Breakthrough Britain

Order in the Courts

Restoring trust through local justice

EXECUTIVE SUMMARY

This is the Executive Summary of the Centre for Social Justice report, *Order in the Courts*. For further information or to download the full report please visit www.centreforsocialjustice.org.uk

The centralisation of the criminal justice system over the last ten years has been an expensive failure. In chasing national headlines and targets, the now government-controlled agencies have not addressed the problem of crime in deprived communities, where it is most acute. The government has also failed to allay heightening public concern about crime, and trust in the criminal justice system has been severely eroded. The current system deals with criminals ineffectively, neither reducing reoffending nor promoting rehabilitation. Fundamentally, in taking over ownership of the local criminal justice system the government has disenfranchised communities of the power to deal with local crime in a way that is appropriate to their specific neighbourhood.

This report recommends policies that will restore power over crime and justice to local political communities; and will give the courts the authority both to order more tailored, structured sentences and to ensure these sentences are translated into practice.

Since the Labour Party's pledge in 1997 to build a system that was 'tough on crime, tough on the causes of crime', the government, between 1998/9 and 2007/8, has increased annual spending on the UK's criminal justice system from £17.9 billion to £32.5 billion.[1] It has also introduced a slew of new criminal justice legislation, including the creation of 3,600 new offences since 1997,[2] and there has been a marked centralisation of control over various aspects of the criminal justice system. Despite apparent success over the last few years in effecting a reduction in crime rates,

1 HM Treasury, 2008. *Public Expenditure Statistical Analyses 2008*, TSO, Table 5.2. A small proportion of this spending is on borders and immigration.

2 Hansard, House of Lords Debate, 9 December 2008 [Column 317]

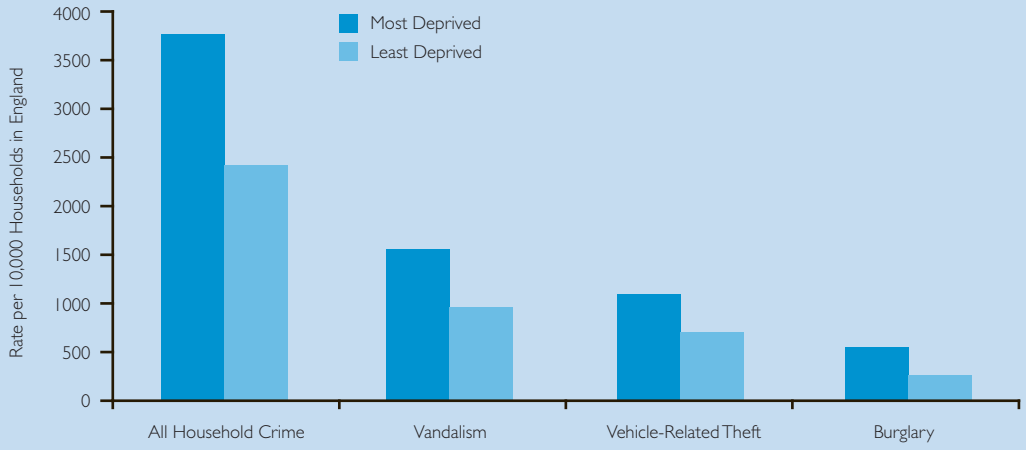
the latest data shows a five per cent increase in reported crime over the last year.[3] Beyond these headline figures, life in deprived communities is still blighted by crime, and indeed the drive for *national* success has overlooked the situation in poorer communities. Moreover, the wider public is sceptical about the government's claims regarding crime reduction and lacks confidence in the criminal justice system. In a survey conducted by Ipsos MORI in 2006, only 25 per cent of those polled in the UK responded that they were confident that the government was indeed 'cracking down on crime', compared for example to Germany, where 48 per cent responded positively. In 2008, more than 40 per cent of people thought that crime was 'the most important issue facing Britain today'.[4]

Order in the Courts looks at the adult criminal justice system.[5] We are concerned with the kind of crime that affects people's daily lives, and is typically dealt with by magistrates' courts, the probation service and short prison sentences. The vast majority of crime falls into this category, starting and ending in the magistrates' courts. Though public debate about the criminal justice system often fixates on the prison service, the probation service is truly the backbone of our sentencing options: about four times as many people are given sentences in the community than are given immediate custody (and some of the latter will also be supervised in the community after release).[6] Of those prison sentences, the vast majority last less than six months.[7]

Crime and Deprived Communities

A large number of offenders live, unsurprisingly, in the poorest communities. A study of the Scottish prison population in 2003 confirmed that deprived areas were feeding the prison population: to take one example, looking at men aged 23 living in 'Hard-Pressed areas', 3,427 among every 100,000 (or one in 29) were in prison.[8]

Figure i: The rate of victimisation in the most and least deprived areas for common crimes, 2008/09



3 Home Office, 2009. *Crime in England and Wales 2008/09,* Home Office, Table 2.01

4 Ipsos MORI. 'The most important issues facing Britain today'. Available at: http://www.ipsos-mori.com/content/the-most-important-issues-facing-britain-today.ashx [Accessed 26 March 2009]

5 The Centre for Social Justice has recently commissioned a report on the youth justice system.

6 Ministry of Justice, 2008. *Sentencing Statistics 2007 (England and Wales)*, MoJ, p. 2

7 Ibid, Table S5.8

8 Houchin R, 2005. *Social Exclusion and Imprisonment in Scotland*, Glasgow Caledonian University, p.18

It appears that just living in a deprived area increases the likelihood of children becoming offenders: the Pittsburgh Youth Study reported that high-risk individuals (those with personal or family issues) are likely to offend regardless of the environment, but low- and medium-risk individuals are significantly more likely to carry out criminal activity if living in a deprived community.[9]

Criminal activity has an impact on the local community as a whole, so an effective justice system must stay locally connected

However, often overlooked is the fact that people living in deprived areas are also more likely to be the victims of crime. According to the ACORN classification system, those living in 'inner city adversity' are nearly four times more likely to be victims of theft,[10] and 5.8 per cent of those living in such areas reported that they had been the victims of violence in the previous 12 months[11] – a figure 60 per cent higher than the national average.

