

WHAT HAPPENED TO THE REHABILITATION REVOLUTION?

How sentencers can revive it
How it can be helped by a hung Parliament

September 2017



CSJ The Centre for
Social Justice

A CSJ Conversation

What Happened to the Rehabilitation Revolution?
How sentencers can revive it, How it can be helped by a hung Parliament
© The Centre for Social Justice, 2017

Published by the Centre for Social Justice,
The Centre for Social Justice, 34a Queen Anne's Gate,
London, SW1H 9AB
www.centreforsocialjustice.org.uk
@CSJthinktank

Designed by Soapbox, www.soapbox.co.uk

Contents

About the Centre for Social Justice	2
About CSJ Conversations	3
About the authors	4
1 The recent history of disappointing progress	5
2 Ten new initiatives	9
3 Expected effects of the ten initiatives	11
4 Summaries of the ten new initiatives	13
4.1 Defining in law the statutory purposes of imprisonment	13
4.2 Introducing a requirement for judicial monitoring by the sentencing court to review whether the custodial sentence might require modification in the interests of the public	14
4.3 Addressing the problem of the 3,200 or so tariff-expired IPP prisoners	16
4.4 The introduction of Problem Solving Courts (PSCs)	17
4.5 Judicial supervision of recalls to prison	19
4.6 Application for early release or executive release	20
4.7 Enabling the judiciary to deem previous convictions as spent, facilitating sustainable employment for those successful in their rehabilitation	22
4.8 Improving the numbers, training, status, pay and conditions of prison officers. They should be encouraged to use their special skills and knowledge to play a leading role in the rehabilitation of offenders on both sides of the prison walls	23
4.9 Only joint working between Probation and sentencers will achieve the intended transformation and deliver effective supervision	24
4.10 Enabling sentencers – both full-time judges and lay magistrates – to play a full and increasing role in enabling those who genuinely wish to do so to change their habits to desist from offending and to lead useful, pro-social and law-abiding lives	26
5 How a hung Parliament could promote and expedite the reforms recommended in this paper	29
6 Conclusion	31
Endnotes	33

About the Centre for Social Justice

Established in 2004, the Centre for Social Justice is an independent think-tank that studies the root causes of Britain's social problems and addresses them by recommending practical, workable policy interventions. The CSJ's vision is to give people in the UK who are experiencing the worst multiple disadvantage and injustice, every possible opportunity to reach their full potential.

Since its inception, the CSJ has changed the landscape of our political discourse by putting social justice at the heart of British politics. This has led to a transformation in government thinking and policy. The majority of the CSJ's work is organised around five 'pathways to poverty', first identified in our ground-breaking 2007 report, *Breakthrough Britain*. These are: family breakdown; educational failure; economic dependency and worklessness; addiction to drugs and alcohol; and severe personal debt.

In March 2013, the CSJ report *It Happens Here*, shone a light on the horrific reality of human trafficking and modern slavery in the UK. As a direct result of this report, the government passed the Modern Slavery Act 2015, one of the first pieces of legislation in the world to address slavery and trafficking in the 21st century.

The CSJ delivers empirical, practical, fully-funded policy solutions to address the scale of the social justice problems facing the UK. Our research is informed by expert working groups comprising prominent academics, practitioners, and policy-makers. Further, the CSJ Alliance is a unique group of charities, social enterprises, and other grass-roots organisations that have a proven track-record of reversing social breakdown across the UK.

The 13 years since the CSJ was founded has brought with it much success. But the social justice challenges facing Britain remain serious. Our response, therefore, must be equally serious. In 2017 and beyond, we will continue to advance the cause of social justice in this nation.

About CSJ Conversations

The Centre for Social Justice (CSJ) was established as an independent think-tank in 2004 to put social justice at the heart of British politics and make policy recommendations to tackle the root causes of poverty.

We work with policy makers and political figures from all major parties to promote new ideas and policies around social justice, particularly in the areas of educational failure, long term worklessness, family breakdown, serious personal debt, addiction, and criminal justice. Our past successes in areas from welfare reform to the Modern Slavery Act serve as a reminder of what can be achieved.

As a think tank our core work is to research and promote ideas that will improve the lives of those living in poverty. Our dedicated Policy team is constantly promoting and exploring policies that help the Government to reduce poverty.

However, we don't have a monopoly on new thinking and want to encourage new ideas and thought leadership. The CSJ Conversations series is designed to achieve this.

What these papers are:

- They align with our core value of putting social justice issues at the heart of British politics.
- They are written by individuals with expertise and/or influence in their specific field.
- They promote new thinking and innovation in social policy.
- They are the work of the authors and not the original work of the CSJ.

The CSJ Policy team works alongside authors to edit and bring these CSJ Conversation papers to publication, from concept to design.

About the authors



Jonathan Aitken

Jonathan Aitken is an author, commentator, former Member of Parliament, former Cabinet Minister and former prisoner. In his 30 year political career he was a Special Adviser to the Chancellor of the Exchequer; the Conservative Member of Parliament for South Thanet; Minister of State for Defence; and Chief Secretary to the Treasury. His political career ended when he told a lie on oath in a libel case. He subsequently pleaded guilty to charges of perjury and served an 18 month prison sentence.

He is an author of seventeen books including award winning biographies of President Richard Nixon and Prime Minister Margaret Thatcher. He is a columnist and commentator for several publications. In his charitable work Jonathan Aitken is a trustee or office holder of eleven Criminal Justice organisations including NACRO, Caring for Ex-Offenders, Blue Sky, New Bridge, Centre for Social Justice, Tempus Novo and Prison Fellowship. He writes and broadcasts on prison and offender rehabilitation issues.



John Samuels QC

His Honour John Samuels QC sat either part-time or full-time in the Crown Court for 27 years, as well as sitting as a Deputy High Court judge for 16 years prior to his full-time appointment. A former Chair of the Criminal Committee of the Council of HM Circuit Judges, he has been in the forefront of pioneering problem-solving courts in England and Wales for 15 years; was a judicial member of the Parole Board for the maximum term of 10 years; and is a Board member of the International Association of Drug Treatment Courts.

He was appointed by the then Lord Chancellor and the Lord Chief Justice to advise their Working Group on Problem-Solving Courts. He has recently retired as Chair of the Criminal Justice Alliance, an umbrella body of 125 voluntary organisations which support reform of the criminal justice system, one associate member of which is the Magistrates Association, with 23,000 lay magistrate members.

He is President of Prisoners Education Trust, of which he was formerly Chairman; Vice President of UNLOCK, Tempus Novo and the Association of Members of Independent Monitoring Boards; a Patron of the Prisoners' Advice Service; and a visiting Professor at Nottingham Law School, focusing on sentencing and criminal justice issues.

chapter one

The recent history of disappointing progress

The Rehabilitation Revolution has been championed in one form or another by at least two former Home Secretaries, five past Secretaries of States for Justice and a previous Prime Minister. Yet for all the ministerial support for the basic thesis of offender rehabilitation the reality of this so-called revolution has been a disappointment.

For more than a decade, informed opinion has broadly agreed that the rehabilitation of offenders needs to be at the heart of an effective criminal justice system. Embedding rehabilitation across the criminal justice system can provide the basis on which the root causes of offending can be tackled, helping to reduce the volume and severity of offending and ultimately improving lives and enabling a reduction in the size of the prison population.

The paradox of this consensus is that successive governments have failed to live up to the bold policy statements which so many have promised in the area of rehabilitative criminal justice reform.

There has been no shortage of fine words: from the Labour Government's White Paper *A Five Year Strategy for Protecting the Public and Reducing Reoffending*¹ introduced in 2006 by Home Secretary Charles Clarke; through a compendium of speeches advocating offender rehabilitation from successive Conservative Justice Secretaries Kenneth Clarke (2010–12); Chris Grayling (2012–15); Michael Gove (2015–16) and Liz Truss (2016–17), to the speech given by David Cameron in February 2016. That was the first speech from a Prime Minister on prison and rehabilitative reform for some 20 years and yet there has been depressingly little in the way of tangible progress.

Both the national reoffending rate and the size of the prison population have remained stubbornly high. While it is true that in recent years the custodial population has remained stable at just under 86,000, in April 2006 it was 77,000, and given recent increases it now approaches 90,000.² This 12 percent rise has been accompanied by year-on-year falls in recorded crime.

