates" maintain a twenty four hour, seven day a week, contact with the young person, with the commitment always to be available and never to give up. Such close, face-to-face contact is the crucial ingredient. The recent ISSP report[99] noted that such schemes "had a higher completion rate, with fewer terminations for breach".

Referral Orders became available from April 2002. They are given to most 10 to 17-year-olds pleading guilty on a first time conviction, unless the charge is serious enough to warrant custody. They take a restorative/reparative approach. After appearing in court, the young person is referred to a Youth Offender Panel (YOP) which considers the best course of action. The panel consists of two volunteers recruited directly from the local community, alongside one member of the YOT. They talk to the young person, the parents and (where possible) the victim of the crime to agree a tailor-made contract aimed at putting things right. The contract might include a letter of apology to the victim, removing graffiti or cleaning up estates and communities. It will also include activities to prevent further offending, such as getting young people back into school and help with alcohol or drug misuse. Early results show that a young offender and a victim meeting face-to-face can be a powerful and positive experience for both.

In Scotland, there are special arrangements for children under 16 (or 18 for those already within the system). Children may be referred to the Children's Hearings system on the grounds of an alleged offence or for purely welfare reasons. The hearing is designed to operate as an administrative welfare agency rather than as a juvenile court. The system has given rise to tensions between welfare and public protection issues and to questions about the use of resources. However, as we explained in the introduction to this report, we regretfully concluded that examination of the operation of the system would take us well beyond the primary focus of the report.

The government is already taking seriously the special needs of under 18s and courts already try to use custody sparingly for this group. Given that the YJB is a comparatively new body, we do not intend to make any recommendations bearing on their current responsibilities. However, the suggestion has often been made that the YJB might also undertake a similar role for young people aged 18-20 or that the approach of multi-agency teams should be replicated for this group.

Clearly, the distinction between a seventeen-year old and an eighteen-year old is a fine one. Many 18 and 19 year olds are still in education (although not many among regular offenders). A case can therefore be made for widening the group of young people subject to special measures. Precisely what the cut off point should be we have been unable to judge. However, we believe there is a strong case for the government to look at the offending characteristics of 18-20 year olds and consider running some pilot projects aimed at establishing whether the YJB approach is more effective for these young people than current adult arrangements.

RECOMMENDATION

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.

Black and Minority Ethnic Groups

A markedly disproportionate number of convicted offenders and persons on remand are members of minority ethnic groups, particularly of the African Caribbean group. Members of that group constituted about 2% of the general population in 1999 but about 13% of the prison population in England and Wales. Between 1992 to 2002 the black ethnic group in prison increased by 50% for males and 20% for females.

Comparable figures for non-custodial penalties are not available for 2002, but figures for 2001 show that about 11% of offenders starting the main community penalties were non-white. It is worth noting that a high level of failure to record ethnicity in some probation areas may be reflected in the figures.

There is surprisingly little research into the reasons for this disproportion and what there is can best be described as patchy. That seems to us to be a serious deficiency, and our concern is reinforced when we look at some of the issues raised in our research volume.

Kelmshall, Canton and Bailey point out [100] that black empowerment models have placed great emphasis upon difference and diversity and the social position of minority groups in society. Proponents of these models argue that minority ethnic groups are differentially affected by social disadvantage and social exclusion, particularly due to their location in depressed inner city areas with high levels of unemployment and social conflict. The experience of racism is seen as a significant additional "layer" with a damaging impact upon self-identity. The contention is that this experience is significantly different to white offenders, and is significantly linked to offending.

However, the authors point out that the supporting evidence for this is currently low, although this may be rectified by the growing Home Office databases on offending and the collection of offender perceptions of group programmes. It may be that, in practical terms, the difference in criminogenic needs between white and ethnic minority offenders is slight, but that when taken in conjunction with the effects of negative discrimination, resilience to criminal activity is lessened.

Home Office sponsored research published in 2004 [101] comparing ethnic minority probationers with comparable white probationers found the following:

- no support for the proposition that offenders on probation from minority ethnic groups had different or greater criminogenic needs (characteristics associated with offending) than white counterparts;
- minority ethnic offenders had received the same community sentences as white offenders with higher levels of criminogenic need. This might be because minority ethnic offenders at all levels of sentence were given more severe sentences. The report suggests further research is needed into this;

- most respondents' experience of probation was positive and they felt fairly treated;
- about a third wanted to be supervised by someone from the same ethnic group but over half thought it made no difference;
- of those who attended programmes, only 5% (all from areas with high minority ethnic populations) wanted groups containing only ethnic minorities;
- being the only member of an ethnic minority in a group was less popular;
- although black and Asian people are known to experience more disadvantage than white people in Britain those in the study group showed substantial levels of disadvantage – but so did the white probationers;
- the participants had negative experiences of parts of the criminal justice system such as "stop and search" and the police.

The researchers conclude that the minority ethnic offenders in the study expected to be treated fairly as individuals and that policies and practice need to be informed by awareness of diversity but not based on untested assumptions about what that implies.

The NPD is currently carrying out an evaluation of five programmes designed specifically for black and Asian offenders which combine black self-development, offending behaviour and mentoring in differing proportions. This is due to be completed in 2005.

It is obvious from this brief survey of research that there are major issues relating to black and minority ethnic groups, which require further study, including the effects of experience of racism on criminogenic needs, the possibility of differential sentencing of ethnic minority offenders and the best approach for interventions. Such research should not be restricted to the activities of the correctional services, but should include the experience of minority groups, churches and community networks, such as those described in the box, which are already working with those in greatest need, but are not necessarily known to or supported by the correctional services.

Black and Ethnic Minority Independent Groups in Local Communities

Pakistani Resource Centre

Established in 1966 as the Manchester Pakistani Welfare Centre in Longsight, initially it provided translation and interpretation services. It then expanded to provide services to tackle problems of unemployment, poor housing and racial abuse. The Centre now works with members of South Asian communities. It deals with domestic violence and child abuse and works with prisoners and their families, providing counselling, emotional and practical support. A South Asian Offenders Project also works with the Greater Manchester Probation Service providing co-working and consultancy on complex, high-risk cases.

Partners of Prisoners and Families Support Group (POPS)

Established in1988 in Manchester as a response to black prisoners' families' needs. It provided the first court support service at Manchester Crown Court – an advice service to remand prisoners with the Greater Manchester Probation Service and an arrest referral scheme working with the police and young offenders' institutions. Through its work in the community and prisons, and through such innovative developments as the Black Prisoners' Support Services, POPS has not only worked alongside the prison and probation services in the North West but, their experience over 15 years, has enabled it to contribute to national policy developments in both services and the independent sector.

RECOMMENDATION

The government should 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.

Women Offenders

Women are not, of course, a minority in the general population but they are, in terms of their representation among offenders. During the last ten years, the number of women receiving custodial and non-custodial sentences has increased more steeply than for men. Table 3 shows that, as for under 18s discussed earlier in this chapter, a much higher proportion of women (169% compared with 58% of men) have received custodial sentences. The change is less striking for community penalties but still higher. The remand population (which includes young people under 18) shows a similar pattern with an increase of 147% for women, compared with 22% for men.

Table 3 average numbers of women serving custodial and major non-custodial sentences compared with men between 1992 and 2002.

	Custody			Community Penalty		
	2002	1992	% change	2002	1992	% change
Adult male sentenced	45,601	28,894	58	37,782	22,719	66
Adult female sentenced	2,842	1,057	169	10,336	5,542	86
Male remand	11,847	9,707	22			
Female remand	945	383	147			

Source Home Office Prison Statistics 2002 Table 1.4 and Home Office Probation Statistics 2002 Table 3.3

The Wedderburn Report[102], published in 2000, looked in detail at women in prison. It rehearsed the deleterious effects of imprisonment on women and their families, in particular their children, and concluded:

"….the opportunities for punishment in the community have never been greater but that an agreed framework and guidance as to their use is required. We also argue that both custodial and non-custodial sentences must be accompanied by programmes designed to facilitate the reintegration of women offenders and, where appropriate, their dependents, into a sustainable and non-offending lifestyle."

We endorse this conclusion and believe that programmes for women should be built around their needs, rather than assuming that models developed for male offenders will suffice. Many women offenders have suffered abuse by men which may be implicated in their offending. It makes common sense that a mixed group may not be the most productive environment for women to deal with these issues. The programmes should also reflect the realities of women's needs in relation to childcare, school holidays and so on. We were particularly impressed by the way in which the Asha programme deals with women's needs and believe that much of the help female offenders need, is the same as that as other disadvantaged women. Like drug treatment, not all needs have to be dealt with in specialised penal programmes. To this end, we welcome the proposals in the Women's Offending Reduction Programme[103] produced earlier this year by the Home Office which aims to provide a more holistic approach for women offenders.