Concern about crime is particularly acute in Britain's deprived communities. Last year's British Crime Survey showed that residents in 'Hard-Pressed areas' were 'twice as likely to think crime locally had increased 'a lot'... than those in Wealthy Achiever areas'.[12]

Crime, in short, is a marked feature of our deprived communities. Professor Sir Anthony Bottoms called it 'deprived area syndrome':

> *'Deprived area syndrome' is that there is a high victimisation rate, an awful lot of offenders, a lot of this low-level stuff that people find upsetting – there is more of each of these things in the deprived areas.*[13]

The consequences of crime for deprived communities are wide-reaching. Fear of crime in itself keeps neighbourhoods trapped in a cycle of poverty, as enterprise cannot thrive where people are unwilling to spend time outside their homes and where businesses are unwilling to invest. Moreover, crime and disorder are self-perpetuating: research has shown that physical environment – and in particular the visible signs of lawlessness, even as seemingly minor as graffiti and littering – has a strong negative influence on potential offenders, as do the activities and attitudes of peers.[14] Dealing with crime is an issue of social justice.

Crime and Social Breakdown

The characteristics of offenders themselves cannot be ignored. As one magistrate told the Working Group, 'the usual problems are drink, drugs and the problems of family life.' These problems are often the direct catalysts of crime, but they are also characteristic of the majority of other offenders who turn up in the court waiting room.

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9 Bottoms AE, 2007. 'Place, Space, Crime and Disorder', in M Maguire, R Reiner & R Morgan, eds, *The Oxford Handbook of Criminology*, OUP

10 Home Office, *Crime in England and Wales 2006/07*, p. 137. Available at: http://www.homeoffice.gov.uk/rds/pdfs07/hosb1107.pdf [Accessed 28 February 2009]

11 Ibid

12 Home Office, 2008. *Crime in England and Wales 2007/08*, Home Office, p. 130

13 Professor Sir Anthony Bottoms, in evidence to the Working Group.

14 Keizer K, Lindenberg S & Steg L, 2008. 'The Spreading of Disorder'. *Science*, 322(5908), 1681-1685

> "I had two burglars in court the other day who'd handed themselves in to the police. They said they needed [drug] treatment and they just couldn't get it in the community."
>
> Midlands magistrate, in evidence to the CSJ

Half of arrestees for certain common crimes are classed as dependent drinkers;[15] and the Home Office reported that 75 per cent of crack and heroin users claim to commit crime in order to feed their habit.[16] Family life also appears to have a strong influence on later criminality: 70 per cent of offenders, for example, come from lone parent families, and 27 per cent of all prisoners spent time in care, compared to just two per cent of the general population.[17] Unemployment is also rife among offenders, and another Home Office survey showed that more than half of those arrested for common offences were not in employment, training or education at the time of arrest.[18]

It is neither sensible nor constructive to suppose that reforming courts and sentencing can alone transform high-crime communities. However, for many offenders, coming to court may be the first time that they or others have identified the key issues behind their behaviour which could, with help, be overcome. Moreover, courts have at their disposal some extremely useful tools, such as the close supervision and encouragement that typifies the best probation services, and the threat of sanction while under supervision. These measures can have a transformative impact on individuals passing through the criminal justice system, and could if properly administered reduce reoffending, thus removing many offenders from the 'revolving door' syndrome that characterises the criminal justice system, and improving life for the communities affected.

From Crime to Court

It is important that crime, when detected, is dealt with appropriately and as quickly as possible. This is not happening.

Recent years have seen an explosion in the proportion of crime dealt with by police disposals and not taken to court – 13.5 per cent of recorded offences in 2007/8, compared to six per cent a decade earlier.[19] The Commissioner of the Metropolitan Police, Paul Stephenson, has recently reported that the balance between police justice and court justice is 'fundamentally wrong'.[20]

It is also important that offences are dealt with swiftly. The average time between crime and sentence for those found guilty of summary non-motoring offences (including those where the defendant pleads guilty) is 137 days – almost 20 weeks.[21] This compares to 123 days from offence to completion in 2000; the majority of the increase coming in the time between the offence being committed and charging by

15 Boreham R, 2007. *The Arrestee Survey 2003-2006,* Home Office, Table 3.15

16 Home Office, 'Drug-related crime'. Available at: http://www.homeoffice.gov.uk/crime-victims/reducing-crime/drug-related-crime [Accessed 24 February 2009]

17 Youth Justice Board, 2002. Review 2001/2002: *Building on Success,* TSO; Social Exclusion Unit, *Reducing re-offending by ex-prisoners*, London: Social Exclusion Unit, 2002, p. 5

18 Boreham R, 2007. *The Arrestee Survey 2003-2006*, Home Office, Table 2.11

19 The breakdown of police disposals made in 2007/08 is: Penalty notice for Disorder (207,544), cannabis warnings (104,207) and cautions (362,898). See Ministry of Justice, 2009. *Sentencing Statistics 2007 (England and Wales)* (revised edition), MoJ, Table 1.1, p. 21

20 Sir Paul Stephenson, Transcript of the meeting of the Metropolitan Police Authority, 24 September 2009. Available at: http://www.mpa.gov.uk/downloads/committees/mpa/090924-transcript.pdf [Accessed 13 October 2009]

21 Ministry of Justice, 2008. *Time Intervals for Criminal Proceedings in Magistrates' Courts: September 2008*, MoJ, Table 3

CPS.[22] Of course evidence needs to be gathered properly and cases investigated; but it is striking that the average time from offence to court for these simple offences is much *longer* than for more complex indictable offences.[23] The police are pursuing charges less than before, and are taking much longer about it.