The prison estate itself has been changing – though arguably neither fast enough nor necessarily for the best. Her Majesty's 136 prisons have now fallen to 117:³ cutting costs, but at the risk of exacerbating overcrowding.

The recently opened HMP Berwyn, near Wrexham in North Wales, will offer modern facilities for more than 2,100 prisoners when completed – but the location and larger size

of the prison means prisoners will be more distant from their families. For many this will make them inaccessible to their families and prove detrimental to effective rehabilitation, as highlighted in Lord Farmer's recent and important review.⁴

In the prisons dangerous episodes have been getting worse. The latest statistics show that in the past year all records were broken in English and Welsh prisons by 40,161 self-harming incidents, 120 suicides, 224 other deaths in custody and 26,022 assaults of which 6,844 were on staff – 650 of them serious.

So why have successive governments failed so consistently? Why has an apparent consensus stalled? It is worth recalling David Cameron's speech in 2016 on prison and criminal justice reform, with the major commitments made in that address having mostly already been trailed in the speeches of the then Justice Secretary Michael Gove and some of his predecessors:⁵

1. Making sure that prisons are places of positivity and reform designed to maximise the chances of people going straight when they come out.
2. Addressing prisoners' illiteracy, addiction and mental health problems.
3. Revolutionising the prison education system.
4. Measuring the performance of individual prisons.
5. Giving prison governors new powers to set up therapeutic communities, drug free wings and abstinence-based treatment programmes that prisoners need.
6. Delivering Problem Solving Courts in England and Wales.
7. Helping prisoners to find work on release.
8. Delivering lower re-offending rates.

Many of these commitments are themselves born out of policy recommendations made by the Centre for Social Justice in such seminal reports as *Locked Up Potential* (2009), *Green Paper on Criminal Justice and Addiction* (2010), *Meaningful Mentoring* (2014) and *Drugs in Prison* (2015).

Although some small steps towards this "Rehabilitation Revolution" agenda have been started, there has been little significant progress, and the most recent reports from both Her Majesty's Inspectorates of Prisons and Probation paint a depressing picture.

Last year's changes in senior ministerial appointments, most notably the departures from office of both David Cameron as Prime Minister and Michael Gove as Justice Secretary, may have slowed these developments – as might the weakened minority government of Theresa May following the June 2017 general election.

The Prime Minister and Justice Secretary – aside from the omission of the Prison and Courts Reform Bill from the most recent Queen's Speech – have given no indication that

offender rehabilitation should be dropped from the agenda of criminal justice reform. David Lidington, appointed by the Prime Minister as the new Justice Secretary in June 2017, published an open letter reiterating a commitment to reform and rehabilitation:

The work to make our prisons true places of reform and rehabilitation is already under way – and it will continue unabated.⁶

Indeed the Prime Minister's own continued references to social reform and tackling burning injustices speak to a desire to see a more equitable criminal justice system which will require the delivery of effective rehabilitation.⁷

That said, the revolutionary zeal for rehabilitation seems to have been replaced by an understandable, though myopic and almost exclusionary, emphasis on prison safety – understandable given the increases in prison suicide and assaults.

While the current prison safety challenge may have taken the focus of Ministers and civil servants away from the underlying drive towards fundamental reform, the need for a Rehabilitation Revolution is as pressing today as it ever has been. The revolution is at risk of stalling before it has really begun – and the government must do more than recommit to the consensus that exists and think boldly on making rehabilitation a reality.

One of the deeper causes of this failure is the widespread erosion of morale across all areas of the criminal justice system. Prison officers, probation officers and those working in the new CRCs have been adversely affected by the pressures that their respective organisations face.

The morale issue is also being experienced in Her Majesty's Courts and Tribunal Service (HMCTS), and the judiciary.⁸ The numbers of lay magistrates have plummeted;⁹ court closures are widespread;¹⁰ and recruitment to the lay magistracy has slowed almost to a halt, as their previous workload has been diverted to automatic fixed penalties. Both the full-time judiciary and the lay magistracy feel widely unappreciated by the government and by the community to whom they should be serving.¹¹

So there are deep seated problems felt by both the sentenced and the sentencers. It is therefore timely to ask what has happened to the Rehabilitation Revolution and how might the role of sentencers evolve to aid rehabilitation, improve lives and boost public safety.

chapter two

Ten new initiatives

In this paper we suggest ten new initiatives which might help to break the log jam and resuscitate the Rehabilitation Revolution. They are:

1. Defining in law the statutory purposes of imprisonment to include a requirement for judicial monitoring by the sentencing court.
2. Including a requirement for the sentencing court to review whether the original custodial sentence might require modification in the interests of the public.
3. Addressing the problem of the 3,200 or so tariff-expired Imprisonment for Public Protection (IPP) prisoners. The apparent injustice of their continuing imprisonment could be ameliorated by swift and simple secondary legislation.
4. The introduction of specialist Problem Solving Courts (PSCs). This is the tried and tested route for reducing criminal behaviour among the 3 percent of serial offenders, most of them addicted to drugs or alcohol, who commit some 40 percent of crime.¹² There are already more than 3,000 PSCs in the USA and Canada¹³ but the UK government's promise to create them has stalled, despite the strongest of recommendations by a high-powered Ministry of Justice working party.
5. Finding an oversight route of administration or judicial supervision designed to reduce the increasingly high total of 21,559 offenders who were recalled to prison in the 12 months ended December 2016.¹⁴ As of 31 March 2017 the prison population included 6,554 prisoners who had been recalled.¹⁵ A rising number are recalled every year by Offender Managers for breaches. It is our contention that a not insignificant portion of these breaches are minor in nature with up to 55 percent solely due to non-compliance with licence conditions, such as a failure to keep appointments on time with supervisors and therefore not necessarily impacting on public safety. Offender Managers should be restricted to initiating breach proceedings in such cases, leaving the decision on whether to impose a return to custody for that breach to a judge or magistrate. We contend that such judicial oversight could be expected to contribute towards a lessening of pressure on prison places.
6. Authorising a small number of judges to hear applications for early release from prisoners still serving their sentences in prison. The role of such judges would be akin to the French "Juges d'applications des peines" ("sentence implementation judges"). These judges could make recommendations to the Secretary of State to grant executive release on various grounds outlined later in this paper.

7. Giving new powers and instructions to the Judiciary which will enable them to play a key role in making the most effective use of prison capacity and re-energising the failing Rehabilitation Revolution.
8. Improving the numbers, training, status, pay and conditions of prison officers. They should be encouraged to use their special skills and knowledge to play a leading role in the rehabilitation of offenders on both sides of the prison walls.
9. Addressing the failure of the remodelled Probation Service. We suggest that “Transforming Rehabilitation” has resulted in a lamentable decline in effective supervision and has driven up prison numbers. Only joint working between Probation and sentencers will achieve the intended transformation.
10. Enabling sentencers, both full time judges and lay magistrates, to play a full and increasing role in enabling those who genuinely wish to turn their lives around, to desist from offending and to lead useful, pro-social and law-abiding lives.

chapter three

Expected effects of the ten initiatives

We develop ten initiatives and in doing so we suggest the potential for savings and a reduction in pressure on prison places. We summarise the potential impact as follows:

- Addressing the 3,200 or so tariff-expired IPP prisoners (Section 4.3) could free up an equivalent number of prison places, with the Chair of the Parole Board estimating that the release of 2,500 could be relatively quickly, easily and safely achieved.¹⁶
- Creating 4 PSCs as pilots in Crown Courts (Section 4.4) could help free up prison places, reduce crime and reduce victimisation – providing economic benefits of up to £20 million – with the potential for this to grow exponentially as further courts come on stream.
- Avoiding unnecessary recalls to prison (Section 4.5) could free-up approximately 3,300 prison places occupied by recalls.¹⁷
- Directing executive release (Section 4.6) could result in a reduction of approximately 500 prison places per annum.

The cost of the average prison place in England and Wales is estimated at £35,182.¹⁸ We suggest that if our recommendations are adopted, we conservatively estimate they could free up to 7,000 prison places¹⁹ annually, with potential cost savings of £246 million.

