Breakthrough
Britain

Order in the Courts

Restoring trust through local justice

A Policy Report from the
Courts and Sentencing Working Group

Chaired by Martin Howe QC

November 2009

THE CENTRE FOR
SOCIAL
JUSTICE

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 have been affected by poverty. 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.

In addition to policy development, the CSJ has built 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 such individuals, communities and voluntary groups to help themselves.

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

Chairman: Rt Hon. Iain Duncan Smith MP
Executive Director: Philippa Stroud

Breakthrough Britain: Order in the Courts

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Preface

Iain Duncan Smith

When the Centre for Social Justice published *Breakthrough Britain* two years ago, we identified the five pathways to poverty: family breakdown, educational failure, economic dependency, addiction and serious personal debt. It was apparent that these problems were also pathways into crime. Every day, our criminal justice system deals with the consequences of social breakdown – the one-man crime wave who steals thousands of pounds a week to feed a heroin addiction; the domestic abuser who saw nothing but violence in his own family growing up; the young man with no qualifications who cannot get a job. When the same characters – the same individuals – appear in local courts time and time again, we must recognise there is something wrong with the system.

Over the last ten years the prison population has risen by almost 30 per cent to 84,000, and the number serving community sentences has increased even more. These offenders, overwhelmingly, are from deprived communities.

But what I have seen is that crime is not only a consequence of social breakdown – it is also a cause. It makes vulnerable people – potential victims – afraid to leave their houses and less likely to trust their neighbours. It stops businesses from developing. Most directly, it creates misery for millions of people each year who are burgled, attacked, defrauded or whose property is destroyed. Though it may seem counterintuitive, people in deprived communities are more likely to be victims than wealthier people, and they rightly expect that the criminal justice system will pursue the offender and sentence them appropriately.

As this report shows, the criminal justice system does not live up to these expectations. Even for summary crimes, (which exclude the most serious crimes), offenders are finally sentenced an average of 20 weeks after their offence, and this is despite the fact that most of them plead guilty. Serious crime cases tried in the Crown court take still longer. Such lengthy and seemingly unnecessary delays will hardly instil confidence in the public, and particularly in the victims of the crime in question, who are waiting to see justice done.

When someone finally appears in court, the system breaks down still further. Magistrates' courts are often unable to impose the sentence they would like due to a lack of funding, and when funding is available, far too frequently the sentence is not then carried out appropriately by probation. Those who are

sentenced to short prison sentences are offered very little by way of help to rehabilitate, and they are released back into the community after a few weeks or months with no supervision at all. Into this mix are added thousands of offenders with mental health problems, some extremely severe, who are cycled between the prison system and general psychiatric services, with neither taking proper responsibility or care of them until they commit a serious dangerous offence.

The result is predictable – reoffending on a large scale, at levels higher than many other comparable countries. Half of all offenders released from prison on short sentences are reconvicted within two years, while about 36 per cent of those on community sentences are proven to have reoffended *while serving their sentence.* Yet we also know that even these appalling figures are not the whole story: the reconviction rate figures rely on police detecting offences and then deciding to charge them in court. It is clear that the real figures for reoffending are much higher than the ones published. Once in the system, the cycle continues: almost 30 per cent of those starting a community sentence have 11 or more previous cautions or convictions. These people, mostly young men, will find their lives taken over by their interaction with the justice system.

This report shows that there is much public dissatisfaction with the criminal justice system, and no wonder. But its criticism goes further than a failure to subdue crime. The criminal justice system has been increasingly politicised and 'spun' over the last decade. There has been more political interference and more spin. It is almost impossible now to tell how long a sentence passed by a court will actually last, nor whether the reality will reflect the conditions imposed by the court. A six-month prison sentence routinely translates to six weeks: there is an automatic one-third reduction for a guilty plea (180 days to 120 days), then the remaining time is halved, and then a further 18 days are subtracted for early release (leaving 42 days). A six-week sentence can mean immediate release if it is handed down on a Friday: after all the subtractions the offender is left with three days, and there is no release on the weekend.

At the same time, a national centralised bureaucracy has been put in place to control criminal justice professionals. There has been a huge growth in the number of Whitehall bureaucrats and management grades in the probation service: for example, between 2001 and 2006 there was a 150 per cent increase (from 84 to 210) in the number of central government staff with responsibility for probation – almost certainly an under-estimate. At the same time the number of qualified front-line officers compared to the number of offenders has fallen by almost a quarter. The different criminal justice agencies, whose cooperation on sensitive matters require detailed local knowledge and coordination, are controlled only distantly from the centre. Fundamentally, local ownership of the criminal justice system has been eroded. The government, rather than ensuring that justice is available to victims and their communities, has supplanted victims and nationalised crime.

The criminal justice system should make the option of crime a poor one, beset with risk and little reward; and the alternative option should be less risky and more rewarding. For example, if a young would-be offender can see that those around him who are committing crimes are getting caught and prosecuted quickly with effective sentences that are carried out to the letter which the court determines, then he will be more likely to opt for the alternative lifestyle. For those offenders already caught up in the system, it is important that as soon as they start to think about this calculation, they see a clear and effective route out.

This report makes 40 proposals to transform the local courts and sentencing system. It shows why the sentence passed must reflect the reality of the sentence served. It proposes the abolition of prison sentences lasting just a few weeks, to be replaced by tough community sentences backed by the threat of immediate short imprisonment at the court's discretion. It puts the court in charge of the sentence, giving it the power to follow through and require the probation officer or prison governor to explain why a particular sentence has not been properly carried out. Courts will be able to sentence offenders to residential drug rehabilitation, and insist that offenders with diagnosed mental illnesses be admitted to hospital. All the local criminal justice agencies will be held to account by a locally visible, significantly strengthened Criminal Justice Board, with devolved budgetary powers.

I would like to thank Martin Howe and the Working Group for the time and effort they put into this report. If its recommendations are adopted, the criminal justice system will no longer be a political plaything, at the mercy of headline writers and short-term political thinking. The government must allow the professionals to concentrate on catching offenders, redressing harm appropriately and transparently, and providing ways out for those offenders who want it. In this way, the criminal justice system can play its vital role in reversing the growing level of social breakdown.

Iain Duncan Smith
Chairman, Centre for Social Justice

Chairman's Foreword

Crime is a problem for all parts of society but its effects bear most heavily on deprived communities. Victims of crime are disproportionately concentrated there.

Our criminal justice system is failing to convince the public that it is indeed protecting them, failing to satisfy victims of crime that they are receiving justice, and largely failing to turn persistent criminals away from pursuing a criminal lifestyle. This failure is exemplified in the pattern of the 'revolving door', when repeat offenders – often committing economic crimes to fund a drug addiction – are periodically caught and sentenced to short prison terms which do nothing to divert offenders from resuming the pattern of crime and addiction as soon as they are released. These 'revolving door' offenders are a prolific source of crime and of misery to others, cause huge costs to public funds, and their own lives represent a waste of human potential.

Our court system and the other agencies involved, such as the probation service, are increasingly micro-managed from the centre. A torrent of criminal justice legislation has poured out of Marsham Street over the past few years and has drowned the courts. Increasingly detailed and prescriptive sentencing guidelines are being imposed in pursuit of an unachievable theoretical ideal that the same sentence should be imposed for the same crime in every court in the land from Penzance to central Liverpool. These prescriptive guidelines and other centralisation efforts hamper the ability of courts to adapt sentences to the circumstances of the offender or to the availability in the locality of different resources for dealing with offenders, and prevent courts from tailoring sentencing either to local conditions or to the differing priorities of local communities.

The lower courts – which used to be much more local – have been centralised into fewer and larger court centres. Local benches have been amalgamated into large areas and justices, defendants, victims and witnesses travel to remote court centres where the members of the court hearing the case may have little or no knowledge of the localities or the communities from which the participants in the case are drawn. Similarly, the probation service has withdrawn from local offices close to the communities it is dealing with into remote centralised offices from which probation officers venture out less and less.

Despite the attempts to impose detailed central control on the courts and other criminal justice agencies, there is little or no coordination of those

agencies at local level. There is no-one in charge of planning and providing the range of facilities which ought to be made available to deal with offenders, ranging from drug treatment to effective community punishments to mental health services. Different services come out of different budgets; provision is patchy, with the result that an offender may end up in prison instead of, say, a drug treatment programme, even though prison is more costly and far less likely to deal with the offender's problems.

We recommend a number of steps to improve the functioning of courts and of the agencies involved in carrying out sentences. Effective power should be devolved from the centre to local areas so that provision for offenders can be rationally planned, so that the most effective sentence can be made available for each offender, and so that the untapped resources and enthusiasm of the voluntary sector can be drawn upon according to local conditions and availability. It would be naive to suppose that the criminal justice system can magically solve deep-seated problems in the disordered lives of many offenders, but the system should at least *try* to identify and solve the underlying problems (such as drug addiction, alcohol or mental illness) which lead to individuals being trapped in a life of crime. Help should be there for those who are able and willing to take advantage of it.