CASE STUDY – ASHA CENTRE

The Asha Centre is a relatively new organisation, although it derives from a probation centre operating in Worcester in the mid-1990s. Its initial funding from the Government Office for the West Midlands in February 2002 enabled it to lease a building that is fairly central in Worcester, and put it into good order. A programme of courses and advice facilities was offered for the first time in May 2002. Since then, based on experience of users' needs and problems, the range of facilities offered has been continuously adapted and developed.

Asha aims to provide a safe women-only environment in which to offer women who are isolated by disadvantage a starting point from which to achieve personal development and improved economic stability. It recognises women's needs by providing a crèche and a minibus which can pick up women who would otherwise be unable to travel to the centre. Women are individually assessed and a personal plan is prepared, to encourage them to use resources available to them at Asha and in the community; to secure improvements in their functioning, self-confidence and self-esteem. Asha also aims to influence the provision of women-sensitive services by local organisations and statutory services.

The Asha Centre works on a referral system. Just under 200 referrals were received between February 2003 and the end of January 2004. The largest group of referrals (around 45%) are received from health service professionals, and two thirds of these were from mental health services. About 35% of referrals are from the probation and prison services but, in addition, the Centre is used as a base by West Mercia Probation Area for delivering some of its services to women offenders, notably group work programmes and a report facility for women from Worcester.

A high proportion of women referred to the centre indicate that they have mental health problems (more than half), have experienced physical or sexual abuse as adults or as children, and lack confidence and self-esteem. Many report financial problems, difficulties in managing their children, and physical health problems or disabilities, including eating disorders and addictions.

RECOMMENDATION

The government should:

- **produce regular reports on the progress of the Home Office's Women's Offending Reduction Programme initiative;**
- **evaluate programmes developed specifically for women offenders (see below) to establish more clearly "what works" for them.**

The 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.

Mentally Disordered Offenders

Submissions from both Rethink and Mencap drew attention to the mental health problems of offenders. The Social Exclusion Unit,[104] drawing on a survey commissioned by the Department of Health,[105] found that prisoners suffer from much poorer mental health than the general population (see table 4 which refers only to sentenced prisoners): the statistics for remand and young prisoners are even higher, significantly so in some cases).

Table 4 Mental Health of Prisoners Compared with the General Population

Characteristic	General population	Prisoners
Suffer from two or more mental disorders	5% men 2% women	72% male sentenced prisoners 70% female sentenced prisoners
Suffer from three or more mental disorders	1% men 0% women	44% male sentenced prisoners 62% female sentenced prisoners
Neurotic disorder[1]	12% men 18% women	40% male sentenced prisoners 63% female sentenced prisoners
Psychotic disorder[2]	0.5% men 0.6% women	7% male sentenced prisoners 14% female sentenced prisoners
Personality disorder	5.4% men 3.4% women	64% male sentenced prisoners 50% female sentenced prisoners

1 e.g. sleep, worry, fatigue, anxiety and depression
2 e.g. schizophrenia and manic depression

Source: SEU "Reducing re-offending by ex-prisoners"

Kelmshall, Canton and Bailey[106] point out that a review in 2003 found that 27% of offenders under probation supervision had a mental disorder and that only about a fifth of these would be under psychiatric supervision. Courts can impose treatment conditions as part of community rehabilitation orders (and indeed their predecessors) but their use has been declining since the 1970s. One reason is believed to be poor liaison between probation and community psychiatric services but no doubt the pressures on the community psychiatric services are also to blame. Another reason for decline in the use of treatment conditions might be the wider context in which penal and mental health policies have been meshed, with an emphasis on risk management and public protection rather than care, with resources focused on the high risk few at the expense of the low risk many.

There is a need for better information to be available to courts about the mental health of offenders and the part this may have played in their offending so that where it is a contributory factor this should be taken into account in sentencing. If provision for dealing with the mental health issues is not available, this should be recorded by the court and reported to the government for action to be taken.

In the past, there have been isolated examples of community psychiatric nurses being based in probation offices and forensic psychiatrists working with probation areas. We believe the Home Office and Department of Health should jointly explore this.

RECOMMENDATION

The government should develop a national strategy for assessing and treating mentally disordered offenders by having dedicated forensic psychiatrists and community psychiatric nurses working with probation services.

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.

Conclusions

There needs to be greater recognition of diversity and the needs of diverse groups within the criminal justice system. This very brief overview shows that minorities within the system are discriminated against in that there is insufficient awareness of their characteristics and needs. This can lead to them receiving inappropriate and often harsher sentences than is justified by their circumstances and offence. We do not believe that sentencers or probation staff consciously discriminate, but the system – including the dependence in magistrates' courts on guidelines – tends to result in a 'one-size fits all' approach. Along with this, there may be a tendency to believe that equality within the criminal justice system means that treatment for all should be the same.

However, this overview also shows that when special needs are identified, as in the case of offenders under the age of 18, the system can be adapted to make it work more appropriately. We do not believe this means that minority groups all need to be dealt with by the equivalent of the YJB, but it does argue for independent specialist bodies outside of the Home Office and Department of Constitutional Affairs who can identify special needs and best practice in dealing with each of the minority groups discussed above. Such bodies would also be able to advise on training for those involved at all stages of the criminal justice system.

Chapter 11
Conclusions

We set out to look closely at the evidence as to whether the rise in the prison population might be caused by a lack of suitable and available alternative sentences. The evidence is clear that this is not the case. There is a plethora of community penalties available to the courts, many of which have the potential to reduce reoffending.

The rise in the use of both custodial and non-custodial penalties results mainly from a loss of confidence in the ability of the criminal justice system to protect the public and to punish and rehabilitate offenders. This absence of confidence is widespread among politicians, the public, judges and magistrates and, indeed, among many of those who work in the prison and probation services. The reasons for this are complex. We have attempted to identify some of them such as, on the one hand, the use of crime as a political football and as a means of selling newspapers and, on the other, a genuine lack of understanding about what sentences involve (including how long they really last) and what offenders are expected to do during their sentence. The net effect appears to have been pressure to ratchet up sentences in the hope that this will have a positive impact on re-offending.

We believe that it is possible to reverse this trend and to reduce crime and reoffending. However not all the answers lie in either custodial or non-custodial penalties – many relate to crime prevention, which is outside our remit.

As far as custodial and non-custodial sentences are concerned, we believe the evidence shows quite clearly that longer and more severe sentences are not effective in deterring offenders or reducing reoffending. It is self-evident that while offenders are in prison, they cannot offend outside in the community, but it is less easy to appreciate that increasing the length of prison sentences is subject to diminishing returns – which we discussed in chapter 5.

We have made a number of recommendations (see page 9) which we think would improve the situation. However, we believe these can only work if all those concerned have a realistic expectation about what can be achieved. This means accepting that there are a number of contradictory facts about offenders and offending and that there are limitations on what can be expected of the criminal justice system.

Offenders and Offending

We know that, for most offenders, there is a correlation between their offending behaviour and factors in their backgrounds such as poverty, unstable families, failure at school, substance misuse, mental health issues and so on. However, in themselves, these factors do not inevitably lead to offending and there must, therefore, be other forces at work. We also know that most people who commit a first offence do not commit another. This positive fact tends to get lost among the more negative ones.

As most first offenders desist, those who continue to offend will be more difficult to deal with. The Youth Justice Board's (YJB) approach of trying to intervene early to prevent the development of offending behaviour at this, and earlier stages, is one we support.

By the time offenders become "persistent" their behaviour is entrenched in their lifestyle and, like all established patterns of behaviour, is not easy to change. We are therefore struck by the expectation that relatively short programmes to deal with offending behaviour often lasting about 40 hours should be expected to undo the habits of a lifetime. In many ways, persistent offending seems rather similar to drug dependence – a relapsing condition which almost inevitably takes time to overcome.

However, this is not the depressing picture it might seem. The evidence shows that, as with those who misuse drugs, a point comes when the most offenders are motivated to try to cease to offend. This can be at any age but tends to peak in the mid-twenties. The reasons are not firmly established but may be due to maturity and the establishment of more permanent relationships. What both prison and community sentences should therefore be trying to achieve, is to ensure that offenders acquire the skills and training that will eventually enable them to reintegrate into society together with an understanding of their offending behaviour so they can learn to control it. In many cases, the short-term effect may be to reduce the seriousness and frequency of offending before long-term desistence is achieved.

Limitations of the Criminal Justice System

The second factor we identified was a realistic expectation of what the criminal justice system itself can deliver. Given the nature of offenders and offending, there is clearly a limit to what the penalties imposed by the courts and carried out by the probation services can achieve. A minority of offenders will always prefer a criminal career to an honest one.

Given the variety of individuals who work in it, it is unrealistic to expect that there will be uniformity over the whole criminal justice system, or that mistakes will not be made. Consistency is important but so is the ability to respond to unusual circumstances, in the interests of justice, and judges and magistrates should be able to expect that they will not come under public criticism merely because they are thought to have departed from the normal course. It is important that the desire for consistency should not drive up the severity of sentencing.