It is our view that such a lowering of the numbers held in custody would assist with reducing overcrowding and mitigating the shortage of prison staff. It would therefore aid in the creation of opportunities for genuinely rehabilitative work in custody: education, vocational training and addressing substance misuse would all be enhanced.

The fruits of such rehabilitative opportunities would be seen in a lowering of the numbers returning to custody through reoffending in the future. Furthermore, a reduction in re-offending would contribute positive advantages to the community.

chapter four

Summaries of the ten new initiatives

4.1 Defining in law the statutory purposes of imprisonment

Prior to the Criminal Justice Act 2003 courts sentenced offenders without being obliged to consider the statutory purposes of sentencing, which were then enacted for the first time, namely:²⁰

- a. the punishment of offenders;
- b. the reduction of crime (including its reduction by deterrence);
- c. the reform and rehabilitation of offenders;
- d. the protection of the public; and
- e. the making of reparation by offenders to persons affected by their offences.

The Prisons and Courts Bill published in the last Parliament had at its core the requirement that prisons have a purpose; and the Secretary of State has a personal role in relation to fulfilling that purpose. The statutory purpose of prisons was identified in the Bill as follows:

In giving effect to sentences or orders of imprisonment or detention imposed by courts, prisons must aim to:

- a. protect the public
- b. reform and rehabilitate offenders
- c. prepare prisoners for life outside prison, and
- d. maintain an environment that is safe and secure.²¹

The role of the Secretary of State, who is identified in the Bill as having overall responsibility for prisons, includes an obligation on the part of the Secretary of State, in presenting an annual report, to set out the extent to which prisons are meeting the purpose mentioned above.

In February 2017, the Secretary of State announced that the planned Bill would “for the first time” identify the statutory purpose of imprisonment.²² Since the statutory purposes of sentencing set out in the Criminal Justice Act 2003 are the other side of the coin of

the statutory purposes of imprisonment set out in the Prisons and Courts Bill 2017 we respectfully question how far the Bill really broke new ground.

As a starting point for discussion and debate here is a suggestion for the statutory purposes of imprisonment which not only reflect the five statutory purposes of sentencing set out in the CJA 2003 but fit appropriately within them.

Once an offender has been committed to any term of imprisonment it shall be the duty of the Secretary of State:

- a. periodically to review, in conjunction with the sentencing court, whether the punitive element of the sentence imposed requires modification in the interests of the public.
- b. to consider in conjunction with the sentencing court whether the continued imprisonment of the offender once the term of the sentence necessary for the punishment of the offender has expired is likely to lead to the reduction of crime, either generally, or specifically in the case of the offender.
- c. periodically and objectively to identify the steps being taken in the case of each offender to reform and rehabilitate that offender.
- d. regularly to assess whether the protection of the public is being promoted by the imprisonment of all those committed to custody by the court; and to the extent that it is not, to take such steps (including the use of executive release) as will ensure the protection of the public.
- e. provide all those offenders serving sentences of imprisonment with appropriate opportunities to make reparation to those affected by their offences, and thereby to prepare such prisoners for life outside prison.

If adopted, it would follow from our suggestions for a legal definition of the statutory purposes of imprisonment that there would be a new requirement for judicial monitoring of sentences.

Recommendation: Define the purposes of prison in a manner consistent with the Criminal Justice Act 2003 and creating a new requirement for the judicial monitoring of sentences.

4.2 Introducing a requirement for judicial monitoring by the sentencing court to review whether the custodial sentence might require modification in the interests of the public

Traditionally Britain's judges have, except through the cumbersome process of appeal, resisted all suggestions that they should review or monitor the sentences that have been passed in their own courts. Almost the only exceptions to this stance are to be found in the limited examples provided by the handful of Problem Solving Courts (PSCs) which have in one form or another been experimentally introduced in the UK.

Sentences tend to be passed in what might best be described as the "snapshot moment" – the moment when the court identifies the penal consequences which flow from the conviction and then moves on to the next case. From that moment onwards the sentencer is, by custom and practice, detached from any further consideration of how the offender responds to the requirements of the sentence or even whether the prison

service makes available any programmes or opportunities which might reform and rehabilitate the offender.

This detachment of sentencers from any involvement in the reform and rehabilitation of offenders seems to us to be at odds with the statutory purposes of sentencing, as specified in Section 142 of the Criminal Justice Act 2003, namely the reform and rehabilitation of offenders. This may well be a relic of a bygone era when judges were aloof and lofty figures who took no interest in the post-sentence lives of offenders. Their responsibility was limited to the pronouncement of the sentence, leaving its execution to others.

We do not suggest that all Crown Court Judges should be as proactive in the reform and rehabilitation of offenders as problem-solving judges with the new mandate outlined by Michael Gove on a pilot basis when still Lord Chancellor.

Nevertheless we recommend that 21st century judges should sooner or later be required to play a modest supervisory role in the sentence plans of those they have sent to prison.

The mention of the phrase “sentence plans” should set alarm bells ringing, with previous Probation Inspectorate reports having indicated “inadequate” sentence planning – and Parole Board experience suggesting sentence planning and annual reviews are similarly lacking.²³ Until recently it was accepted that it was the responsibility of the prison establishment where an offender enters custody, to identify an appropriate sentence plan soon after admission to custody and then to review it annually. Parole Board experience now suggests that a sentence plan or its annual review is spotted as infrequently as the Loch Ness Monster!

One way of preventing sentence planning from being more honoured in the breach than in the observance would be to involve the initial judicial sentencer in the creation of the sentence plan. This is not a suggestion that judicial officers should supplant the role of the prison officer or the offender manager. What we are proposing is a light touch supervisory responsibility which can identify whether the offender is maintaining the trajectory envisaged at the time when the sentence of the court was imposed.

The involvement of the initial judicial sentencer in the creation of the sentence plan would be a modest step towards the engagement of both the sentencer and the offender in a constructive dialogue with the ultimate aim of the offender’s rehabilitation.

Such a move towards requiring judges from the original sentencing court periodically to monitor and review the sentences they have passed would, in our judgment, be a significant breakthrough for a fairer and more rehabilitative system of criminal justice.

Almost inevitably, some of these reviews would result in the original custodial sentences being modified by the original sentencer or representative of the sentencing court, with some undoubtedly having their periods in custody reduced and replaced with non-custodial penalties or periods of supervision. Once judicial supervision or monitoring of this kind becomes part of the criminal justice system we believe it is a near certainty that the prison population would be significantly and perhaps substantially reduced.

Recommendation: Introduce a requirement for judicial monitoring by the sentencing court to review whether the custodial sentence might require modification in the interests of the public.

4.3 Addressing the problem of the 3,200 or so tariff-expired IPP prisoners

A serious injustice persists against an estimated 3,200 prisoners who continue to be held in custody after their IPP (Imprisonment for Public Protection) sentence tariffs have expired.²⁴

IPP sentences were introduced in 2005, modified in 2008, and abolished in 2012 after widespread criticism, not least from David Blunkett the Home Secretary who created them. However, the abolition was not retrospective and existing prisoners continue to be bound by the IPP regime. An IPP prisoner can only be released once the Parole Board is satisfied that such a prisoner “no longer presents a risk of life or limb to the public”. The onus of proof that such a risk no longer exists rests with the prisoner.

The Secretary of State for Justice has the power under Section 128 of the Legal Aid Sentencing and Punishment of Offenders (LASPO) Act 2012 to change the test for release on licence of IPP prisoners.²⁵

Once the tariff term has been passed it should be for the Secretary of State to satisfy the Parole Board that the prisoner continues to pose such a risk. We recommend that the Secretary of State exercises his power to reverse the burden of proof requirement. This does not require primary legislation.

As a result, unless the Secretary of State satisfies the Parole Board that a prisoner continues to pose that risk, then an IPP prisoner who had served a sentence longer than their original tariff would be entitled to be released on licence as if they were a determinate-sentenced prisoner.

We recommend that this reform to reverse the burden of proof requirement should be implemented by the Secretary of State by secondary legislation laid before both Houses of Parliament as a matter of urgency.