There are other reforms that need to be made. Honesty in sentencing is an essential first step. The present practice, where sentences of imprisonment pronounced by a court bear no relationship to the time which will actually be spent in prison, gravely undermines public confidence in the system. Both fines and 'unpaid work' need to be made more effective penalties and less easy to avoid. Where prison sentences are used, it should be realised that the period after release is just as important as the time spent inside when it comes to preventing a slide back into a criminal lifestyle, and appropriate support and supervision should be provided. Short prison sentences, which disrupt an offender's home, relationships and employment without providing any opportunity for rehabilitation, should be restricted and all prison sentences should be effectively structured.

The problems which the criminal justice system is trying to deal with are colossal and there are no easy answers. However we believe that it could do a great deal better than at the moment if the reforms we propose are adopted.

I would like to pay my personal tribute to all those who have contributed to this report. The members of our group and our distinguished advisers have contributed many hours of their valuable time and expertise. As can be seen from their biographical information on the Working Group Members page, their collective expertise in the workings of the criminal justice system from a wide range of angles is unparalleled. As a barrister with a mainly civil practice, I have learned a great deal from them. I would also like to thank all the witnesses who contributed to our inquiry, who in many cases took time and trouble to prepare detailed papers for us as well attending evidence sessions; and the judges, magistrates and court staff, and the probation, social work and

medical staff, who made us welcome and answered our questions on our visits to courts and other agencies.

Within the CSJ, I would like to mark the enormous contribution made by our tireless researchers Gabriel Doctor and Alex Halliwell, along with others who helped produce the report, and finally Iain Duncan Smith MP and Philippa Stroud for setting up the project and for providing support and direction for our work.

Martin Howe QC
Chairman of the Courts and Sentencing Working Group

Members of the Courts and Sentencing Working Group

Martin Howe QC, Chairman

Martin was called to the Bar (Middle Temple) in 1978 and since 1996 has been a practising Queen's Counsel. Martin conducts cases before the English courts, the European Court of Justice and other European tribunals, and specialises particularly in Intellectual Property and European law. Before joining chambers, Martin worked as a commercial and systems software programmer for IBM and a software house – he continues to maintain an interest in evolving computer technology.

Gabriel Doctor, Author

Gabriel is the Policy Group Manager at the Centre for Social Justice. He read English at New College, Oxford, before gaining an MSc. in Political Theory at the LSE.

Victoria Elvidge JP

Victoria sits as a magistrate at Gloucestershire County Court, and was previously a Lord Chancellor's appointee magistrate at Horseferry Road, London. Before this, Victoria spent ten years working as a commercial property solicitor in the City. She has also been a chaired the London Rent Assessment Panel and worked as adviser at the Citizens' Advice Bureau.

Simon Pellew OBE

Simon is currently the Chief Executive of Time for Families, a charity working to help the relationships of prisoners and their partners to survive the prison sentence. Before that, he set up and ran Pecan, an organisation reducing unemployment in Peckham, for which he was awarded the OBE. Simon then moved on to running a charity providing accommodation for ex-prisoners.

Tom Stancliffe

Tom is a solicitor at Allen & Overy. He was previously employed by the Centre for Social Justice and acted as Secretary to the Conservative Party Social Justice Policy Group.

Malcolm Thomson

Malcolm has been working with CLINKS since 2004 to manage a project to develop strategic links between the National Offender Management Service and the Voluntary and Community Sector. This has facilitated consultations on a number of policy initiatives affecting offender-related voluntary and community groups and developed policy in relation to working with ethnic minority offenders and women. Malcolm has worked in the Probation Service for over 30 years and has experience both in the United Kingdom and Canada. From 1985, he worked for what is now West Mercia Probation Area, with responsibilities for commissioning and partnership arrangements.

Advisers

Rob Allen

Rob is Chairman of CLINKS, the umbrella body which supports voluntary organisations working with prisoners and their families. Rob is also Director of the International Centre for Prison Studies and has been a member of the Youth Justice Board for England and Wales since 1998. In 2005, he ran Rethinking Crime and Punishment, an initiative set up by the Esmée Fairbairn Foundation to change public attitudes to prison and its alternatives. Prior to this, Rob was Director of Research and Development at the crime reduction charity NACRO – The National Association for the Care and Resettlement of Offenders.

Professor Sir Anthony Bottoms

Sir Anthony is Honorary Professor of Criminology at Sheffield University. He was previously Wolfson Professor of Criminology at Cambridge University and Professorial Fellow in Criminology at Sheffield, retiring from these posts in 2007. He is a Fellow of the British Academy, and holds an honorary LLD from Queen´s University, Belfast. In 2007 he received the European Criminology Award from the European Society of Criminology for lifetime services to European criminology. In 2001 he received a knighthood for services to the criminal justice system.

Dame Helen Reeves

Helen is currently a member of the international development committee of the Tim Parry Jonathan Ball Trust, the RSA Risk Commission and the Howard League Commission on The Future of the English Prisons. From 1980-2005, she was the Chief Executive of Victim Support, a national charity which looks after the needs of victims and witnesses in the criminal justice system. She was a founding member and Chairman of Victim Support Europe and Vice-President of the World Society of Victimology.

His Honour Judge John Samuels QC

John sits as a Crown court judge for much of the year and was a Circuit Judge until his retirement in April 2006. For four years, he has been Chairman of the Criminal Committee of the Council of Circuit Judges. John is very active in the sphere of criminal justice reform and sits on many criminal justice advisory groups – including the London Probation Forum, the Parole Board, and the National Sentencer/National Offender Management Service Consultation Group. He is also Chairman of the Prisoners' Education Trust.

Enver Solomon

Enver was recently appointed Assistant Director of Policy at Barnado's, and was previously Deputy Director of the Centre for Crime and Justice Studies, an independent charity based at King's College London. Since 2002, he has worked for both the Prison Reform Trust and the Revolving Doors Agency. Enver has published a number of reports on a range of areas from criminal justice policy, crime and the media, to mental health and young offenders. Prior to working in criminal justice policy, Enver was a reporter and producer with BBC News for nearly ten years.

Judge Daphne Wickham

Daphne was called to the Bar in 1967 and practised on the South East circuit until 1989 when she was appointed as a Metropolitan Stipendiary Magistrate. She was later appointed as a Recorder of the Crown Court in 1997. Since 2003 she has been a Deputy Senior District Judge and is now based at Westminster Magistrates' Court. Daphne's interest in criminal justice comes from her strictly professional background as a sentencer - she has been a member of the Inner London probation board and was Chairman of the Inner London probation committee.

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Executive Summary

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, 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]

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]

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

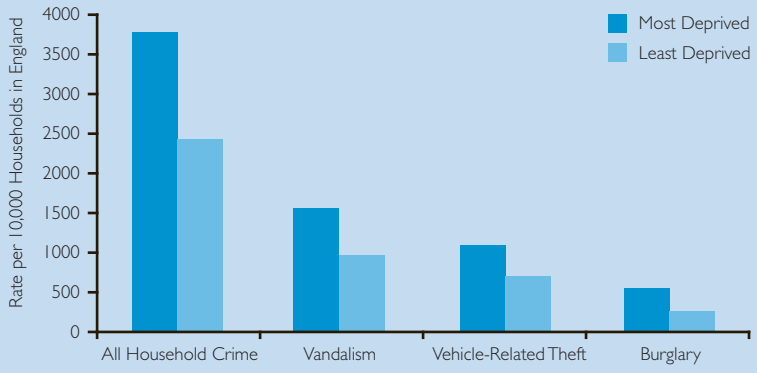
4 Ipsos MORI. 'The most important issues facing Britain today'. Available at: http://www.ipsos-mori.com/content/the-most-important-issues-facing-britain-today.ashx [Accessed 26 March 2009]

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] 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]

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



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

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.

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

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.

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

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
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]

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]

> "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

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 CPS.[22] Of course evidence needs to be gathered properly and cases investigated; but it is striking that the average time

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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

22 Ibid

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

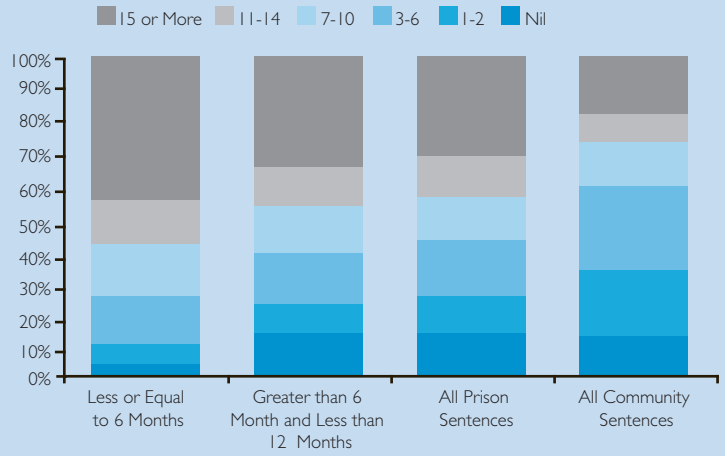
24 Ministry of Justice, 2009. *Re-offending of adults: results from the 2007 cohort, England and Wales*, MoJ, Appendix I, Table A5. This has remained fairly static over the last few years; see Cunliffe J & Shepherd A, 2007. *Re-offending of adults: results from the 2004 cohort*, Home Office RDS, p. 21

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 Ministry of Justice, 2008. *Offender Management Caseload Statistics 2008*, MoJ, 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.)