Responsibility for this situation lies partially with the police's Offences Brought to Justice targets, introduced in 2002, which count a caution and a conviction equally: cautioning is quicker, easier and just as 'valuable' (in terms of target-hitting) as a conviction. The Crown Prosecution Service also bears responsibility. CPS targets are based on the proportion of successful convictions, giving CPS lawyers an interest in only pursuing the most clear-cut convictions. Other CPS targets relate to how quickly offences are dealt with in court, once a charge has been made – which gives them an incentive to push back on police and charge as late as possible.

> "We had a PPO [prolific and other priority offender] smash up a booking shop. The CPS wouldn't charge because there was no CCTV. There were witness statements. He was seen by us. That afternoon he was released and raped a 16 year-old girl behind the same shop. That's the kind of thing that gets to you."
>
> Police officer, in evidence to the CSJ

Given these misleading targets, it is no wonder that the police prefer to use summary disposals, and that, despite improvements to the timeliness in court, the overall time between offence and sentence is unchanged.

Reoffending

Courts have an important role in preventing reoffending. Despite the high level of spending and mass reorganisation of the system, there has been no noticeable reduction in the very high reoffending rates.

Approximately half of all offenders commencing community sentences are reconvicted at least once for committing a crime within two years of starting the sentence,[24] and 36.1 per cent are convicted for crimes committed during the first year.[25] Since the average community sentence lasts almost a year and a half,[26] most of these offences are committed *while the offender is under sentence*, and the figures do not include offences committed which were not detected or dealt with by police caution.

Physical evidence of unlawful behaviour and deprivation, such as graffiti, is proven to encourage further criminal activity

Most of those serving community sentences and short prison sentences are repeat offenders. Almost 60 per cent of offenders serving prison sentences of six months or less have more than 11 previous cautions and convictions; 33 per cent of those on community service orders have seven or more previous cautions and convictions.[27]

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22 Ibid

23 Ministry of Justice, 2008. *Time Intervals for Criminal Proceedings in Magistrates' Courts: September 2008*, MoJ, Table 3

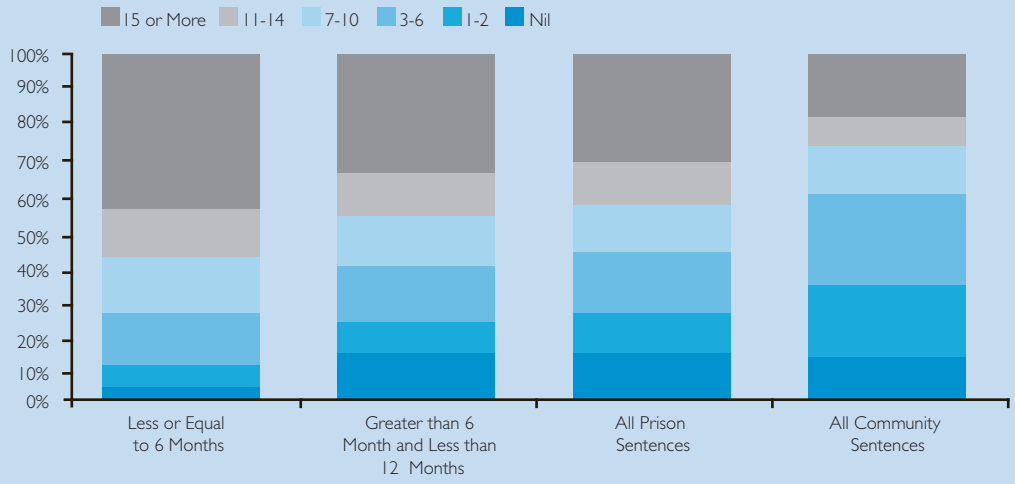
24 Ministry of Justice, 2009. *Re-offending of adults: results from the 2007 cohort, England and Wales*, MoJ, Appendix I, Table A5. This has remained fairly static over the last few years; see Cunliffe J & Shepherd A, 2007. *Re-offending of adults: results from the 2004 cohort*, Home Office RDS, p. 21

25 Ministry of Justice, 2009. *Re-offending of adults: results from the 2007 cohort*, England and Wales, MoJ, Appendix A: Table A5

26 Ministry of Justice, 2009. *Offender Management Caseload Statistics 2008*, MoJ, Table 4.2

27 Ibid, Tables 7.32 and 4.9

Figure ii: Proportion of offenders with previous convictions or cautions, by sentence type



There is little evidence that probation supervision or short sentences have led to improvements in terms of protecting the public or rehabilitation. There has been no significant improvement against a predicted hypothetical rate of reoffending over the years; and an apparent reduction in the frequency of new convictions per 100 offenders sentenced[28] is better explained by the introduction of police Offences Brought to Justice targets, and the concomitant explosion in the use of cautions as discussed above.

Sentence Structure and Delivery

WHAT IS A COMMUNITY SENTENCE?

There are two main kinds of community sentences: community orders (COs) and suspended sentence orders (SSOs). COs last between six months and three years, and SSOs last a maximum of two years. Technically, SSOs are custodial sentences that have been suspended dependent on compliance with the terms of the order; in practice, though, the main difference between a CO and an SSO is that breach of an SSO is more likely to result in a prison sentence than breach of a CO.

The content of a CO or SSO is determined by the 'requirements' attached by the court. Theoretically courts are able to choose from a menu of 12 requirements. The most common requirements are 'Supervision', 'Unpaid Work', 'Accredited Programme' and 'Drug Rehabilitation'.

If an offender fails to comply with his order, either by committing a new crime or failing to abide by the requirements twice without a reasonable excuse (as deemed by the case manager), the order is said to be breached. A lengthy process ensues, culminating in the court either imposing new conditions or sending the offender to prison.

28 Ministry of Justice, 2009. *Re-offending of adults: results from the 2007 cohort,* England and Wales, MoJ, Table A5

There is no supervision requirement in 65 per cent of community orders;[29] and even when a requirement is made it generally means little more than an offender showing up at a town centre probation office once every few weeks. Unpaid work is ordered in only one third of community sentences. Many offenders who clearly have the ability to work manage to escape this requirement by claiming incapacity, an excuse which is often too readily accepted by the probation service.