We also agree with the recommendation made by Michael Gove in his 2016 Longford Lecture that executive clemency should be granted to the 500 or so IPP prisoners who have not only been serving for longer than their original tariffs but have also (usually after multiple parole reviews) served even longer than the maximum determinate sentence which would have been permissible for their index offence.²⁶

While this is a discrete example of the executive clemency to which we refer in more detail in section 4.6 below, it will address one of the of the most blatant examples of unfairness from the discredited IPP regime.

Not only would this proposal free up desperately overcrowded establishments: it would also send a potent signal to the prison population that the Government is listening to the grievances felt by many IPP tariff-expired inmates. This in turn would damp down the fires of resentment stoking some of the disturbances. However, to date successive Justice Secretaries have apparently refused to adopt this reform.

We estimate that if these recommendations were implemented the prison population would be reduced by between 3,000 and 3,200. A more conservative achievement would be along the lines proposed by Professor Nick Hardwick, Chair of the Parole Board, who believed a reduction of up to 2,500 could be relatively quickly, easily and safely achieved.²⁷

In either case, this would present a substantial contribution to lessening the pressure on the prison system.

Recommendation: Reduce the IPP prisoner population through a mixture of executive clemency and Secretary of State exercising his power to reverse the burden of proof requirement, changing the test for the release of IPP prisoners on licence.

4.4 The introduction of Problem Solving Courts (PSCs)

PSCs are an internationally tried and tested route for helping reduce criminal behaviour among usually drug and alcohol dependent offenders who commit a large proportion of acquisitive crimes against property.

There are already more than 3,000 such courts in the USA and Canada²⁸ with a handful of experimental problem-solving courts working well in the UK in locations such as Glasgow and St Albans.

Problem Solving Courts in the UK²⁹

- Glasgow Drug Court, which is based in Glasgow Sheriffs' Court, targets offenders who steal to fund drug habits. The court is overseen by four specially trained sheriffs (equivalent to English Circuit Judges) who are supported by a dedicated team of nurses, criminal justice social workers and substance misuse workers who help offenders stop using and reduce reoffending. Offenders are reviewed regularly and can be jailed if they don't engage with the help they are offered.
- St Albans Choices and Consequences Court, based in a crown court, works with some of Hertfordshire's most prolific drug and drink addicted offenders. They are offered drug treatment and employment advice and are reviewed monthly by the project's dedicated judge.

However, the Ministry of Justice promises to introduce PSCs on a wider basis have stalled despite the strongest recommendations by a high powered MoJ working party which reported in 2016.³⁰

The purpose of PSCs is to deal with selected offenders who have repeatedly committed and admitted to non-violent drug and alcohol offences; admitted their addiction; and made a commitment to changing their way of life.

Such selected offenders will for such period as they comply with the regime of the PSC be diverted from the sentencing regime typically applied by the Crown Courts. Instead they will be supervised within a PSC whose presiding judge can exercise a wide range of powers designed to reduce reoffending; while at the same time retaining the ultimate power to impose the sanction of imprisonment if the offender fails to comply with the regime of the PSC.

The PSC judge needs to be supported by a drug and alcohol testing regime located nearby and able to undertake random testing; a multi-agency group of advisers focusing on the specific needs of individual offenders; regular pre-hearing case conferences with this group of advisers; a court coordinator to manage the cases; and a personal willingness to sit in court as often as necessary to provide continuity in the relationship between judge and offender.

In the first instance PSC judges, although initially appointed from the ranks of the professional judiciary, will be volunteers and pioneers within the criminal justice system.

They will be innovators, leaning away from imposing stock off-the-shelf community or prison sentences and leaning towards new forms of rehabilitative or therapeutic justice. They will make use of a graduated tariff of well understood incentives, treatments and penalties to guide offenders into changed lives free from substance misuse and crime. The workload and timetable of the cases they hear will be different from other courts because the continuity of sentence supervision by the same judge is an essential requirement of a PSC court.

From our personal observation in many different jurisdictions we believe that the selection and commitment of the judge is pivotal to the success of the PSC court. A PSC judge must insist on holding frequent review hearings of each offender's progress, initially probably on a weekly or fortnightly basis, but at lesser intervals once progress justifies this. This continuity creates a bond of clear personal understanding and accountability between the offender and the judge.

The judge needs to ensure that offenders fully understand their obligations to comply with the PSC requirements. These requirements, which are understood by the offender as conditions in lieu of the custodial or other sentences that would have been imposed by the Crown Court, will include a wide range of interventions, treatments, incentives, penalties and ultimately imprisonment if the offender fails to comply with the PSC regime.

The international evidence on the effectiveness of PSCs is compelling. There are now more than 3,000 PSCs in the United States and the model has spread across the world, notably in Canada, Australia, New Zealand, Ireland, Norway, Belgium and several Caribbean jurisdictions.³¹

In the United States, The National Association of Drug Court Professionals (NADCP) concluded in their 2015 report, *The Facts on Drug Courts*, written in conjunction with a Government Accountability Office study on Adult Drug Courts:

- a. Drug Courts provide more comprehensive and closer supervision than other community-based programs such as probation.
- b. Drug Courts are six times more likely to keep offenders in treatment long enough for them to get better.
- c. After a nationally representative study of more than 2,000 graduates from over 90 Drugs Courts the average repeat offending rate was only 16 percent in the first year after leaving the programme and 27 percent after the second year. This compares favourably to repeat offending rates on conventional probation programmes where between 46 percent and 60 percent commit new offences or probation violation.

- d. Drug Courts have the potential to save considerable sums of taxpayers' money by reduced prison costs, reduced numbers of arrests and reduced victimisation costs. The average economic savings range from \$3,000 to \$13,000 per Drug Court client, with a median figure, for illustrative purposes of \$8,000.³²

Take for example the effects of the successful PSC approach. If 4 pilots initially operate in Crown Courts with an estimated caseload of 10 per week (500 individual clients per year), using the median economic savings from problem-solving courts in the United States, equivalent to approximately £6,400 per annum per case, that might equate to about £13 million annually across the four pilots.³³ We would expect these benefits to scale accordingly as successful problem-solving courts are expanded.

The MoJ's Problem-Solving Courts Working Group reported in April 2016 and recommended the development of the PSC approach to the Crown Court, with Michael Gove, as then Lord Chancellor, announcing on 12 July 2016 that 4 PSCs would be launched as pilots in the Crown Court.³⁴

Gove's successor, Liz Truss, affirmed her support for the PSC approach; but no steps were taken to implement these pilots.

In September 2016, in a joint statement entitled *Transforming Our Justice System*, the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals appeared to resurrect the plans:

We will also continue to explore the use of innovative 'problem-solving' criminal courts which seek to change offender behaviour by tackling underlying problems, such as drug and alcohol addiction...³⁵

Despite this endorsement, and the overwhelming evidence that the PSC approach works, this much-needed reform has stagnated within the Ministry of Justice, and was not even mentioned in the House of Commons debate on the Second Reading of the Prisons and Courts Bill on 20 March 2017. It did not feature in the most recent Queen's Speech.³⁶

Recommendation: The Secretary of State should push forward with the promotion of problem-solving courts in order to help achieve a more effective criminal justice system.

4.5 Judicial supervision of recalls to prison

In the 12 months ending December 2016 (the last period for which statistics are available) 21,559 people were recalled to prison.³⁷ Of these 7,818 had served sentences of less than 12 months; and 482 were IPPs. Almost half (45 percent) of recalls involve people being charged with a criminal offence, with up to 55 percent of recalls being solely due to "non-compliance" with their licence.³⁸ As of 31 March 2017 there were 6,554 prisoners in custody who had been recalled.³⁹

There are two kinds of recall: a fixed period of 28 days, which leaves the prisoner liable to a further recall at any time before licence expiry; and a standard recall.⁴⁰ Standard recall means that the prisoner will remain in prison until the end of the licence term (in the case of

a determinate sentence), or until the Parole Board directs their re-release. In the case of a life sentence or IPP recall, the Parole Board is unlikely to be able to arrange an oral hearing which will authorise re-release until the prisoner has been recalled to prison for at least 6 months.

Along with the Howard League for Penal Reform and Criminal Justice Alliance we are not alone in questioning the way in which recall may be triggered by Offender Managers.⁴¹ We believe that up to 55 percent may be for a minor reason unconnected to any risk of harm – and yet it still operates as an instruction to the police to arrest the offender and take them directly to prison, without any intervening judicial scrutiny.