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

29 Ministry of Justice, 2009. *Offender Management Caseload Statistics 2008*, MoJ, Table 3.9
30 Ministry of Justice, 2009. *Offender Management Caseload Statistics 2008,* MoJ, Table 3.2
31 National Audit Office, 2008. *The Probation Service- The supervision of community orders in England and Wales*, The Stationery Office
32 Hollis V, 2007. *Reconviction Analysis of Interim Accredited Programmes Software (IAPS) data*, RDS NOMS, p. 6. Calculated from raw data.
33 Ministry of Justice, 2009. *Offender Management Caseload Statistics 2008*, MoJ, Tables 4.8 and 7.32

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

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.

> "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

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.

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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. *Re-offending 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.

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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 August 12, 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 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.

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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

44 Ibid, p. 3

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.

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.

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

> "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

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).

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.

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.

ONE
Introduction

Over the last ten years, crime and law and order have become increasingly salient issues in the public mind. In 2008, more than 40 per cent of people thought that crime was 'the most important issue facing Britain today'.[1] The average British citizen (who is 39 years old) has lived through a four-fold increase in crime during his or her lifetime.[2] Over the last ten years the government has spent more on, and taken more direct control over, all aspects of the criminal justice system; between 1998/99 and 2007/08, expenditure on 'public order and safety' increased from £17.9 billion to £32.5 billion across the UK, a 46 per cent real terms increase.[3] Yet there is little public confidence in the government's ability to address crime. In a survey conducted by Ipsos MORI in 2006, only 25 per cent of respondents in the UK expressed confidence that the present government is 'cracking down on crime and violence', significantly less than those polled in Germany (48 per cent), France, Italy, the USA or Spain (38 per cent).[4] Another poll shows that only 22 per cent of adults are satisfied with 'the way the government is dealing with crime', compared to 60 per cent who are positively dissatisfied.[5]

While general concern about crime is high, it is a particular problem for our deprived communities. The 2008 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' (19 per cent compared to eight per cent).[6] As this paper will show, crime and its consequences have a significantly bigger impact on the daily lives of those in deprived areas, where more people figure both as victims and offenders.

Promise of swift, summary justice is also not being realised. Despite significant financial investment, there has been no reduction in the length of time it takes for

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1 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]

2 Home Office, 2008. *A Summary of Recorded Crime Data 1898 to 2001/02*, Home Office; Home Office, 2008. *A Summary of recorded crime data from 2002/03 to 2007/08*, Home Office. Available at: http://www.homeoffice.gov.uk/rds/recordedcrime1.html [Accessed 26 March 2009]

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

4 Duffy B & Wake R, 2008. *Closing the Gaps: Crime and Public Perceptions*, Ipsos MORI, p. 21

5 Ibid, p. 33

6 Home Office, 2008. *Crime in England and Wales 2007/08: Findings from the British Crime Survey and police recorded crime*, Home Office, p. 130

a criminal to be sentenced. The delay currently stands at just under 20 weeks for summary non-motoring offences, and much longer for more serious offences which go to the Crown court (16 weeks between offence and completion in the magistrates' court and then an average of another four to five months before the substantive trial begins [see Chapter 4]). Fewer crimes on the street are making it to courts; magistrates and senior police complain of an increasing volume of offences being dealt with by police fines (penalty notices) and cautions, including more serious offences which really ought to be dealt with by a court.

As this report will demonstrate, sentencing is very complex and can seem opaque to the uninitiated. The English system fails to satisfy public expectations of robustness, deterrence and rehabilitation. Almost 60 per cent of offenders serving prison sentences of six months or shorter have more than 11 previous convictions;[7] 41 per cent of those on court orders have seven or more previous convictions and cautions.[8] The rate of reoffending while on a community sentence is high: 36 per cent of offenders will reoffend during the year following the start of their community sentence. Within two years, more than half will have reoffended. These statistics both exclude offences dealt with by cautions, and of course any other offences which remain undetected.[9]

Many offenders are caught up in a cycle of poor education, little family stability and multiple addictions (see Chapter 3), yet only a very small proportion of sentences seek to address these problems. For example, less than six per cent of community sentences contain drug rehabilitation elements, even though 22 per cent of offenders commencing community sentences have palpable drug misuse problems (see Figure 7.1). Furthermore, despite studies which show that mental health treatment for those with serious mental disorders reduces their reconviction rate, the availability of proper treatment for mentally-ill offenders is highly inadequate.[10]

1.1 The Working Group's Remit

Two years ago, the Centre for Social Justice looked at the 'pathways to poverty' – factors which contribute to poverty and deprivation, reducing the quality of life and the life chances for those in our poorest communities. The five pathways are family breakdown, worklessness and economic dependency, educational failure, serious personal debt, and addiction.[11] They are present in all Britain's most deprived communities.

These pathways to poverty are also closely related to crime. It should come as no surprise to learn that crime and threatening behaviour affect our poorest communities disproportionately. Deprived communities have the highest

7 Ministry of Justice, 2009. *Offender Management Caseload Statistics 2008*, MoJ, Table 7.32
8 Ibid, Table 4.9
9 Ministry of Justice, 2009. *Re-offending of adults: results from the 2007 cohort, England and Wales*, MoJ, Appendix A: Table A5
10 James D et al, 2002. *Outcome of psychiatric admission through the courts*, Home Office RDS, p. 50
11 Centre for Social Justice, 2007, *Breakthrough Britain*, CSJ

number of offenders, the highest number of victims, and the highest levels of fear of crime and antisocial behaviour (see Chapter 2). Crime is not contained within the bounds of these communities; it is also exported to the surrounding neighbourhoods and to those communities with which their members interact.

Our investigation has highlighted the way in which criminality ties in with drug and alcohol addictions as well as mental health problems.

Martin Howe QC and Dame Helen Reeves

This report is part of a series of publications by the Centre for Social Justice addressing the criminal justice system. *A Force to be Reckoned With*[12] looks at the police force, *Locked Up Potential*[13] looks at prisons, and *Dying to Belong*[14] tackles gang crime. This report deals with courts and sentencing policy in the adult courts. Our courts occupy a central role in the criminal justice system. They deal with people accused of crime who are brought before them by the police and the Crown Prosecution Service, and decide what sentence should be imposed on those found guilty. The role of the courts cannot sensibly be discussed without also considering the role of other agencies with which the courts interact, and criminal justice policy more broadly.

This report argues that the criminal justice system has become removed from the citizens and communities that it serves, who give it legitimacy. It then looks at how the system should deal with those offenders and communities who come into contact with the system most frequently.

The criminal justice system must deal with a wide variety of issues. But this is not a paper about traffic offences, terrorism, the future of juries or the rules of evidence or serious fraud cases. All these are important and serious areas for consideration, but for other groups to address. Our Working Group's remit means that this paper focuses mainly on magistrates' courts and the probation service, and on the types of sentences – the fines, community sentences and short imprisonment – which they typically impose and oversee. The Centre for Social Justice will also conduct a separate review of youth offending and the youth justice system, which is largely administered separately from the adult courts.

1.2 What is the Criminal Justice System?

The criminal justice system is the state's main apparatus for upholding the law and providing safety and security for its citizens. In England and Wales (Scotland has separate laws and a separate criminal justice system), the criminal justice system is managed principally by the Home Office, the Ministry of Justice and the Attorney General's Office. The Home Office funds and manages the police (who are also part-funded by local authorities), and the