> "It's like going to a restaurant, with a big choice on the menu, but when you ask for anything you're told, 'I'm afraid that's not available today."
>
> Midlands magistrate, in evidence to the CSJ

There are notable flaws in the way many of these 'requirements' are administered. As a result of a lack of funding earmarked for community order requirements within the criminal justice system, many of them are not available in certain areas, or there are long waiting lists. Only 41 per cent of offenders start their offending behaviour programme (a type of Accredited Programme) within six weeks of being sentenced. The average waiting time is 23 weeks, or about five and a half months – about a third of the average sentence length.[30] The Audit Office also found that, commonly, the alcohol treatment requirement, attendance centres and mental health requirements were unavailable.[31]

> "Seventy-three per cent of the public agreed that 'unpaid work in the community should be related to what an offender can do, rather than limited by what they can't do.'"
>
> YouGov poll commissioned by the Centre for Social Justice, January 2009

A related problem is whether the orders are being properly tailored by the court. Normally, the court has no involvement in how (or whether) the sentence is carried out. This makes it hard for magistrates or judges to know if they are sentencing appropriately, and also means that there is no agent responsible for overseeing the correct administration of sentences. Of those offenders due to undertake offending behaviour programmes in 2004, 32 per cent completed the programme, compared to almost half (48 per cent) who started but did not complete.[32] Such a high drop-out rate raises questions as to whether orders are being suitably tailored in the first place. They also raise questions about the quality of the support and guidance which probation officers themselves are offering. (The changing role and nature of the probation service itself is discussed below.)

Over half of those who receive a community sentence will be reconvicted within two years

These problems render community sentences and their delivery unreliable. As a result, magistrates sometimes feel that they have no option but to sentence

29 Ministry of Justice, 2009. *Offender Management Caseload Statistics 2008*, MoJ, Table 3.9
30 Ibid, Table 3.2
31 National Audit Office, 2008. *The Probation Service- The supervision of community orders in England and Wales*, TSO
32 Hollis V, 2007. *Reconviction Analysis of Interim Accredited Programmes Software (IAPS) data*, RDS NOMS, p. 6. Calculated from raw data.

offenders to short prison sentences, which, as noted above, have exceptionally high reoffending rates.[33] Such sentences commonly last only a few weeks – too short a period for offenders to undertake any meaningful rehabilitative programme – nor do they act as a sufficient deterrent. Moreover, for all sentences of less than a year (of which less than half the time will be served in prison), there is *no supervision at all* upon release from prison – even though they are the group, of all offenders, most likely to commit serious new offences.[34] The primary impact of these short custodial sentences is, in fact, a negative one: they disrupt family relationships and jeopardise employment and accommodation arrangements, the stability of which is crucial if offenders are to cease offending following release.

Addiction Treatment

Despite the centrality of substance abuse to offending, the two standard treatment orders that can be imposed by a court (Drug Rehabilitation Requirement [DRR] and Alcohol Treatment Requirement [ATR]) fall depressingly short of their potential. The ATR is so rarely prescribed that there are no robust national statistics as to its success or failure. The DRR has staggeringly high reconviction rates and an abysmal drop-out rate:[35] of those who commenced Drug Treatment and Testing Orders in 2005 (the forerunner to the DRR), 70.3 per cent reoffended during the year following the commencement of their order.[36] Current programmes are failing, and we attribute this, at least in part, to the reliance on 'maintenance' rather than recovery.

The current methadone replacement model of treatment is not working. A recent Scottish study found, for example, that 'there was no significant tendency for acquisitive crimes to fall faster among those who received methadone treatment than in the rest of the sample.'[37] But a deeper objection to this method is that methadone maintenance is simply shifting dependency, and does not address underlying personal issues that have led to addiction and crime. The majority of addicts entering recovery programmes state that being drug-free is their ultimate goal – this desire should be supported.[38] However, much-needed funding for residential care has been diverted into maintenance programmes, and chronic underfunding has resulted in the closure of many residential abstinence-based centres.

> "Eighty-eight per cent of the public agreed that the overall aim of drug treatment in prison should be 'To get offenders totally drug-free', compared to seven per cent who thought that the aim should be 'Safe maintenance of a habit using a prescribed substitute.'"
>
> YouGov poll commissioned by the Centre for Social Justice, January 2009

33 Ministry of Justice, 2009. *Offender Management Caseload Statistics 2008*, MoJ, Tables 4.8 and 7.32

34 Figure 5.5: Ministry of Justice, 2008. *Re-offending of adults: results from the 2006 cohort*, England and Wales, MoJ, Table A5

35 Ministry of Justice 2008. *National Probation Service for England and Wales Annual Report 2007-2008,* MoJ, p. 10

36 Ministry of Justice, 2008. *Reoffending of adults: new measures of re-offending 2000-2005 (England and Wales)*, MoJ, Table A5. The reader should note that the measure is reconvictions, not re-offending, and it is from the commencement of the sentence – in other words, many of these are reconvictions for offences committed during the course of the sentence. The 2005 data is the last year for which separate drug treatment reoffending statistics are publicly available.

37 Bloor M. et al, 2008. "'Topping up' methadone: An analysis of patterns of heroin use among a treatment sample of Scottish drug users', *Public Health,* 122(10), 1013-1019

38 McKeganey N, Morris Z, Neale J, Robertson M, (2004). 'What are Drug Users Looking for when they Contact Drug services: Abstinence or Harm Reduction', *Drugs: Education, Prevention and Policy*, 11(5), 423-435

Mental Health

Figure iii: Are mental health treatment requirements under-used?