In conclusion, it will be apparent that we do not propose any simple or dramatic solutions to stemming the rise in the prison population. Although there are promising approaches which demand investigation and support, the principal challenge to the criminal justice and offender management systems is the much less dramatic but much more demanding one, of working with persistence and determination to make and build upon improvements each of which may be small but which, taken together, can make a real impact.

Appendix A
Responses to Consultation

Organisations

Action for Prisoners' Families
Apex Scotland
Artlink Central
Ascension Trust
Association of Directors of Social Services
Association of Scottish Police Superintendents (The)
Bar Council Law Reform Committee
BBC
Bright
BTCV
Cariba Project
Centre for Crime and Justice
Chief Inspector of Probation (England and Wales)
Children Law UK
Children's Society
Church of Scotland Board of Social Responsibility
Churches' Criminal Justice Forum
CIVITAS
Commission for Racial Equality
Compass Prison Service
Conférence Permanent Européenne de la Probation
Connexions
Council of HM Circuit Judges
Creating Confidence in Justice Project – Thames Valley Partnership
Crime Concern
Criminal Bar Association
Crown Prosecution Service
Department of Health, Social Services & Public Safety, Social Services Inspectorate (Northern Ireland)
Director of Public Prosecutions (Northern Ireland)
Duke of Edinburgh's Award (Scotland)
Evangelical Alliance
Extern Organisation (The)

Fawcett Society (The)
Greater Manchester Youth Justice Trust
Henley Management College
HM Prison Shotts Visiting Committee
Home Office
Howard League Scotland
Inside Out Trust
Institute of Economic Affairs
J Paul Getty Jr. Charitable Trust
Justice
Kilbrandon Now
Magistrates Association (The)
Mediation UK
MENCAP
Meridian Trust Association
MIND
National Probation Directorate (Home Office)
National Probation Service – South Yorkshire
National Probation Service – Staffordshire
National Probation Service – Cheshire
Natural Justice
NCH Scotland
North Down IMPACT Project
Northern Ireland Association for the Care & Settlement of Offenders (NIACRO)
Northern Ireland Court Service
Parole Board for Scotland
Penal Affairs Consortium
Police Service of Northern Ireland
Prison Fellowship
Prison Reform Trust
Probation Board for Northern Ireland
Probation Managers' Association
Refugee Council
Reliance Monitoring Services Ltd
Religious Society of Friends' Crime & Community Justice Group
Restorative Justice Consortium
Rethink
Rethinking Crime and Punishment
SACRO
Scottish Consortium on Crime and Criminal Justice
Scottish Executive
Scottish Parliament Justice 1 Committee (The)

Scottish Prison Service
Sheriffs' Association (The)
Smart Justice
Thames Valley Partnership of Townhill Barn
Transform Drug Policy Institute
Ulster Quaker Services Committee
Unison
Victim Support
YMCA
Youth Justice Board

Individuals

Sir Robert Andrew KCB
Sir Christopher Ball
Sir Richard Butler
Lord Carlile of Berriew
Sir Edward Cazalet
Professor Andrew Coyle
The Rt Hon The Lord Cullen of Whitekirk
Mrs Sarah Curtis
Mr David Faulkner
Dr Loraine Gelsthorpe
Mr Brian Harper JP
Professor Mike Hough
Ms Susan Hughes JP
Professor Neil Hutton
Mr Paul Kiff
Mr Andrew Lothian
Professor James McGuire
Dr Nicky Padfield
Professor Ken Pease
Ms Mary Phillips JP
Dr John Harding-Price
Mr Stephen Pryor and colleagues
Mrs Jenny Roberts
Mr Ian Robertson ISM
Mr Jon Robson
The Rt Hon Lord Justice Rose
Ms Wendy Rose JP
Mr Aubrey Rose CBE, D.Univ.FRSA
Ms Sally Sampson JP

Ms Merren
Mr Ron
Mr Bill
Professor David
Dr Martin
Watson JP
Watts JP
Whyte
Wilson
Wright

Appendix B

Meetings and Visits

Consultation Events	London
	Nottingham
	Edinburgh
	Cardiff
Meetings	
Scottish Executive	Senior Officials – covering all aspects of Criminal Justice
Northern Ireland Office	Senior Officials– covering all aspects of Criminal Justice
Welsh Assembly	Edwina Hart and officials
Baroness Scotland	Home Office
Martin Narey	Home Office
Eithne Wallis	Home Office
Lord Carter	Review of Correctional Services – England and Wales
Discussion groups	Business people - England
	Police Officers –Clydeside
	Police Officers - England
Northern Ireland	Magistrates and judges
Visits	
ISSPs	
ICCPs	
Restorative Justice Meetings	
Airborne Initiative	
Asha Project	
Scottish Childrens' Panel	
Nottingham Probation Service	
	Prolific Offender Project
	Probation staff
	Intensive Control and Change programme
	Youth Offending team
Wandsworth Prison	
	Prisoners
	Senior Management
	Prison Officers

Greater Manchester Probation Service	
	Probation Staff
	Offenders on Drug Treatment and Testing Orders
	Presentation on OASYS
	Visit to probation accommodation – discussion with staff and residents

Two day seminar

Institute of Criminology	University of Cambridge

Presentations to Inquiry members

Eithne Wallis	NOMS
Kevin McCormac	Sentencing Guidelines Council
Ben Page	MORI – Public opinion of criminal justice system

Members of the Inquiry also attended a large number of conferences, presentations and so on connected with the subject matter of the Inquiry – these are too numerous to list individually. Members of the Inquiry wish to thank all those who gave their time to assist us in this information gathering process.

Appendix C
Abstracts of Research

CHAPTER 1: INTRODUCTION

Editors: Anthony Bottoms, Sue Rex, Gwen Robinson

CHAPTER 2: TRENDS IN CRIME, VICTIMISATION AND PUNISHMENT

Chris Lewis

This chapter starts by looking at trends in crime. In England and Wales, recorded crime as a whole more than doubled between 1980 and 2003. In Scotland recorded crime rose very little. In Northern Ireland recorded crime in 2003 was two and a half times as high as in 1980.

Over the period 1991-2001, recorded crime in the EU fell by just 1%, whereas crime in England and Wales (-11%) and Scotland (-27%) fell considerably.

Crimes reported by households in England & Wales rose steadily between 1981 and 1991, at 3% a year, and continued to rise until 1995. Since 1995, BCS crime has reported a fall each time. This parallels, although not exactly, the rise and consequent fall shown by police crime statistics. Scottish survey results also parallel the trend in the police figures.

There is considerable public scepticism over this fall in crime over the last decade of the 20th century. The public cannot reconcile the claim that crime is falling, with the rise in prison populations and crime in Britain being high in an international context.

Between 1981 and 2001 the numbers found guilty of indictable offences fell from 465 to 324 thousand, while prison numbers rose from around 42 to 75 thousand. Rises in prison numbers are not due to more people being found guilty, but to changes in sentencing patterns: in particular:

- decline in the use of the discharge, the fine and the suspended sentence;
- increases in the percentage of offenders sent to custody and in the average lengths of sentence for those given custody;
- cumulative effect of much new legislation aiming for longer sentences;
- politicians who have defended each of these legislative changes in sentencing terms;
- the same politicians who have never openly discussed the cumulative effect of 10 years of growing penality on sentencers, the media or the public.

Subsets of the prison population have been affected differently: the female population has risen from 3.9% in 1980 to 6.2% by 2004: the percentage of prisoners from minority ethnic groups in 2002 was 22% for males compared with around 7% in the general population.

Recent Home Office projections imply further rises to the population of 86,000 males and 5,500 females by 2009. These contrast with the conclusions of the Carter Report and the Home Office reply that imply a target of no more than a 80,000 prison population in the medium term.

There have been fundamental changes to the treatment of young people in England & Wales since 1998. These include a number of institutional changes, overseen by the Youth Justice Board and involving a large number of multi-agency local youth offending teams (YOTs). Most commentators on the work of the first five years of this new system conclude the new system is a considerable improvement on the old.

England & Wales in 2002 had a prison population rate of 141 per 200,000 population. This was the highest in Western Europe. Comparisons with Finland, Sweden and the Netherlands show that jurisdictions have been able to take control of the numbers in prison, if they wished to.

CHAPTER 3: EMPIRICAL RESEARCH RELEVANT TO SENTENCING FRAMEWORKS

Anthony Bottoms

The Halliday Report of 2001 was 'born out of a belief that the present sentencing framework suffers from serious deficiencies', and proposed a new framework that 'should increase the contribution of sentencing to crime reduction and public confidence'. The Report concluded that there was little empirical evidence that favoured making changes in the sentencing framework in order to achieve crime reductions through incapacitation or enhanced general deterrence. However, it argued that there was substantially stronger evidence pointing to possible crime reduction through rehabilitation. Reconsidering the research evidence three years later, the case favouring rehabilitation looks weaker, while the evidence relating to deterrence and incapacitation still presents a broadly similar picture to that painted by Halliday.