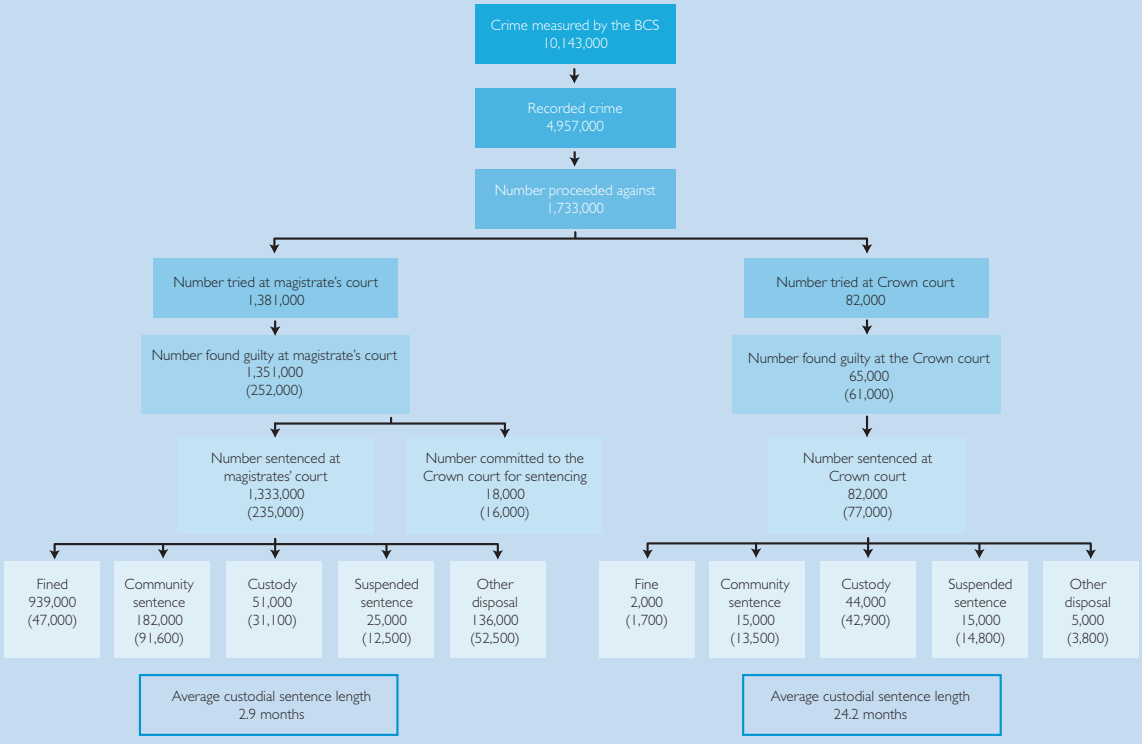
12 Centre For Social Justice, 2009, *A Force to be Reckoned With*, CSJ
13 Centre for Social Justice, 2009, *Locked Up Potential*, CSJ
14 Centre for Social Justice, 2009, *Dying to Belong*, CSJ

Ministry of Justice is charged with the administration of courts through Her Majesty's Courts Service, and with the running of sentences through the National Offender Management Service (NOMS, incorporating the National Probation Service and the Prison Service). The Attorney General superintends the Crown Prosecution Service. The judiciary is independent of government (although its salaries are paid by the Ministry of Justice), and sentencing guidelines, which determine the type and length of punishment for a particular crime and offender, are promulgated by the Sentencing Guidelines Council, an independent body chaired by the Lord Chief Justice.

While many agencies have a role in the administration of justice, the general public does not on the whole differentiate between the different agencies. Most people can only name two agencies – the police and the courts.[15] This suggests that the public elides all courts and sentencing agencies into 'courts', and that the courts are seen as responsible for both sentencing and the quality of the sentence, i.e. how it is carried out.

To give an idea of the scale of the task faced by the courts, Figure 1.1 shows the Ministry of Justice's 2007 statistics for the flow of crime and offenders through the court system (the latest complete set currently available).[16]

Figure 1.1: The flow of crimes and criminals through the justice system



Note: Figures are rounded to the nearest hundred for indictable offences and nearest thousand otherwise.
1. Excludes life sentences and IPPs (Indeterminate sentence for Public Protection)
2. Numbers in brackets indicate figures for indictable offences

15 Smith D, 2007. *Confidence in the criminal justice system: What lies beneath?*, Ministry of Justice, p. 14

16 Ministry of Justice, 2009. *Sentencing Statistics 2007* (England and Wales), revised edition, MoJ, p. 13

1.3 The Cost of Justice

The total budget for the Ministry of Justice for 2009/10 was set at £9.73 billion.[17] This is an increase in real terms of 27 per cent since 1997 on the functions now performed by the MoJ (previously performed by the Home Office and Department for Constitutional Affairs), though the annual budget has decreased over the last few years.[18] The Ministry of Justice is now under instructions to reduce its annual budget by about £1.3 billion over the next two years.[19] As Chapter 12 explains, the massive increase in spending on justice since 1997 has largely been absorbed by expanding central bureaucracies; this has proved unsustainable.

1.4 Purpose and Legitimacy

The role of the courts in the criminal justice system is to ensure that justice is done and seen to be done. Those who are directly involved in the system, whether as victims, witnesses or accused, should believe that the system will treat them fairly. It is essential that the consequences for those convicted of crimes are generally perceived to be fitting, both by the direct participants and wider society.

This public confidence that the criminal justice system will deal fairly and fittingly with participants is key to maintaining the system's legitimacy and also its effectiveness. If it were not perceived to do so, the legitimacy of the system of law and consequence would be compromised, and there would be an acute danger that deprived communities in particular may slide into lawlessness or even into vigilante justice, a subject we deal with in section 2.6 below.

1.4.1 WHAT MUST THE SYSTEM DO?

For a criminal justice system to be trusted by the people it has to reflect their reasonable expectations of justice.

How to do justice in dealing with those found guilty of crimes is a topic which invites partisan views. Campaigners and advocates are divided, with some calling for harsher sentencing (normally greater use of prison) and others calling for more lenient sentencing (normally greater use of community sentences). The Working Group believes that such polarised positions are too crude. Rather, the criminal justice system must satisfy the public's *reasonable* expectations of what it means to do justice. These expectations may vary between different geographical areas, and even

17 Ministry of Justice 2009. *Departmental Annual Report 2008/09*, MoJ, p. 95

18 Ministry of Justice 2009. *Creating a Safe, Just & Democratic Society: Ministry of Justice Corporate Plan 2009-2011*, MoJ, p. 8. This report claims 27 per cent increase but also suggests that the annual budget will be 'just over £10bn', which contradicts the departmental report cited above. The MoJ was only created in 2007 but its departmental budget tracks the cost of the functions it now performs, including prisons and probation which were previously under the Home Office.

19 *The Times,* 15 October 2008. 'Jack Straw's cutbacks will be mirrored across the rest of government.'

within one community people might have opposing instincts. Nonetheless, the system must clearly recognise that these expectations *matter*, and those in charge of the system cannot abdicate responsibility for trying to satisfy these expectations.

To understand what the system must do in order to satisfy public opinion, we have looked at the result of a survey which asked people to identify what they thought were the 'absolutely essential' functions of the criminal justice system. Those polled were also asked how *confident* they were that these goals were being achieved. The results are summarised in Figure 1.2 opposite. What emerges is a picture of interrelated expectations of the criminal justice system, many of which can and must be fulfilled partially through sentencing. The survey also shows that there is a marked lack of confidence in the criminal justice system's ability to achieve these aims.

The survey first demonstrates the difficulty of categorising expectations as 'tough' or 'soft' on perpetrators of crime. Many of the functions of the criminal justice system identified by those polled, such as 'dealing with drug-related crime', 'tackling the causes of crime', and 'stopping offenders from committing more crime,' suggest an attitude to sentencing that prioritises rehabilitation; other surveys suggest that people value robust punishments which fit the crime. Research shows that the British public is not particularly punitive;[20] instead, characteristically, it is 'selectively punitive and selectively merciful depending upon the specific conditions'.[21] We want punishments to be fair – proportionate to the crime committed – but we also expect that punishments will be constructive in some way.[22]

Figure 1.2 also shows that the public lacks confidence that goals which it takes to be 'absolutely essential' are being achieved.

People's expectations of the criminal justice system are complex and liable to change.[23] Given that the legitimacy of the system rests on its ability to achieve society's reasonable expectations (such as the ones outlined above), it is essential for the criminal justice system to stay connected and responsive to victims and their communities. A system which concentrates solely on the processing of offenders and whose agencies lose contact with victims and potential victims is bound to lose public confidence; the system may resultantly begin to face a crisis of legitimacy, particularly in deprived communities that hold little sway over national public life (see section 2.6).

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20 Roberts JV & Hough M, 2002. *Changing Attitudes to Punishment: Public Opinion, Crime and Justice*, Willan Publishing

21 Stalans JV, 2002. 'Measuring attitudes to sentencing', in Roberts JV & Hough M, 2002. *Changing Attitudes to Punishment: Public Opinion, Crime and Justice*, Willan Publishing, p. 19

22 Roberts JV & Hough M, 2002. *Changing Attitudes to Punishment: Public Opinion, Crime and Justice*, Willan Publishing

23 Roberts JV & Hough M, 2002. *Changing Attitudes to Punishment: Public Opinion, Crime and Justice*, Willan Publishing

Figure 1.2: The essential functions of the criminal justice system[24]

More than 50 per cent of those surveyed said that the following functions were 'absolutely essential' for the criminal justice system. The functions are listed in decreasing order of the proportion of people who judged them as such. **Those functions which people had little confidence were being achieved are in bold**. So for example, 'treating people fairly regardless of race' was the function most likely to be considered 'absolutely essential', and most people had high confidence that this was being achieved. 'Creating a society where people feel safe' was described by slightly fewer people (but well over 50 per cent) as being 'absolutely essential', but a majority thought it was not being achieved.

1. Treating people fairly regardless of race;
2. **Creating a society where people feel safe;**
3. Sex offenders;
4. **Bringing people who commit crimes to justice;**
5. Violent crime;
6. **Reducing the level of crime;**
7. Parts of the criminal justice system working together;
8. **Stopping offenders from committing more crime;**
9. Protecting witnesses;
10. Protecting victims;
11. **Dealing with crime promptly;**
12. **Dealing effectively with street robbery (including mugging);**
13. **Tackling the causes of crime;**
14. **Dealing with drug-related crime.**

1.4.2 THE PURPOSES OF SENTENCING

The Criminal Justice Act 2003 defined five 'purposes of sentencing' (see the box overleaf). These purposes have long been recognised in the judgments of the courts and by academic writers on sentencing policy, but the 2003 Act was the first occasion on which these purposes were set out explicitly in statute law.