	Incidence among offender (%)	Relevant requirement	National use of requirement in 2008 (% of all requirements)
Mental health problems	42[39]	Mental health treatment	0.32[40]

Mental health issues are also inadequately addressed by the criminal justice system, despite research showing the majority of prisoners to have mental health problems. To cite just one statistic, 78 per cent of males on remand had at least one clinically assessed personality disorder.[41] Rather than diverting vulnerable people into suitable treatment, the current system simply sweeps them into prison. Even those treatments that are available are under-used, indicating poor identification of mental health issues. In addition, the lack of low-secure beds in hospitals and the unwillingness of hospital consultants to take on court-referred patients cause further blockages within the system.

> "Seventy-four per cent of the public supported more use of secure mental health care instead of prison for diagnosed offenders."
>
> YouGov poll commissioned by the Centre for Social Justice, January 2009

The Role of the Courts After Sentencing

Traditionally, courts have had little engagement with offenders after the point of sentence. The Working Group visited a number of courthouses where the extended involvement of the sentencer has been trialled – most notably, the West London Drugs Court, the North Liverpool Community Court and the Glasgow Drugs Court. These courts routinely conduct 'sentence reviews' whereby the offender returns before the court every four to six weeks with a report from the probation officer. The court can encourage the offender if he is doing well, and this review also provides an opportunity to scrutinise the work of the probation service and drugs workers involved in the sentence.

Unlike their American counterparts (the famous Red Hook Drugs Court in Brooklyn is the model for these courts), the English courts have no power to change the terms of the sentence, or to impose any interim sanctions for non-compliance. In introducing these new courts to Britain, our government failed to give them the additional powers to ensure their effectiveness.

39 Solomon E & Silvestri A, 2008. *Community Sentences Digest* 2nd ed., Centre for Crime and Justice Studies. p. 31

40 Ministry of Justice, 2009. *Offender Management Caseload Statistics 2008*, MoJ, Table 3.9

41 Singleton N et al, 1997. *Psychiatric morbidity among prisoners: summary report,* ONS. Available at: http://www.statistics.gov.uk/downloads/theme_health/Prisoners_PsycMorb.pdf [Accessed 12 August 2008]

Politicisation and Centralisation

The failure of the criminal justice agencies to deal effectively with offenders, the high public concern about crime and the low levels of confidence in the government to deal with it are related. In seeking to micro-manage the criminal justice system from the centre and reduce the discretion of professionals (including magistrates) at the ground level, the government has scored an own goal.

This government has introduced more criminal justice legislation and has interfered more in the application of this legislation than any previous administration. A succession of recent Home Secretaries and Justice Secretaries have attempted to put pressure on the judiciary, and have established increasingly stringent guidelines to limit judges' and magistrates' discretion; the Coroners and Justice Bill, currently in parliament, will oblige sentencers across the country to sentence according to centrally established guidelines, which have no hope of capturing the nuance of local conditions which magistrates' courts have typically offered.

There has been a decrease in the transparency of sentencing. The words used to pass sentence bear little relation to the truth of what that sentence entails. The most egregious examples relate to custodial sentences, where the introduction of early release schemes means that offenders are let out of prison much earlier than the minimum term imposed by the court: a sentence of six months – the longest single sentence magistrates' courts can currently impose – routinely means just six weeks in prison and no supervision thereafter. Similarly when Craig Sweeney, the notorious child rapist, was told he would be eligible for release after five years on a sentence of 18 years, the judge was only following the government's sentencing guidelines. The effect of this early release farce, coupled with spin sentencing, has been to undermine the courts, mislead the public and hamper debate.

Furthermore, the politicisation of crime has impacted the criminal justice agencies heavily. There has been a complete centralisation of organisations which were previously locally controlled: neither Her Majesty's Court Service, nor the National Probation Service, nor the National Offender Management Service – which are now wholly responsible for managing the criminal justice system from the centre – existed in 1997. The result has been a loss of local knowledge, responsiveness and ownership of the criminal justice institutions. This has affected the probation service in particular: the closure of small offices has eroded awareness of local conditions and means that offenders often have to travel many miles for their 'supervision'. Furthermore, the movement towards managerialism ('offender managers') has created pressure to meet centrally set targets rather than engaging with the complex situations many offenders find themselves in.

Centralisation has been accompanied by profligate spending on managerial grades, offices, and lightly qualified functionaries. Annual expenditure on offices and headquarters rose from approximately six per cent of total Ministry of Justice spending in 2002/03 to 33 per cent in 2007/08. The cost of establishing the largely defunct NOMS headquarters and regional offices is put at £2.6 billion.[42] And while there was a 70 per cent increase in the number of senior management employees between 2001 and 2006,[43] the ratio of fully qualified

42 *The Times*, 28 September 2007. 'Offender scheme axed early as Justice Ministry tries to save reputation'

43 Grimshaw R & Oldfield M, 2008. *Probation Resources, Staffing and Workloads 2001-2008*, Centre for Crime and Justice Studies, p.16

probation officers to offenders under supervision decreased from 1:31 to 1:40.[44] Furthermore, these much-needed, highly trained probation officers have been replaced by cheaper and less qualified Probation Services Officers (the equivalent of PCSOs compared to regular police) to the detriment of the service as a whole. Money is being spent on bureaucracy rather than frontline services.

Local probation services had been, for many years, accountable only to themselves. This was not ideal. But the government's decision to make them part of a centrally controlled bureaucracy has been disastrous.

Conclusion

It is essential that the criminal justice system remain locally accessible and locally integrated. This legitimises the system, and makes it accountable to the community in which it operates. Local administration would also allow magistrates and probation officers flexibility to tailor sentences and supervision in response to the needs of particular offenders, each of whom must be viewed in the context of their community. While the criminal justice system is not a social service, a more local organisation of the magistrates' courts and sentencing would allow greater integration with voluntary, private or statutory social service providers. Finally, a locally organised justice system will serve to de-politicise crime as a national issue, absolving ministers of the pretence of responding to every crime everywhere in the country.

The deplorable recycling of offenders through the criminal justice system is good for no one; nor is the spin and politics. The proposals outlined below will restore transparency to the system and reconnect magistrates' courts with the communities for whom they exist. By allowing the courts to impose really useful sentences – whether that be more work, properly tailored fines, proper drug rehabilitation or mental health treatment – they will be able to play their part in upholding order and tackling social breakdown.