The pressure group Civitas has recently sought to present evidence arguing that higher prison populations in the UK would produce reductions in crime based on incapacitative and general deterrent effects. However, neither element of this argument takes full account of the relevant research literatures. When account is taken of such research, the case for general deterrent effects through the enhanced use of imprisonment is weak. The case for incapacitative effects is stronger, but requires many more caveats than Civitas offers, and when considering such matters it is necessary to assess 'collective incapacitation' strategies and 'selective incapacitation' strategies separately.

Some commentators have cited Home Office research by Jennings (2003) as demonstrating that the altered decision framework relating to English youth justice since 1998 has significantly reduced crime. Technical reasons are given why it would be best to remain agnostic on this question for the time being.

In general it is argued that achieving crime reductions through changes in the sentencing framework is a difficult and uncertain matter. As a policy guide, it might therefore be best to allocate sentences primarily on non-consequentialist grounds (especially proportionality). That does not, however, mean that there is

no hope for crime reduction initiatives within the framework of particular sentences chosen on non-consequentialist grounds. On the contrary, there are a number of promising leads, especially for rehabilitative approaches, and these should be carefully developed and evaluated.

Finally, the chapter reviews the extent to which sentences formally designated as 'alternatives to custody' have been allocated to cases where, in the absence of any power to pass the given 'alternative', sentencers really would have imposed a custodial sentence. The empirical evidence on this point is mixed. An attempt is made to explain why that is so, and what are the conditions that appear to favour the delivery of 'real' alternatives to custody. Policy implications arising from this literature are explored.

CHAPTER 4: PUBLIC OPINION AND COMMUNITY PENALTIES

Shadd Maruna and Anna King

This chapter examines what we know about public opinion and non-custodial penalties; what accounts for differences in public attitudes; and the implications of this research for efforts to generate public support for non-custodial penalties. In particular, it reports relevant findings from the authors' study of punitive and non-punitive attitudes amongst British adults.

As discussed in the chapter, despite a flood of recent writing about public opinion and criminal justice, researchers have barely scratched the surface of public attitudes towards punishment. One consistent finding is of a high level of public ignorance about crime and justice. Despite this, the myth of the punitive public persists, although research has shown that the reality is somewhat more complex. Public support for harsh punishment for serious offenders is combined with support for rehabilitation, members of the general public seeing no contradiction in valuing both retribution and rehabilitation. The public is largely unfamiliar with community penalties, but seems prepared to support their use for non-violent offenders when it is informed about them.

Turning to why differences in punitive attitudes exist amongst members of public, the chapter examines both instrumental and expressive explanations. One promising line of investigation is attribution theory, or what people see as the explanation for crime or criminality, so that those who believe crime is a choice might be expected to have more punitive attitudes. Related to this is a belief in people's ability to change: is there a connection between a belief in redeemability and attitudes about punishment?

The chapter reports findings from the University of Cambridge Public Opinion Project, in which a postal survey was used to test a variety of theories about the correlates of public attitudes. One hypothesis that was tested was that individuals who believed deeply in the notion that people can change are the most likely to support alternatives to prison. The research did indeed find considerable support for a relationship between core beliefs about crime and support for non-custodial options, in particular the belief that people can change their ways.

Considering the implications of the above discussion, and in particular these findings, for working with public opinion, the chapter discusses what might work in changing public perceptions of non-custodial penalties. Research has shown that statistics about the effectiveness of community penalties or the costs of custody have little impact on public views. Education or providing information to members of the

public has some influence but it is often limited or short-lived. More promising is the impact of actively involving citizens in criminal justice, perhaps through jury service or participation in restorative justice schemes. However, academics have perhaps overlooked the importance of emotive arguments to a public who wants 'affective' as well as 'effective' justice. Here, redeemability, or the argument that 'people can change' may provide the basis for a powerful appeal to the public to support community-based sanctions that allow offenders to redeem themselves by making amends through positive contributions to their communities.

CHAPTER 5: PUNISHMENT AS COMMUNICATION

Sue Rex

This chapter seeks to clarify the framework for community penalties, arguing that considerable confusion about the purpose of community orders and their place in the sentencing framework has undermined their credibility and use. It draws on views expressed in interviews and questionnaires by people who might be seen to have a particular stake in criminal justice to look at the application to community-based sanctions of theories of punishment in which communication plays a central role.

The chapter starts by providing a brief outline of the various normative theories of punishment and how they apply to community penalties. As set out in the Criminal Justice Act 2003, the purposes of sentencing are punishment, reduction of crime (including deterrence), reform and rehabilitation, protection of the public and reparation. Traditionally, rehabilitation (a consequentialist goal) has provided the dominant rationale for community penalties, more recently evolving into a focus on protecting the public against the 'risk' posed by offenders. It is argued in the chapter that this focus has eclipsed another important function of community penalties, as of all penalties: to punish an offender by restricting his or her liberty (a retributive goal). What is required is a balance between the two elements, so that we have community penalties that both pursue the socially useful goal of reducing crime and act as just responses to crime.

The attraction of communicative theories of punishment lies in their attempt to integrate retribution and crime prevention, looking both backwards to 'censure' the offence and forwards to the crime preventive benefits secured through the sentence. Indeed, a conceptualisation of punishment as communication accorded with the understandings expressed by magistrates, probation staff, victims and offenders participating in the research discussed in the chapter. For them, sentencing transmitted normative or 'moralising' messages, and the experience of being sentenced was intended to elicit a positive response from offenders in the form of making efforts to refrain from offending in the future. People prioritised crime prevention as the overriding aim of sentencing, but also showed a strong commitment to proportionality in deciding amounts of punishment. In short, views supported an account of punishment as both socially useful in preventing offending and also fair.

The people participating in the research expressed keen support for community penalties. Accordingly, the chapter considers the implications of the findings for how community penalties might be developed as communicative sanctions that actively engage offenders in processes of change whilst bearing a reasonable relationship with the gravity of the offence. Understood in terms of communicative penal

aims, community penalties were seen to have the capacity to combine an appeal to offenders' sense of moral agency (or citizenship) with practical help in overcoming obstacles to moving away from offending. The findings also suggested that a focus on what offenders might be capable of in the future might be more effective than a preoccupation with their past behaviour. Thus, a consideration of the damage caused by offending would provide a starting point for interventions in which the focus was pro-social rather than condemnatory.

CHAPTER 6: DIVERSIONARY AND NON-SUPERVISORY APPROACHES TO DEALING WITH OFFENDERS

George Mair

While there has been considerable criminological and political interest over the years in reducing the number of offenders being imprisoned, such interest has focused on providing alternative sentences that offer more demanding interventions that aim to replicate - as far as possible - the rigours of custody. Such approaches have not been successful, and it is likely that only a more measured, holistic approach that takes full account of the sentencing tariff (as well as initiatives to divert from prosecution) will be effective and sustainable. In this chapter, the role that fines, conditional discharges and cautions could play in diversion from custody or prosecution is considered.

There has been relatively little relevant research on initiatives intended to divert defendants from prosecution. But there is evidence from juvenile justice in the 1980s that cautioning, if implemented as part of a whole systems approach, can contribute to significant reductions in the use of custody. The Scottish system of Children's Hearings also seems to play a part in diverting young offenders from court interventions. The Public Interest Case Assessment experiment in the early 1990s too proved successful in increasing the likelihood of discontinuance, although it was not cost-effective. The fine remains the most commonly-used sentence in England and Wales, yet research has focused on the same problems for more than 30 years (consistency, assessment, and collection/enforcement) which suggests that these are either insoluble problems (unlikely) or that little notice was taken of the results by policy makers (more likely).

Fines, conditional discharges, and cautions have all been decreasing in use since the early 1990s. There seems to have been a defining moment around the decision to emasculate the 1991 Criminal Justice Act and the Michael Howard 'prison works' era that cemented trends: fines decreased more dramatically, conditional discharges began to fall, and the rise in cautioning rates was reversed. These trends hold for different offences, for different age groups and for both males and females. Even compensation orders, which might have been expected to increase in use due to the interest in restorative justice, have declined in popularity. Yet, while taking full account of the limitations of reconviction rates as a measure of effectiveness, fines, conditional discharges and cautions all display favourable rates of reconviction.

The latest policy developments tend to suggest that the government may be serious about tackling the historically high numbers being sentenced to custody. Conditional cautioning could be helpful, although the possibility of net-widening is present and CPS involvement in cautioning in general might be sensible. The reintroduction of the unit fine would be a positive step, although leaving fines out of the control of the

planned National Offender Management Service seems anomalous. It is worth examining the Scottish (and German) prosecutor fine; and also worth looking again at methods of calculating fines. Recent efforts to improve levels of fine enforcement have been successful and it will be important to sustain these. If such developments were to be backed up by pre-sentence reports taking low risk as seriously as they do high risk, and they were part of a holistic recalibration of court sentences, then it may be possible to begin the process of halting – or even turning around the increasingly punitive sentencing patterns that have led to a prison population that would have been unthinkable 10 years ago.