The problem is that while these are all recognised as worthy objectives of sentencing, merely reciting this list of 'purposes' does little to guide the courts in practical day-to-day sentencing decisions. In real situations, these purposes may well conflict with each other: what is a court to do if it considers that a certain lenient sentence provides the best chance of rehabilitating a particular offender, but such a sentence would be deemed an inadequate punishment for the offence.

24 Page B, Wake R and Ames A, 2004. *Public Confidence in the Criminal Justice System*, Home Office RDS, p. 3

Figure 1.3: The purposes of sentencing according to the Criminal Justice Act 2003 [section 142(1)]

(1) Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing—
  (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.

We have very high expectations of our criminal justice system and the role of the courts within it, and the 'purposes of sentencing' outlined above are not easy to achieve. In individual sentencing decisions, proportionate punishment, as Andrew Ashworth argues, remains the 'touchstone' of sentencing, 'but...within that framework of a proportionate sentence it may be possible to aim for rehabilitation. A reparative measure may also be possible.'[25] In the aggregate, sentencing *policy* should reflect the public's expectations.

While accepting that it may not be possible to fulfil *all* the purposes of sentencing in a particular sentence, it is important that none of the purposes of sentencing are ignored. Where appropriate, a judge or magistrate should have the discretion to tailor the sentence to the particular case at hand, balancing the purposes as they see fit. Differing circumstances of both offenders and crimes mean judges and magistrates need to be able to impose nuanced sentences, balancing the various important goals and opportunities that different cases and offenders may present. The Working Group believes that the criminal justice system can do what people expect of it as long as it stays close to them, relating to individuals in a way that makes it evident that their feelings and thoughts are being considered. This means an end to the Leviathan that we have developed in England and Wales.

The Working Group also recognises the limitations of courts and their sentencing powers. The criminal justice system operates in the real world – often in communities that are suffering from social breakdown – and with offenders living extremely disrupted lives. We should not expect the criminal justice system to 'solve' these problems for society. While this paper focuses on what the

25 Ashworth A, 2007. 'Sentencing'. In Maguire M, Morgan R, & Reiner R, eds. *The Oxford Handbook of Criminology*, OUP, 990-1023, p. 998

courts can do, the Working Group stresses that solving the social problems which are manifest at the courthouse is not primarily the responsibility of the courts. A related danger is that focusing on criminal justice interventions will draw attention and funding away from policies that would prevent social problems in the first place. As we shall see, however, the courts do provide a useful *opportunity* to deal with some of these problems; they have useful tools at their disposal, even though their primary role is not that of social worker.

1.5 Hard-Pressed Clientele

By and large, the criminal justice system engages with those in deprived areas more than people living in well-off areas (see Chapters 2 and 3). The system, or its parts, must be capable of responding to these circumstances and the needs of offenders, victims and communities.

The criminal justice system (and particularly the intrinsically local justice institutions of magistrates' courts and probation services) has an important part to play in improving life chances in deprived communities. It provides a gateway for service provision to those communities and the individuals in need living in them. Figure 1.4 overleaf gives an indication of how prevalent certain personal problems are in the criminal justice system.

1.6 The Goals of Reform

Based on the considerations outlined in this chapter, we will argue for policies to achieve the following goals:

- The criminal justice system must restore trust with the public.
- Justice should be done and seen to be done in a more local manner.
- The churn through the system of offenders from poor communities with identifiable problems must be reduced, focussing on solvable problems tackled by solutions that work.
- The criminal justice system should help facilitate a way out of crime for those who desire change in their lives.
- The criminal justice system must become more accessible and transparent.
- The wishes of victims and their communities should become more integrated in sentencing.

By making the courts more accessible to victims and communities and by making procedure and sentencing more transparent, robust and effective, the Working Group believes that confidence in the criminal justice system could be restored.

A robust and effective criminal justice system is a matter of social justice: Chapters 2 and 3 show how crime affects poor communities, and explores the involvement and experience of Britain's most vulnerable people in the justice system.

Figure 1.4: Social profile of prisoners in England and Wales[26]

Characteristic	Prison population	General population
Ran away from home as a child	Males: 47 per cent Females: 50 per cent	11 per cent
Product of the care system	27 per cent	2 per cent
Regular truant from school	30 per cent	3 per cent
Excluded from school	Males: 49 per cent Females: 33 per cent	2 per cent
No qualifications	Males: 52 per cent Females: 71 per cent	15 per cent
Numeracy at or below level of 11 year-old child	65 per cent	23 per cent
Reading ability at or below level of 11 year-old child	48 per cent	21–23 per cent
Unemployed prior to imprisonment	67 per cent	5 per cent
Homeless prior to imprisonment	32 per cent	0.9 per cent
Two or more mental health disorders	Males: 72 per cent Females: 70 per cent	Males: 5 per cent Females: 2 per cent
Drug use in previous year	Males: 66 per cent Female 55 per cent	Males: 13 per cent Females: 8 per cent
Hazardous drinking	Males: 63 per cent Females: 39 per cent	Males: 38 per cent Females: 15 per cent

Chapter 4 looks at the process by which crime reaches the courts – how long it takes and who decides which crimes are prosecuted.

Chapter 5 assesses the effectiveness of the most widely used sentences – community orders and short prison sentences; while Chapter 6 examines

26 Social Exclusion Unit, *Reducing re-offending by ex-prisoners*, London: Social Exclusion Unit, 2002, p. 5

the cause of some of the failings identified. Chapter 7 looks at the particular case of offenders with drug and alcohol problems, and how they are dealt with.

Chapter 8 explores alternative models for sentencing, which involve the court to a greater degree after the sentence has been passed, and put the court in authority over the probation service, ensuring it carries out the sentence as intended.

The probation service is *de facto* a social service provider for marginalised young men, and Chapter 9 looks at how its character and role have changed over the years. It argues that the probation service needs to focus on motivating offenders to change through active encouragement and threatened sanctions, rather than just by managing an offender's sentence; and that it should act as a broker for services, rather than providing them in parallel to existing voluntary or statutory sector organisations.

Offenders with severe mental health problems are highly prevalent in the criminal justice system, and though existing diversion schemes are theoretically sound, Chapter 10 exposes their practical shortcomings. We propose radical reform to force recognition of the true scale of the problem.

Chapter 11 looks at the politicisation of crime as an issue over the last two decades, and its effect on the judiciary and sentencing structures. It argues that local accountability will take some of the political heat out of criminal justice, and that more transparent sentencing structures are a prerequisite for greater confidence.

Chapter 12 brings these themes together by looking at the centralisation of administration of the courts and probation service. It argues that localising the administration of and budgeting for criminal justice institutions and making them accountable to the local public would improve both people's confidence in the system and its ability to deal swiftly and usefully with offenders.

TWO
Crime and Communities

The community dimension of crime has often been ignored, but it is crucial to any successful criminal justice system. As we argue in Chapter 1, the criminal justice system has to stay connected to the community in order to maintain its legitimacy. Moreover, most crime that comes into the criminal justice system is highly related to the locality as well as the personal and communal circumstances in which it is committed.

This chapter looks at the relationship between offenders, victims and location. It will show that getting the criminal justice system right will most benefit those who live in poorer areas, for whom crime impacts on their lives daily. Professor Sir Anthony Bottoms calls this 'deprived area syndrome'. The failures of the criminal justice system impact first and foremost on people living in deprived areas. As was made evident in *Breakdown Britain*, these problems affect our poor communities disproportionately; solving them will benefit them most as well.

> "'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."
>
> Professor Sir Anthony Bottoms, in evidence to the CSJ

The picture this chapter paints is supplemented by Chapter 3, which deals with the prevalence in the criminal justice system of drugs, alcohol and other indicators of social breakdown, and by Chapter 10 which looks at the prevalence of people with serious mental health problems, and how the system deals with them.

This chapter begins by showing that convicted criminals are more frequently from poor areas, and explores why this might be. It then shows that there are also more victims in such areas, and that there is greater fear of crime, and less confidence in the criminal justice system.

2.1 Where are the Criminals from?

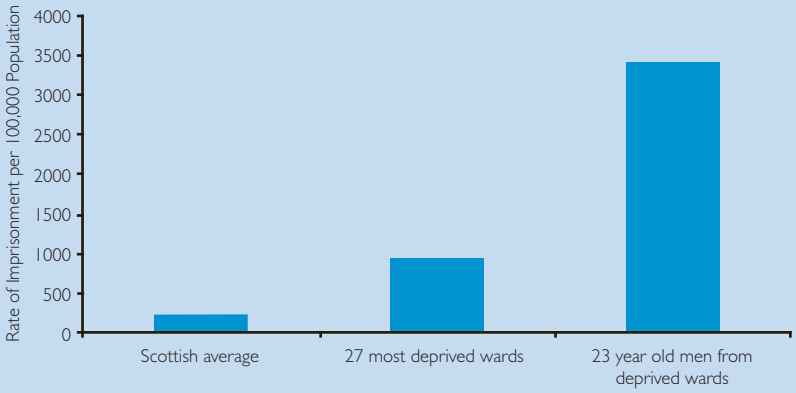
Overt criminality is overwhelmingly a feature of our poor and deprived communities. One magistrate told us that a sizeable portion of the defendants she saw were from particular streets which she could name.