It is our contention that quite apart from the absence of due process which this arbitrary exercise of power entails, we suggest that it is unnecessarily and significantly increasing the prison population.

Save where an offender has been charged with a further offence while on licence, or is reasonably suspected by a police officer of having done so (in which case the offender is liable to arrest), the Offender Manager should cease to have the power to initiate any recall; but should merely commence breach proceedings.

We would emphasise the need for such judicial proceedings to be brought swiftly in line with principles of swift and certain justice. It would then be for a judicial authority to determine what action should be taken if that breach is established.

There are approximately 6,500 prisoners in custody who have been recalled, with potentially up to 55 percent for non-compliance alone. We therefore estimate that with judicial oversight, many could be diverted from a return to custody. This would equate to freeing up to 3,300 prison places.

Recommendation: Introduce judicial oversight of licence recalls where the individual has not been charged with or arrested for a further offence, potentially freeing up to 3,300 prison places.

4.6 Application for early release or executive release

We identified in section 4.1 the statutory purposes of sentencing; and the Prisons and Courts Bill proposals, and our suggested amendments, for the purpose of prisons. If those purposes are not being met, by developments which were not envisaged at the time of sentence, we think it only sensible to invest the sentencing court with the responsibility to modify the sentence in the light of intervening developments. This is akin to the jurisdiction exercised by French “Juges d’application des peines” (sentence implementation judges).⁴²

Example: French ‘Juges d’application des peines’ (JAPs)

Early release may be obtained in France either as “conditional release” or by way of the suspension of the sentence on medical grounds. A three-member judicial court sits in the prison where the prisoner has more than 4 years to serve, and the initial sentence is longer than 10 years; otherwise a single JAP determines the case. The prisoner is usually represented, under legal aid.

Release on medical grounds requires little elaboration. If the prisoner develops a physical or mental condition, short of a psychiatric illness justifying a transfer to a secure mental hospital, which makes the prisoner unsuited to the regime of custodial establishment, it is not only inappropriate to retain that prisoner in a conventional establishment: their presence undermines the prospects of rehabilitation of otherwise able-bodied prisoners who, by being required to remain in close proximity to them, cannot focus on their own determination to change.

Some may ask why such a mechanism could not fit within the remit of the Parole Board, to which the simple answer is that the role of the Parole Board is statutory; and it cannot recommend, let alone direct, the transfer of a prisoner to a particular category of detention, whether in hospital or a lower level of security, save to the extent that the referral letter so permits.

We suggest that a judicial authority can, in appropriate cases, conclude that the punitive element of the sentence (the tariff) requires modification in the interests of the public and that the balance of the sentence can be suspended; or, on medical grounds, the remainder of the sentence can be altered to one of licence in the community.

This overriding review of custodial sentences and their possible modification is distinct from the power of the Secretary of State to grant executive release, to which Michael Gove referred in his Longford Trust lecture.⁴³ It has for many years been within the power of the Secretary of State and ministerial predecessors to direct, on compassionate grounds, the release of a serving prisoner. In practice that power is only exercised when the prisoner is at death's door, and objectively has no more than a day or so to live. We believe that, subject to the independent scrutiny of the specific case by appropriately trained and authorised judges, perhaps assisted by independent members of the Parole Board, an established case for release on compassionate grounds could be established, and the report and recommendation would be submitted to the Secretary of State for his implementation.

It is our view that the following circumstances could be expected to qualify for such executive release:

- The 500 or so prisoners currently serving sentences of IPP but whose imprisonment has already extended for more than the maximum term identified by Parliament for the index offence for which that initial sentence was imposed.
- Prisoners who have been identified as suffering from incurable and progressive disease; and who objectively pose no more than minimal risk to the life or limb of the public.
- Prisoners whose age and general incapacity render them objectively no longer suitable for confinement within a closed establishment, who have already served their tariff (the punitive element of that sentence), and who objectively pose no more than a minimal risk to life or limb of the public.
- Prisoners who are no longer capable of addressing within custody the cognitive behavioural programmes designed for their rehabilitation at the time of sentence, and who have already served the punitive element of their sentence.

Recommendation: Broaden the scope for executive release through the application of appropriate judicial scrutiny to applications for such release, enabling the Secretary of State to make an informed decision on the decision to release.

4.7 Enabling the judiciary to deem previous convictions as spent, facilitating sustainable employment for those successful in their rehabilitation

We have outlined in earlier sections of this report our fundamental thesis that it is primarily to the judiciary to whom the Secretary of State should look to provide the leadership, planning and promotion of the Rehabilitation Revolution for so long promised by successive governments.

It is not only the supervisory role of the judiciary in relation to the creation of sentence plans and in overseeing the problem-solving approach that we are here addressing; but also the determination of whether or not those on licence should properly be recalled to custody.

We envisage a new era of proactivity on the part of the judiciary in focusing on the objective necessity, in the interests of promoting the safety of the public, for the continual incarceration of so high a proportion of our fellow citizens – a proportion which remains far higher than any other state in Western Europe.

It is less widely known than it should be that about one third of the male population has a criminal conviction recorded on the Police National Computer.⁴⁴ Such convictions can act as a ball and chain round the ankle of those rehabilitated offenders who, having decided to pursue law-abiding lives in regular employment, find that their prospects are restricted by the requirement to disclose one or more historic and no longer relevant antecedent convictions.

We suggest in this paper that, instead of the arbitrary periods identified in the Rehabilitation of Offenders Act 1974 as amended, after which such a conviction is deemed to be spent, those people who are clearly objectively rehabilitated but whose historic conviction is under current legislation never 'spent' should have the opportunity to apply to a specialist judge, such as those presiding in a problem-solving court, on a case-by-case basis, for their particular conviction or convictions to be treated as spent.

Similarly those whose historic convictions are at present deemed never to be capable of being expunged by the Data & Barring Service, because there were two such convictions on the same occasion, should have an equal right for a judicial authority, on a case-by-case basis, to override the bureaucratic machinery which so imposes a brake on their ability to secure employment.

Recommendation: Create a judicial mechanism to allow those with convictions to apply for historic convictions to be considered spent, enabling improved employment outcomes.

4.8 Improving the numbers, training, status, pay and conditions of prison officers. They should be encouraged to use their special skills and knowledge to play a leading role in the rehabilitation of offenders on both sides of the prison walls

In her speech on criminal justice reform delivered at the Centre for Social Justice on 13 February 2017, then Justice Secretary Liz Truss said that being a prison officer was an important and noble profession “as vital to society as teaching, nursing and being a police officer”.⁴⁵

These sentiments stand in contrast to the reductions in the workforce that took place under her three predecessors, which saw a 30 percent reduction in the prison officer workforce in the years up to 2016.⁴⁶

This equates to the loss of 6,000 prison officers over five years and is cited by many as the primary cause of the present crisis of safety in our prisons; indeed the Government in their Prison Safety and Reform White Paper recognised that the staffing reductions and destabilising impact of NPS are correlated with a growing problem of violence in our prisons.⁴⁷

The former Justice Secretary deserves credit for halting the disastrous cull of experienced and trained prison officers and to have at least started the process of recruiting 2,500 new prison officers. “We are not there yet and it will take time”, she has said.⁴⁸ This may be an understatement – for this recruitment is proving difficult and the retention problem of keeping serving officers in post is undermining establishment totals across the country. We believe that a much more determined effort in terms of recruiting and resourcing officers will have to be made before prisoners and staff can work, reside and facilitate rehabilitation in a safe environment.

We also believe that if prison officers are as vital to society as teachers, nurses and police officers then their training will have to be extended and improved. The prison officer role and its potential is far more than simple security. The present limited 10-week entry level training is simultaneously lacking in depth and duration.⁴⁹ Part of the additional training should seek to address the pressing need to reinstate the dedicated personal officer scheme. It echoes a recommendation found in the Centre for Social Justice’s *Unlocked Potential* report as well as the MoJ White Paper *Prison Safety and Reform* (November 2016).