Proposals

The Working Group proposes:

FROM CRIME TO COURT

i. The functioning of the Crown Prosecution Service should be made the central focus of a further policy review by the CSJ.

The review must examine CPS targets, its resourcing, its relationship with the police and their arrest procedures, as well as whether it is right that only the CPS is able to bring charges.

ii. The expansion of virtual court pilots as a quick way of starting simple cases.

Police stations would be linked to magistrates' courts and the first hearing could be held immediately.

COURT CONTROL OF THE SENTENCE AND HOW IT IS CARRIED OUT

iii. The power to conduct reviews in England and Wales should be widened to all cases in which the sentencing court decides that review (which can either be one-off or periodic) would be useful. On a review, the reviewing court should have full power to vary the sentence or to re-sentence, in light of the offender's progress or lack of progress.

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44 Ibid, p. 3

In the case of magistrates' benches, at least one of the magistrates who imposed the original sentence should be present at a review.

iv. Sentencers must have the power to impose interim sanctions in response to breach of a community sentence, such as an immediate and very short, sharp prison spell, as well as the power to give rewards.

Such a sanction would be short of formal breach; it would be part of the sentence. On being placed on such a sentence, the offender loses the presumption of liberty for its duration. Indeed the value of the sanction is that the offender knows that the judge can impose it summarily without a great deal of bureaucracy. It is important that this threat is credible and executed quickly.

> "Seventy-one per cent of the public thinks judges should have the power to impose smaller scale sanctions short of a breach, such as extra work or a few days in prison, to encourage greater compliance with the community sentence."
>
> YouGov poll commissioned by the Centre for Social Justice, January 2009

It is envisaged that such interim measures would be used where previously technical breaches of the order, or sustained non-engagement, would have resulted in re-sentencing for the breach. In such a scheme, breach proceedings would be reserved for instances where a new offence was committed.

The period of incarceration would be for up to a week – longer than this would lead to those problems currently encountered with short sentences – and it is important to note that this is in the context of an ongoing community sentence, rather than an initial custodial sentence. It is a punishment for non-compliance rather than for a particular crime.

We also draw attention to the power, under this reinforced sentence review, of a court to reduce the terms of community sentences under review, in cases where the court feels that the offender has complied fully and the sentence is of no further benefit to him or her or to the community.

v. The attractiveness of the deferred sentence should be increased by giving the power to defer for up to two years; and giving sentencers and offenders freedom to agree the regime which the offender should follow.

Deferral of sentence is a procedure under which, for example, an offender can engage in a voluntary agreed programme to address his or her problems, with the prospect of the sentencing court assessing what progress has been made before deciding what sentence to impose.

It is also useful to test an offender's true willingness to comply with the full scale of a drugs rehabilitation requirement or another therapeutic sentence. If no real motivation is shown, the court has the discretion to re-sentence more appropriately.

SENTENCES IN THE COMMUNITY

vi. The present, largely artificial constraint that on a breach the sentencing court must impose a sentence which is theoretically more 'onerous' than the community sentence being breached should be abolished.

It is important that courts are told of breaches of the court's order. However, it is unproductive to insist that this result in a formally harsher sentence. We believe that the professional discretion of sentencers and probation officers should be respected.

vii. Restorative justice conferencing should be added to the 'menu' of community sentence requirements.

Restorative justice is one of the few criminal justice interventions which has a solid weight of empirical evidence behind it, bearing witness to its effect on reducing reoffending.

viii. **The range of work made available for offenders under Unpaid Work schemes should be widened so that more offenders can be given this sentence who, at present, are prevented from carrying out unpaid work by claiming incapacity or other reasons.**

In a society that has progressed so far in the inclusion in the workplace of those who have physical or mental disabilities, unpaid work could easily be made more widely available.

ix. **A court considering a fine should have routine access to information about how much benefit an offender receives.**

Offenders should be told that if they expect to be fined on the basis that they are on benefits, then they need to bring documentary proof to court when they are sentenced. If necessary, information given by defendants about their income levels should be routinely cross-checked with social security offices.

x. **The 'victim surcharge' should be abolished.**

If it is desired to hypothecate revenue for victims' services then this should done as a proportion of revenue from fines, or as a small fine in addition to community sentences and prison sentences.

SHORT PRISON SENTENCE REFORM

xi. **Very short prison sentences, where the period of incarceration under sentence is less than four weeks, should be abolished as a primary sentence for a crime.**

The short prison sentence needs to be overhauled. The main problems are the very brevity of the shortest sentences precluding rehabilitation programmes, the administrative chaos, the dubious deterrent effect on general crime, and the lack of any follow-up at all post release.

We propose that all those who at present receive custodial sentences of less than approximately two months nominal (i.e. four weeks of actual time in prison) would no longer receive a custodial sentence, but a community sentence backed by the threat of immediate custodial sanctions for any non-compliance.

The actual amount of time that the offender would spend in prison should be considered alongside the proposals on clarity of sentence (see below).

HMP Highdown, a Category B prison

xii. **The courts should be given power in appropriate cases to mandate the structure of short prison sentences.**

Within such a model, probation officers would identify offenders' problems in a pre-sentence report (as they do for community sentences), with programme recommendations to be carried out in prison in the first place (rather than beginning in the community). Before release, a probation officer should meet up with offenders to plan for their continued employment or training post-release.

This would require something new of magistrates and judges – they would no longer be in a position to ignore what happens to offenders after they pass custodial sentence.

xiii. **The prison governor should be held responsible for the successful completion of the prison-based part of the court order.**

A corollary of the court being in charge of the sentence is that someone becomes responsible for ensuring that the sentence is carried out appropriately. In the case of short prison sentences, the only person who could be held to account is the prison governor.