CHAPTER 7: REPARATIVE AND RESTORATIVE APPROACHES

Gill McIvor

A number of community disposals aim to enable offenders to make reparation for their offences, including community service orders (community punishment orders, or CPOs, in England and Wales) and approaches premised upon restorative justice. The latter – which often have their origins in indigenous practices – include victim offender mediation and reparation, family group conferences, circle sentencing, community panels and circles of support and accountability. These approaches, which aim to hold offenders accountable for their offences and to repair the harm visited upon victims, have been developed at various points in the criminal justice process. Some have their basis in legislation while others, because they are predicated upon principles of voluntarism and non-coercion, operate on a more informal basis. In some jurisdictions, restorative approaches have become firmly embedded in the criminal justice process, whilst in others they have remained somewhat marginalised.

This chapter describes the origins of reparative and restorative approaches with particular regard to how they have been instituted in the UK within varying political and legislative contexts. A number of operational issues or tensions are discussed including the balancing of the interests of the victim, the offender and the community, and safeguarding the rights of the offender; problems of access and responsiveness to diversity; the enforceability of agreements reached through informal, restorative processes; and their potential resource-intensiveness.

The evidence for the effectiveness of reparative and restorative approaches with respect to achieving reductions in recidivism is somewhat fragmentary, though it is often argued that victim and offender satisfaction with the process are equally important measures. The available data suggests, however, that **how** these approaches are implemented is likely to be of critical importance. In particular, how offenders **experience** restorative or reparative approaches and how well they are able to **promote their re-integration** in the community seem to be related to their success. For example, attitudinal change and lower levels of reconviction have been found to be associated with community service that aims to enhance the value of the work for both the offender and the community. Similarly, outcomes for restorative justice appear to vary according to the level of direct participation of offenders and victims in the process.

The chapter concludes that, despite the limited and patchy evidence for an impact on recidivism, there is scope for greater use to be made of reparative and restorative approaches at a more diverse range of points in the criminal justice process. Even if at worst they appear no **less** effective than the alternative

courses of action that they are intended to replace, options such as community service, mediation and reparation and conferencing have been shown to produce other, less tangible benefits for offenders, for victims and for the community. For example, victims who have gone through mediation and reparation have been found to welcome the opportunity to meet the offender, to value the benefits of directly exchanging views with the offender and perhaps receiving an apology, and to be less fearful of further victimisation.

CHAPTER 8: REHABILITATIVE AND REINTEGRATIVE APPROACHES

Peter Raynor

For the purposes of this chapter, 'rehabilitative' penalties are those which aim, in whole or in part, to reduce re-offending by reducing an offender's wish, need and/or disposition to offend. 'Reintegrative' penalties are those which aim to achieve or facilitate rehabilitation by increasing the impact of pro-social contact with others in the community, and of positive social influences in general. Such aims are particularly associated with, though not confined to, community sentences such as community rehabilitation orders (still known outside England and Wales as probation orders). Research over many decades has tried to assess the effectiveness of rehabilitative penalties. Initial discouraging results in the 1970s have been superseded by more encouraging results based on better designed interventions and more appropriate research methodologies. The current consensus of international research is, broadly speaking, that appropriate rehabilitative interventions with offenders have been shown to reduce reconviction by 9% or 10%, and that the most effective approaches (for example, structured programmes based on cognitive-behavioural methods made available to offenders who are assessed as having needs which are suitable for this type of programme) achieve reductions of 13% or more.

However, the application of this research in practice has been affected by implementation difficulties, by a demonstrable tendency for programmes to be more effective when they are piloted than when implemented routinely on a large scale, and by a relative neglect of the contribution of practitioner skills and effective case management. In England and Wales programmes in the community have also suffered very high attrition, i.e. most offenders who are supposed to complete programmes do not do so. These problems of implementation make evaluative research both difficult and unlikely to show good results, so that the recent unprecedented investment in probation research is not, on the whole, producing results that match those in the international 'What Works' research literature. Both implementation and evaluation have arguably taken place over too short a time-scale, with the result that excessively pessimistic conclusions might be drawn about what is achievable in Britain. However, if the right lessons about implementation and case management are learned from the recent British research, there is a realistic possibility of improved performance.

The right lessons include the idea that correctional services should be concerned with the whole process of supervision or case management, of which programmes, if used, form only a part. The aim should be to try to secure a rehabilitative impact through the whole process. Lessons should also be learned from earlier research which suggested that programmes could be most usefully offered to offenders who would otherwise receive custodial sentences. Both 'end-to-end' case management and limiting the

growth of prison populations are part of the government's new strategy for offender management in England and Wales. Other promising approaches include better assessment; better targeting (including strategies to enlist the cooperation of sentencers); a more realistic and feasible pace of implementation with more evidence-based numerical targets; facilitating compliance rather than relying on enforcement through deterrence; maintaining and reinforcing learning, and involving offenders in pro-social support systems. It will also be important to recognise effective rehabilitation as a process which benefits communities and in which offenders actively participate.

CHAPTER 9: ELECTRONIC MONITORING AND THE COMMUNITY SUPERVISION OF OFFENDERS

Mike Nellis

This chapter examines the electronic monitoring of offenders, a relatively new development in the community supervision of offenders, which may have implications for the very definition of community supervision itself. Various technologies are currently encompassed by the term "electronic monitoring" (EM), including voice verification and satellite tracking, but the commonest form to date has been based on radio frequency telephony, and has been used to monitor curfews. The remote monitoring of people at distant locations and in real-time has to be understood as a form of surveillance, and this is partly why EM was initially controversial in the probation and youth justice services, into whose "territory" is was pitched by the Home Office in the 1990s. Probation Service resistance led the Home Office to use private sector bodies to deliver EM services. Although there had been attempts prior to the 1990s to incorporate the monitoring of offenders' locations and schedules into community supervision in non-electronic ways they were never as widespread, or as supported by government, as EM has become.

The idea of EM was first promoted in Britain by the Offender's Tag Association. It was taken up by a Conservative government as a way of making community penalties more controlling, and ostensibly more credible as a means of reducing the use of custody. Home Office research into the initial EM trials showed high rates of compliance with curfews, and a belief that it was a high tariff penalty best used in conjunction with other, more overtly rehabilitative measures although in reality it was routinely used as a stand-alone measure. The post-1997 Labour government has been even more committed to EM-based penalties, for juveniles as well as adults. It has rolled out eight national programmes (including voice verification, which has not been particularly successful) and proposes satellite tracking trials later in 2004. Approximately 144,000 offenders were tagged between 1999 and 2002. The average daily caseload is approximately 9000, the largest proportion of these being offenders on an early release from prison scheme.

EM originated in the USA (still the largest user, numerically), spread to other countries and has an independent momentum in mainland Europe, where the private sector is less involved in its delivery, and where it is more entwined with probation than in England and Wales. Intense professional debate surrounds the significance of this technology for community supervision, although it is by no means clear that it has been adequately theorised by criminologists. It is seemingly an expression of a surveillant-managerial trend in criminal justice, and although it could reasonably be used in conjunction with social work, it is potentially threatening to the humanistic-rehabilitative tradition. Both EM and social work

alike are threatened by "populist punitivism", and while the development of EM will be checked by punitive sentiments it is more likely to survive than purely humanistic measures like probation.

CHAPTER 10: DEALING WITH SUBSTANCE-MISUSING OFFENDERS IN THE COMMUNITY

Judith Rumgay

This chapter explores good practice in the treatment of drug and alcohol misusing offenders. It considers first the prevalence of drug and alcohol abuse among offenders and the links between substance misuse, crime and other indices of harm. It briefly reviews the treatment implications of alternative theoretical perspectives on substance misuse before considering strategies for enhancing treatment opportunities within the criminal justice system. Issues in inter-agency collaboration, effectiveness and the balance between coercion and voluntarism are examined.

There has been a long-standing recognition of an association between alcohol and crime, in contrast with the more recent rise in concern about the prevalence of drugs misuse amongst offenders. The costs to the criminal justice system of problem drug use have recently been estimated as ranging up to over £3 million per year, with further costs to victims of over £12 million. Studies have shown that substance misusers who are also offenders often have the most severe problems but are the least likely to gain access to formal support services or to succeed in treatment. The chapter argues that an effective strategy for dealing with substance misusing offenders in the community should provide comprehensively for the range of problems and risks associated with substance misuse.

Over the past decade, the routes by which offenders may enter drug or alcohol treatment through the criminal justice system have expanded, an encouraging development but one that also creates potential confusion as between alternatives. The chapter looks at early experience with the drug treatment and testing order (DTTO), an intervention that uniquely brings together correctional and rehabilitative treatment agencies, and one that envisages the personal involvement of sentencers in reviewing offenders' progress.