We should not immediately infer that there are more criminals residing in these areas – offenders may prey on the poor. However, separate evidence does show that there are indeed more criminals living in deprived areas.

A study of the Scottish prison population on 30 June 2003 underlined the concentration of criminals in the poorest communities. The study traced back the given address of all inmates who were in prison on that date. The researchers found that Hard-Pressed areas were over-represented. The rate of imprisonment among men was 953 per 100,000 in the most deprived communities (on the Scottish Index of Multiple Deprivation). Among 23 year-old men this rose to 3,427 per 100,000 – that is to say that one in 29 of all 23 year-olds from these areas were in prison.[1]

Overall, 10.2 per cent of the general Scottish population lives in the poorest council estates (as recorded by the Scottish ACORN scale)[2] compared to 28.4 per cent of the prisoner population. This overall statistic includes those jails in relatively rural areas, which though poor are often socially stronger. When the study looked just at urban prisons, the picture was much starker – for example, in Glasgow City jail, six out of ten offenders gave a home address which was in the poorest council estates.[3]

Figure 2.1: Rate of imprisonment, by different characteristics



The study found that a quarter of the prison population came from just four per cent of local government election wards, and that a further quarter came from eight per cent of remaining wards. Fifty per cent of the prison population lived in just 12 per cent of wards. Many of these wards were very deprived.

This strong positive correlation between the greater likelihood of being a prisoner and living in a more deprived area was unsurprisingly replicated in the English context, in a study of offenders in South Yorkshire.[4]

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1 Houchin R, 2005. *Social Exclusion and Imprisonment in Scotland*, Glasgow Caledonian University, p. 18. Though this report does not look at the Scottish criminal justice system, nonetheless, the social circumstances of crime in Scotland is comparable to England and Wales.

2 'Most deprived' corresponds to Scottish ACORN group H. See Houchin, *Social Exclusion and Imprisonment in Scotland*.

3 'poorest council estates' corresponds to Scottish ACORN group H. See Ibid.

4 Craglia M & Costello A, 2005. 'A Model of Offenders in England' in Toppen F & Painho M (eds) *Agile 2005 Conference Proceedings*, p. 561

There is nothing in these statistics that you will not hear anecdotally from thousands of police officers, magistrates, and prison and probation officers across the country. What is debated is *why* there is such a concentration of offenders in these areas.

2.1.1 CRIME-PRONE PEOPLE . . .

Higher crime rates in poorer areas can be partially accounted for by the fact that people likely to commit more crime tend to live in areas with cheaper – or heavily subsidised – housing.[5] This is because, on the whole, crime does not pay that well in the long run. Children of offenders will grow up in these areas. In addition, bail hostels are also located predominantly in deprived areas.

2.1.2 BUT THE AREA ITSELF MAKES A DIFFERENCE

It is well recognised that there are 'personal risk factors' which predict how likely a person is to commit crime. For example highly impulsive people, those from broken homes and those with low educational attainment are more likely to offend than those without these characteristics.[6] More controversially, researchers have established that local environment also impacts on the likelihood of a person committing crime, using data from the important study of criminal careers, the Pittsburgh Youth Study. The relevant results are summarised in Figure 2.2 below.[7]

Figure 2.2: Percentage having committed serious offence by risk/protective score and neighbourhood context

	Neighbourhood Context			
			Disadvantaged	
Individual's personal risk score	**Advantaged**	**Middle-range**	**Non-public (i.e. deprived, non-social housing)**	**Public (i.e. social housing)**
High Risk Score (i.e. high risk individual)	77.8	71.3	78.3	70
Balanced Risk and Protective Score (i.e. medium-risk individual)	27.3	40.1	38.5	60.7
High Protective Score (i.e. low-risk individual)	11.1	5.1	16.7	37.5

5 Ibid, p. 558

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

7 Figure 2.2 adapted from Bottoms AE, 2007. 'Place, Space, Crime and Disorder', in M Maguire, R Reiner & R Morgan, eds. *The Oxford Handbook of Criminology*, OUP

This study graded the 'personal risk score' of a group of young people, a score which reflects measures of personality (such as impulsiveness) and family structure (such as whether they lived with both biological parents). They were graded as low personal risk (i.e. 'High Protective Score'), medium risk ('Balanced Risk and Protective Score') and high risk. Researchers then looked at the proportion of each category that had committed a crime, and cross referenced this with the characteristics of the area in which they lived. (These area characteristics are not reflected in the personal risk score measure.)

Reading across the table, we find that children with high personal risk factors were likely to commit a serious offence regardless of the type of area they lived in: in all areas, between 70 and 80 per cent committed an offence. By contrast, children with medium-risk and low-personal risk factors were significantly more likely to offend if they lived in deprived areas than if they lived in prosperous areas.[8] In the case of low-risk children, those living in social housing ('public housing' in the US context) were more than three times as likely to offend as those living in advantaged areas (11.1 per cent compared to 37.5 per cent). Just living in certain places makes it more likely that a child will grow up to offend.

The causes of this are varied: we can point to poor schools or a lack of job opportunities, and even the existence of criminal cultures embedded within an area. There is a rich seam of sociological field research which has sought to observe such 'cultures' in the real world, whether it be the fences of South London (*Villains*[9]) or the drug gangs of Chicago's South Side (*Gang Leader for a Day*[10]).

One might object that the apparent prevalence of criminals in deprived areas just shows that people in such areas are more likely to get entangled with the law; that well-off people who commit crimes are not criminalised in the same way. However, the Working Group stresses that this report is concerned with those who *do* appear at court, and what should be done with them. A criminal justice system which does not focus on understanding crime in its communal context will be ineffective in reducing it.

It may surprise no one that there is a greater proportion of offenders living in deprived areas than in other areas, and that young men from such areas are more likely to be involved in crime than other people. This is a well established picture. However, we now turn to look at the victims – both those who make it to court, and those who do not. Those who appear in court as victims are also much more likely to be from deprived areas.

2.2 Victims from Deprived Communities

The most deprived people are most likely to be victims of theft from their person. On average 1.77[11] per cent of people will be a victim of this type of

8 Ibid, p. 560

9 Foster J, 1990. V*illains: Crime and Community in the Inner City*, Taylor and Francis

10 Venkatesh SA, 2008. *Gang Leader for a Day: A Rogue Sociologist Cross the Line*, Allen Lane

11 Home Office, 2008. *Crime in England and Wales 2007/08: Findings from the British Crime Survey and police recorded crime*, Home Office, Table 6.11, p. 163

crime; however, those who are classified as 'inner city adversity' by the ACORN classification system are nearly four times more likely to be theft victims.[12] They are also the most likely, bar 'aspiring singles', to be victims of violent crime: 5.8 per cent reported that they had been the victims of violence in the previous 12 months, a figure 60 per cent higher than the average.[13]

Figure 2.3: The rate of victimisation in the most and least deprived areas for common crimes, 2008/09

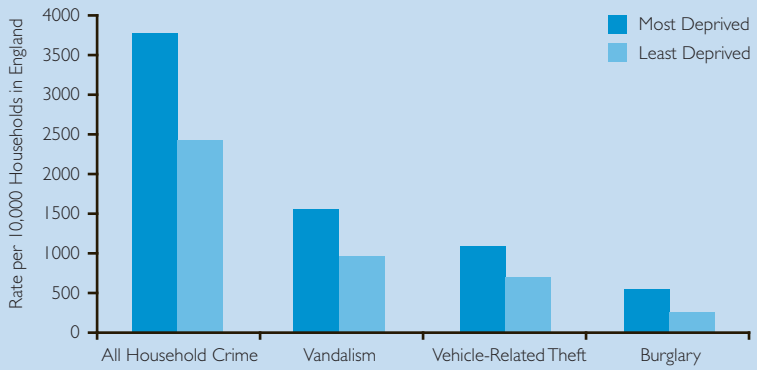


Figure 2.3 above compares the rate of victimisation – the number of victims per 10,000 households – in the 20 per cent most deprived and 20 per cent least deprived local authority areas.[14] The graph shows us that, across a range of common crimes, people in poor areas are twice as likely to be victims of crime as those in wealthy areas. It must also be stressed that this probably underestimates the true extent of crime in deprived communities for two reasons. First, the British Crime Survey (from which the above chart was compiled) averages out crime rates across local authorities, but within local authorities there are likely to be more and less deprived wards and communities. In addition, very deprived wards within these local authorities are likely to have lower response rates to the BCS than the better-off parts, but the better-off parts may have lower crime rates. Secondly, there are comparatively higher rates of repeat victimisation in deprived communities (see section 2.6.1) – but the BCS 'stops counting' at five crimes per household, and so the rate of victimisation (calculated by multiplying the number of victims by the number of incidents) will be artificially lowered.[15]