A representative of the prison would have to be available if the court so directed, and we envisage conditions under which, if there were sustained failure, the governor himself or herself would have to

appear. Ultimately, both court and governor would have the ability to raise issues with the strengthened Criminal Justice Board (see below).

xiv. A study should be commissioned to assess the feasibility of limiting magistrates' custodial sentencing powers to 'four weeks plus', 'eight weeks plus', or 'twelve weeks plus'.

Educators and those working to help prisoners would be greatly benefited by knowing how long they 'had' offenders for in prison – just as they would in any other setting. Moreover, standardising the length and start dates of short sentences would help prisons to plan rationally for this very high-flow group.

Under such a sentence an offender would serve four weeks, counting from a convenient, regularised start-day on which courses begin (e.g. a Monday), plus the few intervening days between sentence and the start of the course. (The number of intervening days would depend on the prison intake and how well-prepared they were to run courses starting on different days of the week.)

FOLLOW-THROUGH SUPPORT

xv. All prisoners released from prison, regardless of their sentence length, should be automatically considered for appropriate support.

Post-release supervision and resettlement support is crucial to our vision of sentences that work. The imprisonment part of a custodial sentence must be seen as just a constitutive part of the sentence. It must be integrated properly into a larger whole which includes post-release support.

Post-release supervision for offenders serving short sentences will promote better rehabilitation and bring the reality of sentences closer to the rhetoric. If, currently, a six-month custodial sentence means in practice nothing more than three months in prison, it is simply misleading to pretend otherwise.

xvi. Released prisoners, and prisoners nearing the formal end of their sentence, ought routinely to be offered support in strengthening their family relationships, and finding work and accommodation where they need it. Moreover, a staged transition between a closed prison regime and full release should be a normal part of longer sentences. Support should also routinely be provided to defendants who are released after being held in prison on remand.

If, as happens all too often at present, many thousands are released from prison each year without accommodation or employment pre-arranged, or without repairing possibly frayed family relationships, evidence suggests there is a very high risk of reoffending within a short period of time.[45]

ADDICTION TREATMENT

xvii. The closure of residential rehabilitation centres must be reversed; and it must be made easier for probation services to utilise residential rehabilitation centres.

Many people with addictions want to become abstinent, rather than dependent on another drug. Current criminal justice treatment is only really directed towards people with heroin addictions, and not the multiple drug and alcohol problems that come before the courts.

Offenders serving DRR community orders would benefit from the greater availability of residential rehabilitation.

xviii. Secure residential drug treatment facilities, with a focus on abstinence, should be piloted, as an alternative to certain short prison sentences.

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45 Social Exclusion Unit, 2002. *Reducing re-offending by ex-prisoners*, Cabinet Office

These would combine aspects of a low-secure prison and rehabilitation centre. They could well be used as part of a more substantial deferral of sentence.

xix. A review should examine the feasibility of a 'custodial rehabilitation sentence', in which offenders are sentenced to absolutely drug-free, secure accommodation as part of a structured sentence.

The power for the courts to mandate this as a type of custodial sentence, in appropriate cases, would greatly appeal to many magistrates and judges. It would also force the creation of the requisite number of places, both secure and open.

xx. The use of specialist courts should be expanded, and courts developed to deal with offending associated with alcohol addictions.

The model of a drugs court could equally apply to an alcohol-addiction court; though the medical aspects of the intervention may differ, the underlying addiction treatment is analogous.

PROBATION SERVICE

xxi. Probation boards should regain offices in those deprived areas where there is a high volume of clientele.

Control of local probation services must be localised. Restoring ownership of probation property to the local level will allow probation services to make their own decisions about whether small probation offices are useful.

These should be bases from which to re-establish local knowledge of offenders, their families and communities.

xxii. It is imperative that the probation service re-discovers the practice of widespread home visits.

Home visits are a useful way of learning more about offenders' lifestyles, of checking up on their whereabouts, and of learning early about potential pitfalls and problems to proper rehabilitation.

xxiii. The role of a probation officer should be characterised as a 'benign authority', rather than an 'offender manager'.

The probation service must play to its strengths, which are not just enforcement but also encouragement. There is no need for the probation services to 'choose sides' between the law and the offender – probation officers must adopt the role of a benign but firm authority.

xxiv. Probation services should utilise existing social services and voluntary sector organisations as far as appropriate.

Probation areas should conduct an audit of which services that they provide are duplicates of services run by social services, voluntary or private groups, catering to mainstream clientele. They should act as brokers to these services, and seek to bolster and expand them rather than replace them.

MENTAL HEALTH

xxv. There should be a phased-in removal of the power of the consultant psychiatrist at the hospital to refuse or delay the admission of someone sent by a court under a mental health order.

The prison service is currently masking the under-resourcing of general psychiatry and mental healthcare.

This very simple change to the Mental Health Act would lead to systemic change in mental health treatment. It would ensure that hospital administrators and health officials make proper plans for all people who are seriously mentally ill, not just those who are finally proven dangerous.

This would necessitate a significant expansion of psychiatric services. We would need more beds, doctors, nurses, psychologists, occupational therapists and associated professionals. The resulting service level would reflect the true level of mental healthcare need.

The costs of this must be offset against the reduction in the number of prison spaces and prison mental health provision, and reductions in re-offending rates.

xxvi. The power of consultant psychiatrists to discharge patients from section 37 (court-imposed treatment orders) of the Mental Health Act should be abolished and given to a review panel.

This would prevent individual doctors from discharging patients sent from the court, sometimes on the same day that they arrive, in a way that undermines the courts.

xxvii. There must be a large scale reinvestment in low-secure hospital beds.

There is currently little provision for very ill people who need to be secured but have not committed a dangerous offence. These people should be in secure accommodation in a therapeutic setting.

xxviii. Courts should be able to sentence offenders to compulsory treatment in the community, regardless of whether they have previously received a hospital order.

Currently patients have to have been in hospital prior to being sentenced before a community treatment order can be imposed. However many offenders with lesser mental health problems would benefit from mental health treatment, without needing to be hospitalised.