While it is said that the recruitment of 2,500 new officers will enable the Secretary of State to allocate 6 prisoners to every officer, 25 years ago the ratio of prison officers to prisoners was 1:2.⁵⁰

The training of prison officers should also include a special focus on the rehabilitation of offenders and an understanding of what can promote or hinder desistance from crime. This is conspicuously absent from the present training arrangements.

We take some encouragement from the pioneering work on prisoner rehabilitation recently introduced by the Scottish Prison Service with a scheme known as Throughcare Support Officers (TSOs).

Example: Throughcare Support Officers (TSOs)

The Throughcare Support Officers' role is to support people on their journey into desistance by working with them to prepare for and successfully make the transition from custody into the community. The TSO service aims to encourage desistance, reduce the risk of a person reoffending and to support recovery and reintegration into communities.

The TSOs use a case management approach, working collaboratively with the prisoner, their family, statutory and third sector service partners, to discuss appropriate support provision and to develop a personalised plan to support the person during their transition from custody back in to the community.

The TSO approach was piloted at Greenock Prison and the subsequent evaluation was broadly favourable though stopped short of being able to link the programme to desistance, owing to the timescales needed to provide accurate measurement.⁵¹

The prison workforce – both at governor and officer/staff level – includes many talented individuals genuinely passionate about the potential to help improve and transform lives.

This passion is evident in the work of many grass roots organisations. Take the example of Steve Freer and Val Wawrosz, two senior prison officers formerly based at HMP Leeds, who started to mentor and find jobs for selected prisoners in their spare time. Having retired from the prison service they have gone on to work full-time running the charity which they founded, Tempus Novo in Yorkshire.⁵²

Since launching, Tempus Novo has placed 102 released prisoners from HMP Leeds, HMP Wealstun and HMP Askham Grange into full-time jobs: 64 of the 102 completing six months in work and 39 completing over 12 months.⁵³

Programmes like Tempus Novo could and should be replicated in other areas of the country. An expansion in such services would open up real opportunities for both serving and retired Prison Officers and other staff to make an invaluable contribution towards helping improve lives and reduce crime.

Recommendation: Improve the numbers, training, status, pay and conditions of prison officers. They should be encouraged to use their special skills and knowledge to play a leading role in the rehabilitation of offenders on both sides of the prison walls.

4.9 Only joint working between probation and sentencers will achieve the intended transformation and deliver effective supervision

The Offender Rehabilitation Act 2014 split responsibility for supervising those on licence or on probation between the National Probation Service (“NPS”) (high and very high risk offenders) and Community Rehabilitation Companies (“CRCs”) (medium and low risk

offenders). The split of responsibility is at best artificial, since the risk of harm is dynamic – it can and does fluctuate over time, depending on the changing circumstances of those under supervision.

Since the 2014 Act came into force, morale within both NPS and the CRCs has plummeted. As we note in Section 4.5, recalls to custody have risen dramatically over time, with up to 55 percent being solely limited to ‘non-compliance’.

The merger of the Prison Service and the Probation Service, in substitution for the discredited NOMS, provides the ideal opportunity to introduce the reforms we outline in this paper.

Since CRCs took over the supervision of medium to low risk offenders in 2014 the results have, in the words of Her Majesty’s Inspectorate of Probation, been reported as “mixed, significantly lower than that formerly seen in the Probation Trusts, and in some respects poor”.⁵⁴

Her Majesty’s Chief Inspector of Probation, Dame Glenys Stacey, has grown increasingly critical of the CRC regime. Reporting in December 2016, on the largest of the 21 CRCs in England and Wales, the London Community Rehabilitation Company, which supervises over 28,000 offenders, the Chief Inspector of Probation said:

Due to the poor performance of [this CRC] ... services are now well below what people rightly expect, and the city is more at risk as a result.⁵⁵

Among the serious faults identified in the report were a 20 percent shortage of staff, a heavy reliance on inexperienced agency recruits, an impossible overload of casework on individual officers (some of whom are overseeing 900 cases) and a failure to prioritise those offenders who posed most risk of harm to the public.⁵⁶

In remarks to the All Party Parliamentary Penal Affairs Group on 28 February 2017, Dame Glenys Stacey made it clear that similar failings had been found in CRCs all over England and Wales.⁵⁷

She highlighted the problem of CRCs being notified of offenders being released from prison only the day before they came out of the gate. This means many cases received little or no meaningful support. The most recent joint Prisons and Probation Inspectorate report in June 2017 on the provision of Through the Gate (TTG) services has declared that the work of CRCs “was not making any difference”, with Dame Glenys commenting:⁵⁸

The gap between the government’s aspirations and reality is so great. There is no real prospect that these services as they are will reduce reoffending. Instead there needs to be a renewed focus and effort.

Financial problems, staff shortage and workload problems, staff inexperience and a widespread absence of mentoring seem to be endemic within the new CRC system – a position echoed in the TTG inspection.

Reports of HM Inspectorate of Probation, while accepting that the performance of NPS had satisfactorily monitored the most dangerous offenders, pointed to similar shortcomings across the board in relation to the rehabilitative support NPS is required to offer.

So widespread a failure of the regime of supervision, which NPS and the CRCs were designed to undertake, can only lead to increased reoffending – that means more crime, more victims and more suffering.

We reiterate in this paper that partnership working, spearheaded by judicial leadership, as exemplified in the PSC approach, between sentencers and all arms of probation will deliver the transformation which the proposed legislation is intended to achieve; and will provide an effective blueprint for helping to enable the rehabilitation of those who are supervised on licence or on community sentences.

Recommendation: Changes to the probation landscape as part of Transforming Rehabilitation have only increased the need for effective supervision and for greater collaboration between sentencers and all arms of probation. The growth of the progressive monitoring of those under probation supervision through the PSC approach which we propose will incrementally bring this about.

4.10 Enabling sentencers – both full-time judges and lay magistrates – to play a full and increasing role in enabling those who genuinely wish to do so to change their habits to desist from offending and to lead useful, pro-social and law-abiding lives

Playing a positive role in support of those who are keen to improve the pattern of what have hitherto been wasted lives is immensely satisfying. It is a phenomenon described in more detail in the Centre for Social Justice's 2009 report *Locked Up Potential*.⁵⁹ It underscores why many prison officers and probation officers have chosen their vocation.

The theme of this paper is that the work and vocation of frontline staff, whether in CRCs or the new Her Majesty's Prison and Probation Service (HMPPS), can be strengthened and supported by appropriately experienced judicial officers, whether full-time judges or lay magistrates.

Judges and magistrates, if enabled to do so, could help the frontline efforts to make offender rehabilitation succeed. This is because the judicial role commands an authority which prison and probation officers may not be able to match.

While the 2016 UK Judicial Attitude Survey should be approached with some caution, since it surveys criminal, civil and family judges, it has a near-universal response rate: with 99 percent of judges taking part. The results provide an important indication around morale:⁶⁰

- Virtually all judges feel that they provide an important service to society; and are committed to doing their job as well as they possibly can.
- 43 percent of judges feel valued by the public; but only 2 percent feel valued by the UK Government.
- Only 48 percent of Circuit Judges and 50 percent of District Judges expressed satisfaction in their sense of achievement from their judicial role.

The international evidence from PSCs across the globe is that judicial officers who undertake a regular reviewing role experience significantly enhanced levels of personal job satisfaction when contrasted with those of their colleagues in traditional court roles who leave the monitoring, management and execution of sentences to others.⁶¹

We anticipate that similar enthusiasm for routine engagement with those who are trying to turn their lives around will be found among lay magistrates, just as it exists within members of the Independent Monitoring Boards. The Magistrates' Association (MA) has itself endorsed the approach:

The MA welcomes the positive indication that problem-solving approaches will be considered. Magistrates have long called for effective sentencing options that respond to substance abuse or mental health issues that are impacting on offending behaviour.⁶²

We do not, in this paper, pretend to offer a detailed blueprint for the development of the liaison opportunities which we recommend. We envisage that these can and should grow incrementally, informed by what works well at a local level and assisted by active partnership working.