Turning to the effectiveness of substance misuse treatment, the chapter draws on findings from a recent large-scale study of conventional drugs programmes. Over four or five years, the study found a substantial decrease in criminal activity, apparently as a consequence of reduced problematic drug misuse and improved psychological health. These findings suggest that the most important challenge might be to ensure that offenders enter and remain in treatment, itself a significant achievement given what is known about the characteristics of substance misusing offenders. Here, drugs courts in the USA, a model that inspired the DTTO initiative, have shown particular success, possibly because of the active interest shown in offenders' progress in treatment.

The chapter concludes by identifying a number of key issues for the future development of community-based treatment. One is the difficulty of delivering treatment within a penal framework, especially as offenders constitute a group that combines severe drug and alcohol problems with poor engagement with treatment services. Linked to this is the need to develop motivational work with substance misusers

and to diversify rather than to restrict the range of treatment opportunities to reflect the diversity of substance misuse and associated problems. The tension between compulsion, enforcement and therapeutic goals requires careful attention, and there is a need to develop voluntary as well as compulsory pathways to treatment.

CHAPTER 11: INTENSIVE PROJECTS FOR PROLIFIC/PERSISTENT OFFENDERS

Anne Worrall and Rob Mawby

Home Office research suggests that 10% of offenders are committing half of all crime in England and Wales at any point in time. It is in this context that this chapter focuses on intensive projects for prolific/persistent offenders.

Intensive projects for prolific/persistent offenders can be viewed as both a recent innovation and also as the latest incarnation of a much older penal preoccupation with persistent offending and intensive supervision. In England and Wales, whilst intensive supervision has been a continuous part of work with juvenile offenders, for adult offenders it is possible to identify three 'generations' of intensive supervision initiatives. The most recent generation emerged in the late 1990s and there are now at least 40 Intensive Supervision and Monitoring Programmes (ISMs) for adult prolific offenders at various stages of development in England and Wales. In addition, the separate Persistent Offender Scheme was launched in October 2002 across all 43 police force areas as part of the government's *Narrowing the Justice Gap* strategy.

The current prolific (or persistent) offender projects represent an amalgam of the theoretical underpinnings, policy objectives and multi-agency practices of previous generations of intensive supervision. These 'third generation' projects combine penal philosophies of deterrence, incapacitation and rehabilitation. The projects, though locally different, share a number of key characteristics. Their central feature has been the combination of intensive attention from both the police and probation services which seeks to address participants' offending behaviour and other needs. They provide a mix of frequent contact, access to treatment (particularly drugs treatment) and community facilities, and constant monitoring. They are also required to demonstrate cost-effectiveness and increased public safety. The major departure from previous projects, however, is their avoidance of the pitfall of relying on offenders to reduce their own rates of re-offending. Instead, it is now accepted by project managers and practitioners that prompt re-arrest, resulting from increased intelligence and monitoring, is also a measure of success.

Evaluation studies of earlier generations of intensive supervision projects tended to be discouraging in their findings concerning impact on recidivism. Emerging evaluations of the current generation of projects have not to date provided overwhelming evidence of reduced offending or cost effectiveness. However, prolific offender projects are complex in terms of their multi-agency nature and the needs of their clientele. In addition to being judged on crime rates and cost-effectiveness, other criteria of success should be taken into account. These include, on the one hand, health, educational and social benefits for participants and, on the other hand, improved multi-agency working and information exchange between project partners, and improved intelligence on prolific offenders.

Given that the Carter Report recommended targeted and rigorous sentences, specifying for persistent offenders not only greater control and surveillance, but also help to reduce their offending, it is likely that intensive projects for prolific/persistent offenders will maintain their current high profile. If this is to be the case, it is important that these projects should be regarded as being of a maintenance nature (accepting the possibility of 'relapse'), rather than a short sharp intervention that acts as a cure-all. In addition, consideration must be given to creating sustainable funding for these projects and, finally, care must be taken that they target genuinely high-risk and persistent offenders in order to avoid net-widening.

CHAPTER 12: WHAT GUIDES SENTENCING DECISIONS?

Martin Wasik

This chapter examines practical decision-making by sentencers, focusing on decisions on and around the elusive custody threshold. The legal framework for sentencing can be divided into (i) statute law, and (ii) case law, especially guidelines, and the discussion of each in the chapter is informed by what is known empirically about sentence decision-making and the operation of various influences on sentencers. In particular, the chapter considers recent research commissioned by the Prison Reform Trust, which examined sentencing in borderline custody cases. It also looks at the implications of the Criminal Justice Act 2003, the gradual implementation of which will continue until 2007.

The chapter discusses how discretion in sentencing has been reduced in England and Wales, both through the legislative framework and through the creation of the Sentencing Advisory Panel and the Sentencing Guidelines Council. It argues that, whilst sentencers bear the primary responsibility for the recent escalation in the use of custody, their decisions are made against a political and media context that has been relentlessly punitive despite official exhortations to limit imprisonment to violent sexual and seriously persistent offenders. On restricting the use of custody, the chapter charts guideline judgements since the Criminal Justice Act 1991 on when an offence is 'so serious' that only custody can be justified. It also looks at the desirability of minimising the use of short custodial sentences, and the possible impact of the 2003 Act in requiring all short terms of imprisonment to be combined with lengthy periods of supervision in the community.

The chapter then turns to the impact on sentencing of the guilty plea, criminal record and personal mitigation, all factors that can influence the decision to impose a custodial sentence. The relevance of criminal record to sentencing is a matter of controversy between desert theorists, for whom the key driver for sentence is the seriousness of the offence, and utilitarians who advocate progressively harsher punishment or cumulative sentencing for repeat offenders. The 2003 Act contains provision that commentators assume will enhance 'sentencing on record' and increase the incarceration of persistent offenders, although it is unclear how the Sentencing Guidelines Council will interpret it.

Looking at community sentences, the chapter reviews the current statutory tests and notes that the language of 'alternatives' is not embodied in the law. Community sentences are seen as 'punishments in the community', having varying degrees of restriction on liberty as well as differing utilitarian goals. The next phase in the development of community sentences is the 'generic community sentence', to be

introduced under the 2003 Act and in which the sentencing court may include any from a menu of requirements.

Finally, the chapter considers the possible implications of provisions in the 2003 Act for suspended sentence and deferred sentence. Whilst there are real opportunities within the 2003 Act for a de-escalation in the use of custody, the chapter concludes that the Sentencing Guidelines Council has an enormous task before it in issuing coherent and comprehensive guidelines on the many complex legislative changes.

CHAPTER 13: SENTENCE MANAGEMENT

Gwen Robinson and James Dignan

This chapter focuses on the administration or management of community-based sentences, rather than the delivery of specific interventions. It examines recent research on models of 'case management', as well as paying particular attention to two aspects of the case management process: namely, the assessment of offenders and the enforcement of community orders. It also addresses separately the management of 'seamless' sentences, which are served partly in custody and partly in the community. In the final part of the chapter attention turns to the role of sentencers in the oversight and review of community-based penalties.

Firstly, then, we review the considerable advances that have been made in respect of the technology of offender assessment, including the development of OASYS and ASSET. We consider the extent to which such instruments potentially assist practitioners and managers to appropriately target their resources, and the role such instruments are currently playing in facilitating a shared approach toward offender management across prison and probation services. Some of the less frequently discussed problems associated with such instruments, such as their association with fears about 'deskilling' among practitioners, are also discussed. We then move on to identify and discuss four key contemporary issues in the management and delivery of community sentences, namely: (i) the advantages and disadvantages of generic vs. specialist practitioner roles for different groups of stakeholders; (ii) the relative neglect of the case management role in favour of investment in accredited programmes; (iii) the related neglect of the supervisor/supervisee relationship as a basis for effective practice; and (iv) problems around matching offenders to appropriate resources, both 'in-house' and those provided by partnership agencies. Our principal argument here is that the management of community supervision cannot be reduced to an automated or purely 'technical' set of procedures; nor should those responsible for managing and delivering community sentences lose sight of evidence which suggests that the consistency and quality of offender/supervisor relationships are an important aspect of effective practice, both in terms of promoting motivation and compliance (in the short term) and desistance (in the longer term).

We next turn to the enforcement of community penalties, and review both the recent tightening of enforcement procedures and existing evidence concerning the relationship between enforcement action and reconviction. We explain that whilst appropriate enforcement action (though not necessarily breach action) does appear to be related to lower rates of reconviction, stricter approaches to enforcement are not necessarily associated with lower rates of reconviction. In common with a number of researchers,

we conclude that instead of asking 'what works?' in enforcement, we ought to be devoting more attention to the question of 'what works?' in encouraging compliance, and a number of suggestions, drawn from others' work, are made to this end.