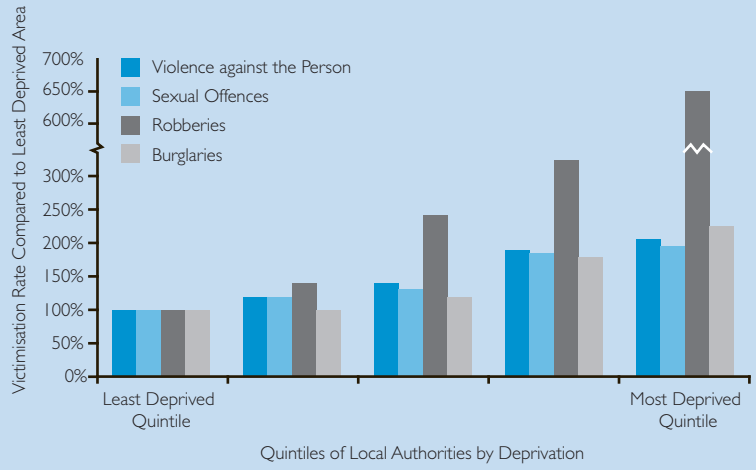
There is more crime and there are also more victims in deprived areas

12 Ibid, p. 187
13 Ibid
14 Figure 2.3: Home Office, 2009. *Crime in England and Wales 2008/09: Findings from the British Crime Survey and police recorded crime*, Home Office, Table 7.02
15 Bolling K, Grant C & Donovan J, 2008. *British Crime Survey Technical Report 2007/08*. The Home Office, p. 88

Figures 2.4 gives a clear illustration of how crime and its victims are concentrated in the most deprived communities, with regard to several types of serious crime: Violence Against the Person (VAP), Sexual Offences, Robbery, and Burglary of a Dwelling.

In Figure 2.4, local authorities have been ranked in order of deprivation (according to the 2007 deprivation rankings produced by the Indices of Multiple Deprivation) and then split into quintiles.[16] (The least deprived quintile includes places such as Isles of Scilly, Rutland and Teesdale, and the most deprived includes Birmingham, Liverpool and Manchester). The recorded crime rate (per 1,000 population) for each type of crime as a proportion of the rate in the least deprived quintile is plotted on the vertical axis.[17] An upward trend (visible to different degrees in every case) indicates a correlation between deprived areas and high local crime levels of a given category. Again we must note that crime is much less reported in deprived areas, which suggests that the trends should be even more marked.

Figure 2.4: Comparative victimisation rates for common local crimes, benchmarked against the least deprived local authorities



Crime is generally concentrated in particular areas. If we consider only the most serious violence against the person offences, statistics show that:

> *...the 21 authorities with rates more than twice the average for England and Wales represent ten per cent of the population but account for 26 per cent of offences of most serious violence against the person.*[18]

16 Communities and Local Government, *Indices of Deprivation 2007*. Available at: http://www.communities.gov.uk/communities/neighbourhoodrenewal/deprivation/deprivation07/ [Accessed 28 February 2009]. Note that the IMD includes a weighting (9.3 per cent) for crime. However crime plotted against income deprivation, another one of the contributing indices, shows similar trends.

17 Home Office, *Crime and Disorder Reduction Partnerships - Recorded Crime for Key Offences 2006/07 to 2007/08* . Available at: http://www.homeoffice.gov.uk/rds/crimeew0708.html [Accessed 28 February 2009]

18 Home Office, 2008. *Crime in England and Wales 2007/08: Findings from the British Crime Survey and police recorded crime*, Home Office, p. 65

Ten per cent of areas have twice the amount of property crime as the next worse ten per cent, and four times the amount compared to the majority of areas. The ten per cent of areas with the most crime are, as we can see from the graph above, mostly deprived areas.

Antisocial behaviour is also a bigger problem in deprived areas. The 2008 British Crime Survey confirmed that living in a Hard-Pressed area (on the ACORN scale) was independently associated with perceiving a high level of antisocial behaviour, as was living in an area where physical disorder was assessed as high.[19]

2.2.1 REPEAT VICTIMS

It is not just that these areas have more victims, but that these victims are also victimised more times. For example, in the 1988 British Crime Survey, 28 per cent of respondents in the ten worst areas were victimised on average 4.6 times during the previous year – some only once but others repeatedly. (According to Professor Anthony Bottoms, 'The most plausible explanation is that there are some targets that, over time, are repeatedly attractive to different offenders, acting – unknown to one another – on the same set of cues.'[20])

2.2.2 WHY HIGH CRIME?

There are many theories as to why certain kinds of crime are more prevalent in more deprived areas.

The presence of more criminals surely figures in an explanation. The more people who are willing to break the law, or be involved in criminal activities, the more crime. It is sometimes suggested that burglars in particular don't steal in their own back yards; there is a well known effect whereby areas adjacent to deprived areas have high burglary rates. But many estates are adjacent to other estates, and many criminals have no compunction against stealing from those who are not 'their own', even if equally poor or poorer. Moreover, it is also well established that most burglars or thieves offend in areas that they know well; this makes the selection of victims, and escaping, easier. The areas they know best are close to home. Furthermore, drug offenders' theft is often characterised by urgent need, and they will go for the nearest available targets.

The 'broken windows theory' tells us that disorder spreads through areas, with broken windows, for example, indicating to people that other forms of disorder are tolerated.[21] Greater levels of sanctioned physical decay and less capital investment in an area mean that crime becomes increasingly tolerated by the people who live in the area. This has been demonstrated by Dutch researchers who conducted a series of experiments as to whether disorder promotes further disorder and crime. In one such experiment they left a €5

19 National Statistics, 2008. Crime in England and Wales 2007/08: Findings from the British Crime Survey and police recorded crime. (London: Home Office, 2008) p. 125

20 Bottoms A, 2007. 'Place, Space, Crime and Disorder'. In Maguire M, Reiner R & Morgan R (eds). *The Oxford Handbook of Criminology*, OUP, p. 550

21 Wilson JQ and Kelling GL, 1982. 'Broken Windows', *The Atlantic Monthly*, p. 29-38

note sticking out of an envelope in a post box, and monitored how many people took the note in different conditions: when the area around the post box was neat, when there was litter but no graffiti, and when there was graffiti but no litter. They found that 'the mere presence of graffiti more than doubled the number of people littering and stealing.'[22] They concluded:

> *Signs of inappropriate behavior like graffiti or broken windows lead to other inappropriate behavior (e.g., litter or stealing), which in turn results in the inhibition of other norms (i.e., a general weakening of the goal to act appropriately). So once disorder has spread, merely fixing the broken windows or removing the graffiti may not be sufficient anymore.*[23]

Finally, analysis of crime statistics shows us that

> *households which contained a (current) known offender had a higher rate of victimization than other households, even when the area offence rate is controlled for; and also that repeat victimization was higher in offender-households.*[24]

Visible disorder makes people more likely to commit and tolerate crime

Being an offender also makes it more likely that you will be a victim. Victimhood is determined by who you associate with, not just where you live or go. As section 2.1 established above, there are more offenders in deprived areas. One third of all 2,114,000 violent incidents recorded in the 2008/09 BCS were acquaintance violence, where the offender was already known to the victim.[25]

2.3 Perceptions of Crime and the Criminal Justice System in Deprived Areas

Chapter 11 will explore the general state of public concern about crime and confidence in the criminal justice system. So far this chapter has looked at crime in worse-off communities, and now turns briefly to look at perceptions of crime and the criminal justice system in these areas.

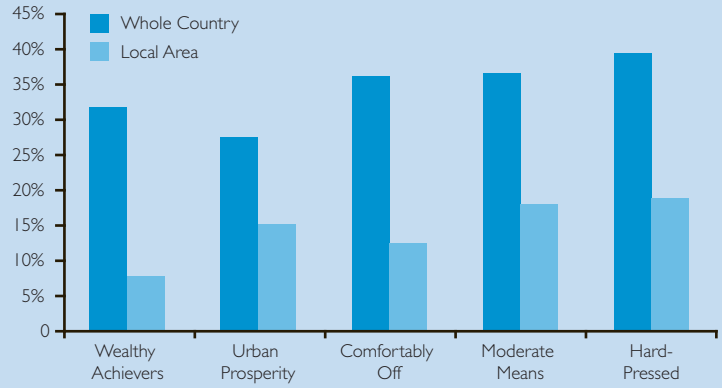
2.3.1 MORE CONCERNED ABOUT CRIME

Involvement with crime, whether as victim or perpetrator, is a part of regular life for many people living in worse-off areas. According the most recent British Crime Survey, residents in Hard-Pressed areas were 'twice as likely to

22 Keizer K, Lindenberg S & Steg L, 2008. 'The Spreading of Disorder'. *Science*, 322(5908), 1681-1685, p. 84
23 Ibid, p. 85
24 Bottoms A, 2007. 'Place, Space, Crime and Disorder'. In Maguire M, Reiner R & Morgan R (eds). *The Oxford Handbook of Criminology*, OUP, p. 547
25 Home Office, 2008. *Crime in England and Wales 2007/08: Findings from the British Crime Survey and police recorded crime*, Home Office Table 2.01, p. 27