We recognise that those who engage with this paper, and specifically those who argue for the development of a PSC approach, enhanced supervision by judicial monitoring of those already in custody, and the development of a new and important jurisdiction to extend, on a case-by-case basis, the operation of the Rehabilitation of Offenders Act will ask:

- How can time be found by busy judges and magistrates for these extra functions?
- To the extent that extra costs will be involved, who will meet those costs?
- What incentives should be offered to judges and magistrates to shoulder these added burdens?

These are proper and legitimate concerns; and we seek to answer these questions in this paper as follows:

- Even with the measures properly introduced to speed up the trial process, in the Crown Court trials may last for several days, weeks or months. Sentencer review, by contrast, only requires a tiny fraction, perhaps just a few minutes, of a judge's time, yet in terms of rehabilitative outcomes may be of critical importance.
- Those judges and magistrates who show an aptitude for and/or interest in the monitoring role which we have outlined should be enabled to specialise in it; leaving other colleagues, such as Recorders in the Crown Court, and other lay magistrates to undertake conventional trial and jury management activity.
- There will be some small additional costs involved in the setting up of PSCs. To those in the Treasury or elsewhere who may cavil at the relatively insignificant increases in public expenditure we draw attention to the substantial economic savings that would be achieved by our proposals as set out in Chapter 3. These annual savings could amount to £246 million from the reduction in prison places with economic savings from four pilot PSCs alone of up to £13 million annually.

- As a result of the pilot PSC initiatives, there might be a need to employ additional Recorders. We calculate that one in ten judges at a typical Crown Court centre would need to devote one day per week to the role we envisage. Employing a Recorder at the standard rate of £623 per day to back fill the role of the reviewing judge would therefore cost approximately £30,000 per court annually, representing a tiny percentage of the potential economic savings set out in Chapter 3.
- On the wider issue of incentives for those members of the judiciary who are willing to take on the added responsibilities of sentence reviewing and monitoring we would suggest that there are several areas which should be considered.
- Once sentence reviewing and monitoring are accepted as being integral to judicial duties, then an appropriate application of the system of judicial career progression would recognise that judges specialising in this field would be prime candidates for judicial advancement. This might be by way of authorisations to undertake more demanding and high-profile cases ('ticketing'); or by sitting as *ad hoc* members of the Court of Appeal; or by promotion to a higher tier in the judicial hierarchy.
- Since the kind of specialist judicial role which we envisage requires special expertise, those who embrace the PSC approach might well be appointed as specialist circuit Judges, with the kudos and salary uplift which matches other specialist circuit Judges already performing specialist roles within the system (e.g. those who sit at the Central Criminal Court; mercantile judges; and Chancery judges).
- Our experience is that some judges will see post-sentence engagement with offenders in their rehabilitation in order to protect the public as an attractive new approach which will provide greater judicial job satisfaction alongside improved outcomes. The fact that a number of judges involved in pioneering problem-solving approaches in the UK have been appointed CBE, speaks to the recognition of the role as being worthy of recognition.
- Recruitment to the full-time judiciary has been transformed since the Constitutional Reform Act 2005. A modern and diverse judiciary would, we believe, actively embrace the opportunity to support those who are trying to lead pro-social lives – aided by an uplift in salary through recognition as a specialist judge. The growth of judicial monitoring, and its impact in reducing reoffending, is likely to encourage those who embrace a judicial career in order to help the disadvantaged to apply for judicial appointment.

Finally, in recognition of the fact that we do not intend to set out detailed specifics in this paper, we would urge, to the extent that our proposals command support within Government, the reinvigoration of the Working Group jointly established by the Lord Chancellor and Lord Chief Justice in January 2016, not only to develop the PSC approach, but to extend that approach to the other proposals we outline in this paper.

chapter five

How a hung Parliament could promote and expedite the reforms recommended in this paper

The last hung Parliament (1974–79) was greeted by widespread pessimism about its longevity and its ability to enact significant legislation. These predictions turned out to be wrong, particularly in the field of Criminal Justice.

Thanks to an unexpected degree of cross-party cooperation in the House of Commons some seventeen bills influencing Criminal Justice reached the statute book in the lifetime of the 1974–79 Parliament.

The most important items of legislation in this category passed by the hung Parliament were as follows:

- Rehabilitation of Offenders Act 1974
- Juries Act 1974
- Road Traffic Act 1974
- Sex Discrimination Act 1975
- Bail Act 1975
- Police Complaints Act 1976
- Domestic Violence and Matrimonial Proceedings Act 1976 (first gave power of arrest for domestic violence)
- Race Relations Act
- Sexual Offenders Act 1976 (radically amended the law of rape)
- Criminal Law Act 1977

- Theft Act 1978
- Criminal Evidence Act 1979
- Justices of the Peace Act 1979
- Prosecution of Offenders Act 1979

Most of these Acts of Parliament received all party support in the House of Commons.

One of the authors of this paper, Jonathan Aitken, was a backbench MP throughout the hung Parliaments of 1974–79 and Secretary of the Conservative Parliamentary Home Affairs Committee. He recalls that affable relations between the Home Secretary, Roy Jenkins and the Shadow Home Secretary, William Whitelaw created a cooperative atmosphere on Criminal Justice issues which was further enhanced by the Liberal Party.

Another ingredient in the cooperation was the unusual amount of Parliamentary time in 1974–79 available for opposition day debates, adjournment debates, private members motions and private members bills which affected Criminal Justice matters. To give one example there were six Parliamentary debates in the period on the future of Special Constables.

Looking at today's hung Parliament there is no reason why the conditions which prevailed on Criminal Justice issues in 1974–79 period should not be recreated again now.

Once the new House of Commons has settled down, backbenchers of all parties with an interest in Criminal Justice will start to contribute to Parliamentary debates. If they begin to voice support for some of the reforms outlined in this paper, this could be an important factor in bringing about revived progress towards the Rehabilitation Revolution.

chapter six

Conclusion

The Rehabilitation Revolution requires a reboot. The political and public consensus that rehabilitation is a vital and necessary part of an effective criminal justice system remains intact and the Government should seek to turn this ambition into a reality.

The Rehabilitation Revolution is capable of being a success. The rewards – less crime, a lower prison population, improved lives and safer communities – are worth fighting for. With talk of a crisis in our prisons and concerns around probation performance, the question should be not ‘if’ change is required, but ‘when’ the Government will actually deliver.

The history of prison and criminal justice reform can be instructive. The first major shock to the prison system came at the time of the Strangeways rioting in 1990. The prison population was then 44,000.⁶³ That was far too high a figure said Lord Justice Woolf in his seminal report on the future of prisons. His warnings and his recommendations were ignored by successive governments.

Today the prison population has almost doubled. Yet the recorded crime figures have fallen year on year for over a decade. Probation, long a much-respected profession, has suffered enormously in recent years. Prison officer numbers have fallen to levels where the safety of prisoners and staff have been compromised.

The scandal of the indeterminate sentence has been exacerbated by the even greater scandal of what we see as the inappropriate use of recall to custody.

The reluctance to follow other countries’ examples with Problem Solving Courts and judicial monitoring of sentencers by the original sentencing court highlights a paralysis of reforming will within the Ministry of Justice.

Politicians of all parties have ducked the sensible reforms needed because they fear the charge of “being soft on crime”. Successive Home and Justice Secretaries may have been lions, but they are lions caged within a tabloid media unwilling to appreciate the detail of criminal justice reform. Lord Woolf, speaking on the 25th Anniversary of his report said, “Let’s take the politics out of prisons”.⁶⁴ He was right then and he’s right now too.

We hope that this paper makes the case for beginning a real and serious effort by Government and Parliament to reboot the rehabilitation revolution. We hope others will join the conversation and see our contribution as providing a fundamentally sound starting point for the debate on how this rehabilitative reboot can and should be done. For the reasons explained in Chapter 5 of this paper we believe that MPs in today’s hung Parliament could play an important role in promoting and expediting the reforms which we recommend.