In the following section we review evidence in relation to the management of sentences which are served partly in custody and partly in the community. In respect of so-called 'seamless' sentences (e.g. the Detention and Training Order for 10-17 year olds, and custodial sentences with statutory licence periods) prominent challenges include the requirements of cooperative working between prisons and community-based agencies, as well as between both statutory services and the independent sector; the necessity of effective information exchange; and the continuity of interventions and personnel across custodial and community boundaries.

Finally, we turn to the expanding role of courts and sentencers in the monitoring and review of certain community sentences. In this section we briefly review the research on DTTOs in England and Wales, and the Drug Court approach in Scotland. We conclude that one of the most interesting aspects of the Drug Court approach is that it appears to offer an alternative strategy for securing an offender's compliance rather than relying on the excessively rigid and possibly counterproductive use of automatic breach procedures; it also offers an alternative way of resurrecting the relational or interpersonal dimension of case management discussed earlier in the chapter.

CHAPTER 14: DIMENSIONS OF DIFFERENCE

Hazel Kemshall, Rob Canton, Roy Bailey

This chapter considers the provision of non-custodial measures for specific minority offender groups, namely women, ethnic minorities and mentally disordered offenders. The chapter considers the evidence for differential custodial sentencing and the differential access to community sentences (and should be read in conjunction with chapters 2 and 12). Some of the key factors implicated in differential sentencing rates are briefly discussed, and recent Section 95 material is reviewed.

The emerging evidence for different criminogenic needs is also addressed, and the extent to which diversity is integrated within programme design and content. Current debates are wide-ranging covering issues of access and programme targeting, but also more fundamental issues of content, process and style. The literature does not argue that criminogenic needs are totally distinctive across diverse groups, but that there are some important differences. The research base, whilst presently limited, makes an initial case for specific provision targeted at particular criminogenic needs. However, there is continuing debate about the status of some of the research studies (often local and small scale), and therefore the extent to which alternative provision should be made. The debate is also affected by the relatively small numbers of offenders involved and the relative costs involved in programming alternatives.

The effectiveness of non-custodial options for minority groups is also considered, although the review is restricted to consideration of probation programmes and assertive outreach for mentally disordered offenders as two of the main alternatives to custody and compulsory residential care. Evaluations of impact have also been restricted to small-scale, largely local studies and there is, as yet, a limited evidence

base for their effectiveness. Emerging evidence on programme effectiveness is reviewed and some of the key critical success factors are presented.

The chapter concludes with five recommendations for improving provision to minority offender groups. (1) Alternatives to custody must be subject to a 'diversity test'- not just in terms of programme content and responsivity, but also in terms of differential access, differential impact (e.g. differing attendance demands), and unintended consequences (e.g. up-tariffing, or exacerbating the risk of attrition by increasing programme lengths). (2) Proposals/alternatives should be robustly examined to ensure that they do not create differential and potentially discriminatory pathways through the criminal justice system. (3) Simplistic notions of cost should be replaced with a clearer concept of value for money in which relevance and appropriateness of programmes to the profiles, criminogenic needs and offending patterns of minority groups should be a key feature. (4) Further research into the role of diversity in desistance is required to answer, for example, whether desistance is different for different groups. (5) Investigation into the impact of diversity on resilience to crime may also be productive, and may assist policy makers and practitioners in designing and implementing effective non-custodial options.

CHAPTER 15: COMMUNITY STUDY

Anthony Bottoms and Andrew Wilson

This is summarised on page 33.

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Appendix D

Community Orders

The first order of this kind was the probation order introduced, under the Probation of Offenders Act 1907. The original purpose of probation was to provide assistance to the offender by "advising, assisting and befriending". In the course of the twentieth century, probation developed so as to include elements of compulsion and restraint. In the 1970s the Community Service Order, requiring the offender to undertake a period of unpaid work in the community, was introduced and rapidly became one of the most significant community orders. In England and Wales, but not in Scotland, probation and community service orders were later renamed Community Rehabilitation Orders and Community Punishment Orders and provision was made for a combined Community Punishment and Rehabilitation Order. The changes of name, however, made no real difference to the character of the orders or the way they are used. Apart from probation and community service, the two most significant orders are Drug Treatment and Testing Orders and Curfew or Restraint of Liberty Orders which became available in the 1990s. The Criminal Justice Act 2003 replaces the various separate orders with a generic community order to which no less than twelve types of condition can be added.

Community Orders: England and Wales

Disposal	Age Group	What is involved	Maximum/Minimum Terms	Procedural Requirements
Absolute Discharge	All ages	Appropriate where the offender is virtually blameless and the offence is not sufficiently serious to warrant a fine or other penalty.		Court must consider it inexpedient to inflict punishment.
Conditional Discharge	All ages	Offence is not sufficiently serious to warrant a fine or other penalty e.g. petty dishonesty. Restrictions apply to youths (10 to under 18) (excuses offender from being punished for the offence provided no further offences committed during the period of discharge).	Maximum 3 years, no minimum	Court must consider it inexpedient to inflict punishment.

Continued

Community Orders : England and Wales *(continued)*

Disposal	Age Group	What is involved	Maximum/Minimum Terms	Procedural Requirements
Compensation Order	All ages	Compensation paid to victim for personal injury, loss or damage arising from the offence. Amount of compensation must be related to offender's ability to pay. Max in magistrates' court £500 per offence.		
Fine	All ages	Sum of money fixed by court. Payment by stated time or by instalments. Parent may be required to pay for under 18s in the event of default. May be deducted from Job Seekers' Allowance or Income Support.	In Crown Court unlimited. In magistrates' court maximum usually £5000.	Court must consider offender's financial circumstances. Amount must reflect seriousness of the offence and ability to pay.
Attendance Centre Order (ACO)	10 to under 21	Offender attends centre for 2/3 hour sessions usually on Saturday afternoons and must participate in a variety of activities. Offence must be serious enough to warrant community penalty. Also available for fine defaulters up to 25 yrs old or as penalty for breach of probation order (up to 21 yrs).	Minimum normally 12 hours, maximum 24 if under 16; 36 if 16 or over.	Offence must be punishable by imprisonment. Centre must be reasonably accessible. No consent required.
Reparation Order	10 to under 18	Offender required to make reparation to victim/ community e.g. apology, cleaning graffiti. Is not a community sentence and offence does not therefore need to be "serious" enough. Length must be commensurate with seriousness.	Up to 24 hrs (to be made within 3 months of order).	Direct reparation requires victim's consent. Cannot be combined with custody, CPO, CPRO, SO, APO. Court must have a written report outlining type of reparation and attitude of victims.
Referral Order	10 to under 17	Referral to a Youth Offender Panel (YOP), which includes 2 volunteers from the community. Together with the victim and offender's family, a contract is agreed to make reparation and prevent re-offending.		Not available in Crown Court. Offender must plead guilty and the order is only avalable for a first conviction.

Continued

Community Orders : England and Wales *(continued)*

Disposal	Age Group	What is involved	Maximum/Minimum Terms	Procedural Requirements
Action Plan Order (APO)	10 to under 18	Order specifically tailored to address the causes of an offender's behaviour. May be imposed for relatively serious offending but also as an early intervention to prevent re-offending. Offences must be "serious" enough to warrant a community sentence.	3 months.	Cannot be combined with custody, PO, CRO, CPO, SO or ACO. Cannot be imposed if already subject to such an order. Court must have report outlining proposed requirements and parents' attitude.
Parenting Order	Under 16 and 16-17	Order designed to assist parents provide appropriate care, support, protection and control of their children. Parental consent not required.	Mandatory element (counselling and guidance) up to 3 months. Discretionary element up to 12 mnths with requirements to exercise control over child's behaviour.	Court must obtain information about family circumstances and likely effect on them.
Supervision Order (SO)	10 to under 18	Order puts offender under supervision of social worker, probation officer or YOT. Requirements may be added (residential, live in local authority accommodation, mental treatment, comply with supervisor's directions, activities, reparation, night restriction etc, education).	Maximum 3 yrs. No minimum.	Offence must be serious enough to warrant a community penalty. Supervisor must be consulted before requirements imposed re activities, reparation, night restriction etc. or education.
Deferred Sentence	All ages	Sentence deferred pending offender fulfilling a promise made in mitigation e.g. to find work, save up for compensation, keep free of drugs.	Maximum 6 months.	Offender must consent. Sentence can only be deferred once.