This pathway should only be available where there is a qualified doctor on hand to recommend it to the judge after an assessment of the offender's situation.

xxix. There should be further trialling of mental health sentencing courts, in which prolific offenders with recognised mental health problems are sentenced to a treatment order overseen by a psychiatric team and drugs team if necessary. As with the drugs courts, the sentence should be open to review based on the offender's progress.

Offenders with non-psychotic mental health problems do not need to be diverted absolutely from the criminal justice system. Mental health court pilots have been developed in Brighton and Stratford, based on the drugs courts model.

xxx. Psychiatric diversion schemes, with access to doctors as well as nurses, should be mandated to magistrates' courts in all areas, and have a permanent presence in the larger areas.

INTERACTION BETWEEN CRIMINAL JUSTICE SERVICES AND COMMUNITY SERVICES

xxxi. There must be closer coordination between services provided to offenders and services provided to the general community. This will ensure that wherever possible, when offenders come to the end of their sentence, support is available to them for the continuation of rehabilitation.

The voluntary sector is particularly well-suited to this kind of follow-through.

xxxii. Help Desk schemes should be expanded beyond a few London magistrates' courts. We also recommend piloting a referral scheme to help court-users who are known to be in difficult circumstances. Knowledge about hard circumstances which are revealed in court should be passed, where appropriate and with the consent of those involved, to the social services.

Attendance at a court can provide an opportunity for 'hidden' problems to become visible and for distressed families to acknowledge their needs. Courts should have mechanisms for helping these families access available support.

xxxiii. Local probation offices incorporate other local social service agencies.

Local social support agencies should be represented in these drop-in centres, allowing for the resolution of wider social problems and needs. Offenders and their families should be encouraged to connect to social services and the voluntary sector when necessary.

xxxiv. The role of victims' personal statements should be clarified, and greater emphasis should be placed on ensuring that facts about the victim find their way into the statement of facts where they are relevant to the sentence.

xxxv. The Working Group recommends that all changes in procedures that can affect magistrates are considered in the light of the possible impact they could have on magistrates' motivation.

HMCS staff, and in particular the Justices' Clerks, should be given training in understanding volunteer management so that they can maximise the effectiveness and motivation of this substantial, and generous, volunteer commitment.

CLARITY IN SENTENCING

xxxvi. All current and future early release schemes must be incorporated into the sentence up-front. If possible, a review for eligibility for early release should be conducted before sentencing.

If a risk-assessment or another factor is expected either to shorten or to lengthen the order, this should be made absolutely plain at the point of sentencing.

While the Working Group accepts that risk profiles for some offenders may change during long sentences, by and large the eligibility of offenders for early release schemes can be assessed at the point of sentencing, especially for short sentences.

Snaresbrook Crown Court, one of the largest justice centres in Europe

xxxvii. All sentences of imprisonment pronounced should clearly state the actual time which the offender will spend in prison, or at least the range between which the time in custody will last.

The formula should also make a clear distinction between the time spent under supervision and time spent on licence.

CRIMINAL JUSTICE ORGANISATION

xxxviii. Increased control over the agencies involved in the criminal justice system should be devolved from the national level to strong locally accountable bodies. These would be based on greatly strengthened Criminal Justice Boards, which at present are liaison bodies that coincide with police force boundaries. These bodies would coordinate and be responsible for the police, the CPS, the local courts service, the probation service and any other local enforcement organisations. Judicial independence would not be affected.

The Working Group recognises that an important failing in the old local model was that there was not effective oversight over magistrates' courts and probation – they were possibly too independent and risked pursuing institutional agendas which were not necessarily in the interests of the local community.

xxxix. Local Criminal Justice Boards should be made more powerful, chaired by a local Crime and Justice Commissioner.

The Chief Constable, Chief Probation Officer, Magistrates' Courts executives, and District Public Prosecutor would all sit on this board. It would be chaired by a publicly identifiable figure.

It would have responsibility for setting the strategy and targets of the criminal justice agencies within its area, with sufficient power over budgets to make those powers effective. Funding, which at present comes centrally from the Home Office, Ministry of Justice and Communities and Local Government Department, should be distributed through the local Board. This would include the freedom to establish bases where they consider they would be most effective at involving communities in the criminal justice system – for example, small, local offices in high-crime neighbourhoods.

In parallel to the Centre for Social Justice's policing report, *A Force to be Reckoned With*, we believe that the role of central government should be to provide robust and well-publicised inspections of criminal justice areas, made easily comprehensible to the public.

xl. As part of the decentralisation recommended above, the costs of the agencies involved in carrying out all kinds of sentences should be brought within a single local budget.

Budgetary problems bedevil the operation of the present system of criminal justice. Effective programmes of treatment may not be available for an offender, so the sentencing court is left with no alternative but prison, even though this solution will actually cost the public purse more and is likely to be less effective. Furthermore, it is not possible under the present system for money to be diverted from the cost of carrying out sentences to measures which might reduce crime, even where this will make budgetary sense – so-called 'justice reinvestment'.

Decentralising the budget will force each local Board to consider whether money spent on paying for a prison place might be better spent on a programme targeted at dealing more effectively with the problems of particular offenders, or preventing crime in the first place.

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About the Centre for Social Justice

The Centre for Social Justice aims to put social justice at the heart of British politics.

Our policy development is rooted in the wisdom of those working to tackle Britain's deepest social problems and the experience of those whose lives are affected. Our working groups are non-partisan, comprising prominent academics, practitioners and policy makers who have expertise in the relevant fields. We consult nationally and internationally, especially with charities and social enterprises who are the champions of the welfare society.

We are not a typical Westminster 'think-tank'. In addition to policy development, we foster an alliance of poverty fighting organisations that reverse social breakdown and transform communities.

We believe that the surest way the Government can reverse social breakdown and poverty is to enable individuals, communities and voluntary groups to help themselves.

The CSJ was founded by Iain Duncan Smith in 2004, as the fulfilment of a pledge he made to Janice Dobbie, a mother whose son had recently died from a drug overdose after he was released from prison.

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