Endnotes

1. Home Office (2006) 'A Five Year Strategy for Protecting the Public and Reducing Re-offending' [accessed via: www.gov.uk/government/publications/a-five-year-strategy-for-protecting-the-public-and-reducing-re-offending]
2. Ford, R. (2017) "Strain on jails as prison numbers head for 90,000" *The Times*
3. Prison Reform Trust (2017) "Prison: the facts" Bromley Briefings Summer 2017
4. Madoc-Jones, I. Williams, E. Hughes, C. & Turley, J. (2016) "Prison Building 'Does Size matter? A Re-Assessment'" *Prison Service Journal* No. 227. pp 4–10
5. Ministry of Justice & Rt Hon Gove, M. (2015) "What does a one nation justice policy look like?"
6. Ministry of Justice & Rt Hon Lidington, D. (2017) "Prison reform: open letter from the Justice Secretary"
7. Rt Hon May, T. (2016) "Statement from the new Prime Minister Theresa May"
8. Thomas, C. (2016) "2016 UK Judicial Attitude Survey" *UCL: London*
9. HL Deb 20 Feb 2017, vol 779
10. Bowcott, O. (2016) "Ministry of Justice to close 86 courts in England and Wales" *The Guardian*
11. Bowcott, O. (2016) "Crisis in morale blamed for resignation of 842 magistrates since April" *The Guardian*
12. Home Office (2005) "Lord Birt's review on Reducing Crime"
13. National Unit FDAC (2015) "The Principles of Problem Solving Courts"
14. Table 5.1, Licence Recalls, Ministry of Justice [accessed via: www.gov.uk/government/uploads/system/uploads/attachment_data/file/610976/licence-recalls-q4-2016.xlsx]
15. "Prison Population 31st March 2017" [accessed via: www.gov.uk/government/uploads/system/uploads/attachment_data/file/610971/prison-population-31-mar-2017.xlsx]
16. Parole Board (2016) "Statement on IPP prisoners from Parole Board Chairman"
17. Ministry of Justice (2016) "Offender Management Statistics Bulletin, England and Wales"
18. Prison Reform Trust Bromley Briefing, Autumn 2016
19. For the purposes of this estimate we use the Parole Board Chair's estimate of 2,500 IPP prisoners as being relatively quickly and easily released, though we believe the scope in the longer-term ranges up to 3,200.
20. *Criminal Justice Act* (2003) Section 142. [accessed via: www.legislation.gov.uk/ukpga/2003/44/section/142]
21. Prisons and Courts Bill (2016) [accessed via: https://publications.parliament.uk/pa/bills/cbill/2016-2017/0170/cbill_2016-20170170_en_2.htm#pt1-pb1-l1g1]
22. Ministry of Justice & Rt Hon Truss, E. (2017) "A speech on criminal justice reform by the Secretary of State for Justice"
23. Criminal Justice Joint Inspection (2012) "Second Aggregate Report on Offender Management in Prisons" *Findings from a Series of Joint Inspections by HM Inspectorate of Probation and HM Inspectorate of Prisons*

24. HM Inspectorate of Prisons (2016) "Justice Secretary must bring down number of prisoners sentenced for public protection still in jail years after tariff, says Chief Inspector"
25. Legal Aid Sentencing and Punishment of Offenders Act (2012) [accessed via: www.legislation.gov.uk/ukpga/2012/10/section/128/enacted]
26. Rt Hon Gove, M. (2016) "What's Really Criminal About Our Justice System" *Longford Lecture*
27. Parole Board (2016) "Statement on IPP prisoners from Parole Board Chairman"
28. National Unit FDAC (2015) "The Principles of Problem-Solving Courts"
29. Centre for Justice Innovation "What are problem solving courts?" [accessed via: <http://justiceinnovation.org/portfolio/what-are-problem-solving-courts>]
30. Bowcott, O. (2016) "US-style problem solving courts plan losing momentum, says legal charity" *The Guardian*
31. National Unit FDAC (2015) "The Principles of Problem-Solving Courts"
32. NADCP Report The Facts on Drug Courts 2015; US Government Accountability Office 2005: Adult Drug Courts; Carey: Californian Drugs Courts (2006) *Journal of Psychoactive Drugs* 345–346
33. NADCP "Facts and Figures" [accessed via: www.nadcp.org/learn/facts-and-figures]
34. Announcement made on 12 July 2016.
35. Lord Chancellor, the Lord Chief Justice & the Senior President of Tribunals (2016) "Transforming Our Justice System"
36. Cabinet Office (2017) "Queen's Speech 2017"
37. Table 5.1, Licence Recalls, Ministry of Justice [accessed via: www.gov.uk/government/uploads/system/uploads/attachment_data/file/610976/licence-recalls-q4-2016.xlsx]
38. Routinely published Ministry of Justice data on licence recalls do not provide sufficient detail for the case-specific reasons for a recall being instigated. We therefore exercise caution in estimating the potential for judicial supervision of recall to reduce the prison population.
39. Prison Population (2017) [accessed via: www.gov.uk/government/uploads/system/uploads/attachment_data/file/610971/prison-population-31-mar-2017.xlsx]
40. The Ministry of Justice do not routinely publish data on the breakdown of recall types.
41. Howard League for Penal Reform (2016) "Call to stop revolving door to prison as numbers recalled to custody soar" and Criminal Justice Alliance "Response to Justice Committee Inquiry: Crime reduction policies: a co-ordinated approach"
42. See *"The JAP: lessons for England Wales"* Professor Martine Hertzog-Evans and Nicola Padfield (Criminal Justice Alliance, April 2015).
43. Rt Hon Gove, M. (2016) "What is Really Criminal about our Justice System?" *Longford Lecture*
44. Business in the Community "Who are 'ex-offenders'? Employer factsheet" [accessed via: www.bitc.org.uk/system/files/who_are_ex-offenders_-_employer_factsheet_0.pdf]
45. Ministry of Justice & Rt Hon Truss, E. (2017) "A speech on criminal justice reform by the Secretary of State for Justice"
46. NOMS Offender Management Workforce Statistics
47. BBC News (2014) "Charity warns officer cuts leave prison system 'in crisis'"
48. Ministry of Justice & Rt Hon Truss, E. (2017) "A speech on criminal justice reform by the Secretary of State for Justice"
49. HM Prison Service "Working for HMPS"
50. In April 1992 there were approximately 23,500 prison officers in establishments serving a prison population on 31 March 1992 of 47,746, giving a ratio of 1 prison officer to 2.03 prisoners. Source: Report on the Work of the Prison Service April 1991–March 1992, Home Office.

51. Evaluation of Greenock Prison Throughcare Project [accessed via: www.sps.gov.uk/nmsruntime/saveasdialog.aspx?fileName=Evaluation_of_Greenock_Prison_Throughcare_Project.pdf]
52. As authors we declare an interest in serving as we do, respectively as President and Vice President of Tempus Novo. <http://tempusnovo.org/trustees.php>
53. Information supplied by Tempus Novo (correct as at 24 July 2017).
54. HM Inspectorate of Probation (2016) "Probation services in Derbyshire – A mixed picture"
55. HM Inspectorate of Probation "Probation services in north of London – Poor work means public more at risk"
56. HM Inspectorate of Probation (2016) "Quality & Impact inspection: The Effectiveness of Probation Work in the North of London"
57. Minutes of the Meeting of the All-Party Group on Penal Affairs, held on 28 February 2017 in Conference Room E, 7 Millbank
58. Criminal Justice Joint Inspection (2017) "Support for prisoners leaving jail: Community Rehabilitation Companies not having any impact, says inspectors"
59. Centre for Social Justice (2009) "Locked Up Potential: A strategy for reforming prisons and rehabilitating prisoners"
60. UK Judicial Attitude Survey (2016) "Report of findings covering salaried judges in England & Wales Courts and UK Tribunals" *UCL*
61. Chase, D. & Hon Hora, P. (2009) "The Best Seat in the House: The Court Assignment and Judicial Satisfaction" *Family Court Review: An Interdisciplinary Journal*
62. Magistrates Association "MA response to vision paper 'Transforming Our Justice System'" [accessed via: www.magistrates-association.org.uk/news/ma-response-vision-paper-%E2%80%99transforming-our-justice-system%E2%80%99]
63. Prison Reform Trust (1991) "The Woolf Report: A summary of the main findings and recommendations of the inquiry into prison disturbances"
64. Prisons Reform Trust (2015) "Strangeways 5 years' on: Achieving Fairness & Justice in Prison"



The Centre for Social Justice
34a Queen Anne's Gate
London
SW1H 9AB

www.centreforsocialjustice.org.uk
@csjthinktank