Continued

Community Orders : England and Wales *(continued)*

Disposal	Age Group	What is involved	Maximum/Minimum Terms	Procedural Requirements
Community Rehabilitation Order (CRO)	16 and over	Order puts offender under supervision of a probation office with aim of rehabilitation, protecting the public and preventing further offending. Requirements may be added. Requirements: residential, activities, attendance at a Community Rehabilitation Centre, mental treatment, treatment for alcohol dependency, curfew, exclusion, drug abstinence. At least 12 appointments in first 12 weeks, including a home visit. 6 appointments in second 12 weeks after which may be reduced to once every 4 weeks.	Minimum 6 months; maximum 3 yrs.	Offence must be serious enough to merit a community sentence.
Curfew Order	16 and over	Requires an offender to remain for periods specified at a specified place.	Curfew between 2-12 hrs per day for a maximum of 6 months (3 months for juveniles).	In making order the court must consider information about the specified place including attitude of persons likely to be affected by the offender's presence there.
Drug Treatment and Testing Order (DTTO)	16 and over	Order authorises treatment with a view to reduction in dependency and testing to establish compliance.	6months - 3yrs.	Court must be satisfied is dependent on or has a propensity to misuse drugs which may be susceptible to treatment. Offender must consent.
Community Punishment Order (CPO)	16 and over	Performance of unpaid work in what would be the offender's spare time. First work session within 10 days of order; minimum of 5 hours per week. Up to 10% can comprise basic literacy or other work necessary to gain maximum benefit from the order.	Minimum 40 hrs; maximum 240hrs.	Offence must be punishable by imprisonment. Offender must be considered a suitable person to perform work.

Continued

Community Orders : England and Wales *(continued)*

Disposal	Age Group	What is involved	Maximum/Minimum Terms	Procedural Requirements
Community Punishment and Rehabilitation Order (CPRO)	16 and over	Requires offender to be under supervision of a probation officer and to undertake unpaid work. Standards for both components apply. Minimum of 12 community rehabilitation appointments plus 1 community punishment assessment and 11 community punishment work session in the first 12 weeks.	Minimum supervision 12 months; maximum 3 yrs. Work not less than 40 hrs; maximum 100 hrs.	Offence must be punishable by imprisonment.

Community Orders : Scotland

(unless otherwise specified, references are to the Criminal Procedure (Scotland) Act 1995)

Order	Statute	Effect	Conditions
Absolute Discharge	S.246(2)	Not treated as a conviction, except for laying before court in a later case.	Inexpedient to inflict punishment and probation not appropriate.
Admonition	S.246(1)		Justice of the case.
Caution	S.227	Find security for good behaviour for specified period not exceeding 12 months.	
Compensation Order	S.249	Pay compensation for personal injury, loss or damage.	May not be combined with probation or deferred sentence.
Community Service Order	S.238 - 245	Unpaid work 80- 240 hours: or 300 if on indictment.	Offence punishable by imprisonment.
Confiscation and Forfeiture	Proceeds of Crime (Scotland) Act 1995	Applies to property used in the commission of a crime and to the proceeds of a crime.	
Drug Treatment and Testing Order (DTTO)	S.245A (inserted Crime and Punishment Act 1998)	Social work supervision, random drug tests, monthly court reviews, counselling programmes: minimum 6 months, max. 3 years.	
Deferred sentence	S.202	Postpones sentence for a defined period: on next appearance court has the same powers of sentencing as on first appearance.	Generally has a condition of good behaviour attached.
Fine	S.307(1)	Money payment.	
Probation Order	S.228 - 230	Supervision 6 mths. – 3 years	May include residence and participation in programmes, and, if offence punishable by prison, unpaid work requirement 40 – 240 hours.
Restriction of Liberty Order	S.234B (inserted Crime and Punishment Act (Scotland) 1997)	Offender can be restricted to a specific place (max. 12 hours in a day) and/or from a place (up to 24 hours per day) for 12 months max.	May be concurrent with a probation order or DTTO.

Continued

Community Orders : Scotland *(continued)*

(unless otherwise specified, references are to the Criminal Procedure (Scotland) Act 1995)

Order	Statute	Effect	Conditions
Supervised Attendance Order		Time penalty plus education for failure to pay fine (or for 16-17s who couldn't pay a fine): 10 – 100 hours.	

Appendix E

Intensive Supervision and Surveillance Programmes and Intensive Control and Change Programmes

Intensive Supervision and Surveillance Programmes (ISSPs)

These programmes are available for juvenile offenders aged 10-17. Run by multidisciplinary Youth Offending Teams (YOTs), they target the most active repeat young offenders, and those who commit the most serious crimes. They aim to:

- reduce the frequency and seriousness of offending in the target groups;
- tackle the underlying needs of offenders which give rise to offending, with a particular emphasis on education and training;
- provide reassurance to communities through close surveillance backed up by rigorous enforcement (this is achieved largely as a result of police involvement in the YOTs which provides access to police intelligence as well as surveillance).

There are three routes onto ISSPs:

- as a condition of bail supervision and support;
- as part of a community penalty (either a Supervision Order or a Community Rehabilitation Order); or
- as a condition of community supervision in the second half of a Detention and Training Order.

Intensive Control and Change Programmes (ICCPs)

These are similarly designed to secure changes in behaviour with persistent older offenders aged 18-20.

Appendix F
Members of the Inquiry

Chairman

The Rt. Hon. John Taylor Cameron
Lord Coulsfield

Lord Coulsfield has had a distinguished legal career. He served as a judge in Scotland from 1987-2002. He previously practised at the Scottish Bar, taking silk in 1973. He has chaired a number of committees connected with the reform of court procedure and legal education. He was a member of the Scottish Court in the Netherlands which dealt with the Lockerbie air crash.

Commissioners

Marcel Berlins

Marcel Berlins is a broadcaster and legal journalist. He is Legal Columnist for The Guardian and presented Law in Action (BBC Radio 4) until earlier this year. His books include; (co-author) Caught in the Act, a critique of the law on young offenders.

Andrew Fleming-Williams

Andrew Fleming-Williams retired from the Board of Lloyd's Managing Agents R.J.Kiln in November 2002. He has been Treasurer of the Prison Reform Trust since 2001 and is an external member of the Management Board at HMP Wandsworth. He was a Justice of the Peace 1988-1993.

Cedric Fullwood

Cedric Fullwood took over the reins as Chair of Cheshire Probation Board in February 2002. He is a member of the Youth Justice Board for England and Wales. He chaired the Penal Affairs Consortium from 2000-2003 and is a Vice-President of the Centre for Crime and Justice Studies. In the past, he worked as Deputy Chief Social Work Adviser in the Scottish Office (1978-82) and as Chief Probation Officer in Greater Manchester (1982 - 1998). He has been a member of the Home Office Standing Conference on Crime Prevention, a founding member of the Criminal Justice Consultative Council and the National Trial Issues Group from 1993 - 1997. Cedric was part of the Government's Task Force on Youth Justice in 1997-8 and in 1999-2000 he was on the Committee reviewing the Social Work Services in the High Security Hospitals after the Fallon Report.

Angela Sarkis CBE

Angela Sarkis, is an independent management consultant. She is a Non-Executive Director of the NOMS Board at the Home Office and previously worked as a probation officer. She is a governor of the BBC, a member of the House of Lords' Interim Appointments Commission and was Chief Executive of the Church Urban Fund between 1996 and 2001. She holds a range of trusteeships in the voluntary sector, is an adviser to the Department for Education and Skills and was an adviser to the Government's Social Exclusion Unit between 1997 and 2000.

Annabella Scott JP

Annabella Scott has been a Justice of the Peace since 1975, when she was appointed to the Inner London Juvenile Panel. She sits in Adult, Youth and Family Proceedings Courts and chaired the Inner London Youth Panel 1994-1997. Her term as a member of the Youth Justice Board for England and Wales ended recently, after 6 years of service. She was appointed to the Board on its establishment in 1998. She is a trustee of a number of small charities and is a School Governor.

Secretary

Valerie Keating

Valerie Keating originally joined the Inquiry on secondment from the Home Office and continued following her retirement in March 2004. She has extensive experience of policy development related to the criminal justice system, including the introduction of privatisation into the Prison Service, drug policy in prisons and the Home Office review of correctional services.

Appendix G

Glossary

ASBO	Anti-Social Behaviour Order
ASSET	Not an acronym - a form of assessment used by YOTs
BCS	British Crime Survey
CPO	Community Punishment Order
CPRO	Community Punishment and Rehabilitation Order
CPS	Crown Prosecution Service
CRO	Community Rehabilitation Order
DTO	Drug Testing Order
DTTO	Drug Treatment and Testing Order
EM	Electronic Monitoring
HDC	Home Detention Curfew
ICCPs	Intensive Control and Change Programmes
ISSPs	Intensive Supervision and Surveillance Programmes
KPI	Key Performance Indicator
NBPB	Non-Departmental Public Body
NOMS	National Offender Management Service
NPD	National Probation Directorate
NPS	National Probation Service
OASYS	Offender Assessment System
PSR	Pre-Sentence Report
RCP	Rethinking Crime and Punishment
ROMs	Regional Offender Managers
SAP	Sentencing Advisory Panel
SEU	Social Exclusion Unit
SGC	Sentencing Guidelines Council
YJB	Youth Justice Board
YOP	Youth Offender Panel
YOTs	Youth Offending Teams

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