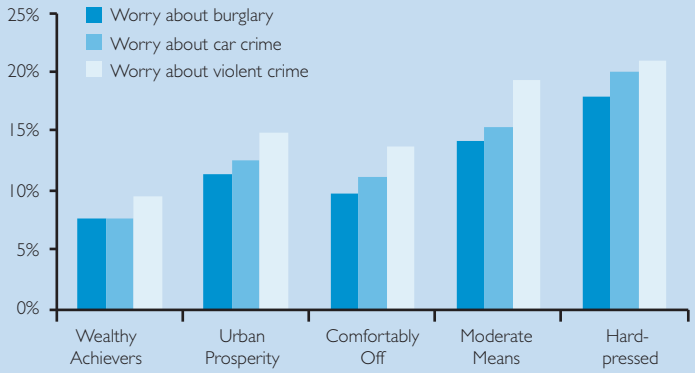
think crime *locally* had increased 'a lot'...than those in Wealthy Achiever areas' (19 per cent compared to eight per cent).[26] Figure 2.5 shows the proportion of people living in different kinds of areas who thought that crime had increased a lot in their local area and nationally. People in Hard-Pressed areas were more likely than others to believe that crime nationally and locally had increased, despite the fact that official figures show crime has been falling nationally over the last few years. This may be a reflection of the fact that local crime is relatively more concentrated in Hard-Pressed areas.

Figure 2.5: Percentage of residents in different types of areas perceiving 'a lot' more crime over the previous two years, locally and nationally, 2007/08



Greater worry about crime (and not just its level) is borne out by another survey:[27] Figure 2.6 shows the proportion of people in different kinds of areas who said they were 'very worried' about particular kinds of local crime.[28]

Figure 2.6: Percentage of residents in different types of areas 'very worried' about crime, 2007/08



26 National Statistics, 2008. *Crime in England and Wales 2007/08: Findings from the British Crime Survey and police recorded crime.* (London: Home Office, 2008) p. 130. Figure 2.5: sourced from Table 5.09

27 National Statistics, 2008. *Crime in England and Wales 2007/08: Findings from the British Crime Survey and police recorded crime.* (London: Home Office, 2008) p. 126. Other factors associated with high worries about crime were: being female and being Black or Minority Ethnic.

28 Ibid, Table 5.06

A greater proportion of people living in Hard-Pressed areas were very worried about these local crimes than those living in other areas, and more than twice as likely as those in 'Wealthy Achiever' areas. Overall, living in Hard-Pressed ACORN areas, areas with high physical disorder, and renting social housing were independently correlated with being more concerned about these crimes.

The greater likelihood that people living in Hard-Pressed areas will be concerned by crime also suggests individuals and communities do not 'get used' to crime. Indeed for people who are more economically and socially vulnerable, crime represents a greater threat than to those who are more secure.[29]

Secondly, the worry is likely to be the result of much higher levels of antisocial behaviour and disorder. Visible evidence of decay and disorder not only encourages crime but also makes people think perceive an area to be less safe.

Unsurprisingly, there is also a correlation between the level of poverty in an area and the number of people who think that there is a problem with antisocial behaviour. One study compared local authorities' ranking for deprivation with the results of an analysis by Ipsos MORI as to the proportion of people in each local authority who thought that antisocial behaviour was a big problem. People living in Hard-Pressed ACORN areas were on average five times more likely than those living in Wealthy Achiever areas to perceive high levels of antisocial behaviour.[30]

2.3.2 LESS CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM

A recent study by Ipsos MORI showed that living in a deprived area is independently correlated (after other factors are controlled for) with having less confidence in the way crime is dealt with locally.[31] This is not because of a greater pessimism about criminal justice in general: living in a deprived area did not correlate particularly with being dissatisfied with how the government deals with crime nationally.

For people in deprived areas, the daily reality of crime results in less confidence in the criminal justice system, which in turn leads to less reliance on the formal justice route and more reliance on informal or local measures. Section 2.6 looks at this further. Whilst people in such areas have lower expectations of the criminal justice system than people in better-off areas, it is worth noting that they may in fact attach less weight to any particular failure because they have lower expectations of the system. If someone from a better-

29 Kershaw C & Tseloni A, 2005. 'Predicting Crime Rates, Fear and Disorder Based on Area Information: Evidence from the 2000 British Crime Survey'. *International Review of Victimology*, 12(3), p. 293

30 Communities and Local Government, 2008. Indices of Deprivation 2007. Available at: http://www.communities.gov.uk/communities/neighbourhoodrenewal/deprivation/deprivation07/ [Accessed February 28, 2009]. Ames A et al., 2007. *Anti-Social Behaviour: People, Place & Perceptions*, Ipsos MORI

31 Ibid, p. 35

off area came to live in a deprived area, he or she would likely be much more concerned by the level of crime in the new area.

2.4 Crime Affects the Poorest Most

Concern for those involved with the criminal justice system often focuses on the offenders. Commentators typically draw attention only to the inadequate support given to offenders, and their deplorable 'cycle' in and out of the criminal justice system.

The truth is that crime impacts disproportionately upon the most deprived communities both as offenders and as victims. Such areas suffer from 'deprived area syndrome' which Professor Anthony Bottoms described to the Working Group as follows:

> *'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.*

Residents are the first people to feel an increase in crime, and their daily life is most affected by it. If bad schools mean that children are left without basic qualifications and therefore turn to acquisitive crime, the communities which use these schools feel it first. If a violent or repeat offender is not dealt with effectively by the criminal justice system, it is the community he returns to which bears the brunt of his reoffending. If addiction rehabilitation programmes are under-resourced, it is mostly deprived communities which bear the cost of this reoffending.

2.5 The Effect of Crime on Communities

The cost is felt in several ways. First, there are simply more crime victims, and it is traumatic to be a victim of crime. Victims lose property and suffer injury and often suffer emotions of violation and anger. Crime restricts victims' liberty, in that many feel that they have to change their behaviour in order not to be victims of crime in the future – for example, by not visiting certain places at night or by changing the route they take to walk home.

> "[In a survey of persistent offenders,] some respondents ruefully confessed that they knew that if they went out with their mates on a Friday or Saturday night, then they might well end up committing offences."[33]

Secondly, the greater concentration of offenders in particular areas makes crime more durable in those areas. It is well-acknowledged that delinquent or criminal peer groups are self-reinforcing and make it difficult for any individual member to reform.[32] This is related to the point made above in section 2.4, where it is not just friends, but

32 Centre for Social Justice, 2009. *Dying to Belong*, CSJ

33 Shapland J, Bottoms AE & Muir G. 'Perceptions of the Criminal Justice System among Young Adult Would-Be Desisters'. In (*Forthcoming publication*)

family and extended family whose lives are involved more or less closely in crime.

Finally, crime creates obstacles to the development of economic and social capital. The fear of crime keeps people in their homes and prohibits engagement in the community. It deters people from interacting with their neighbours, and can create a sense of fear and uncertainty. The high proportion of crime which is committed by acquaintances of the victims and the fact that offenders are more likely than most to be victims of crime demonstrate how people can get drawn into a criminal world where an increased sense of vulnerability itself translates into greater aggression and wariness concerning others' motives. High crime also discourages legitimate business and individual enterprise, as the rewards of labour become less secure. This is true both for members of the community who might feel that they have to 'escape' in order to achieve their vision, and for those looking to invest from the outside. Entrepreneurs and service providers have to spend more money on providing security for valuable capital investment and personnel, and people are less likely to carry or spend money because of the need to travel through high crime areas.

2.6 High Crime, Lack of Confidence

When high crime is compounded by a criminal justice system in which people have little confidence, the result is an even more pronounced withdrawal of the affected community from mainstream society. Over time this lack of engagement can become ingrained and transmitted intergenerationally.

2.6.1 DISENGAGEMENT

The most obvious result of a lack of confidence in a criminal justice system is that people expect that little can be done about it. A Home Office study from ten years ago estimated that less than half of all offences are ever reported, and that *only three per cent of crime ever results in a caution or conviction.*[33] More recently Garside and others have claimed, variously, that the real level of indictable offences is anywhere between six and 26 times as high as the number of crimes recorded by the police.[34] Garside suggests that it is plausible to think that 'around 125 offences were committed in [1999-2000] for every successful conviction.'[35]

People do not report crime for a variety of reasons. If the choice not to report is freely made then there is very little that we can or should want to do about it; a child who steals £20 from his or her mother's wallet is guilty of theft, but we should hardly be worried that parents do not often report a child in this situation.

However, if victims do not report because they do not believe that the police have a reasonable chance of catching the offender; or because they believe that

33 Cited in Garside R, 2004. *Crime, persistent offenders and the justice gap*, Crime and Society Foundation. This same report also undertakes a very thorough analysis of the genesis of this figure.

34 Garside R & McMahon W, eds., 2006. *Does criminal justice work? The 'Right for the wrong reasons' debate*, Crime and Society Foundation, p. 17

35 Garside R & McMahon W, eds., 2006. *Does criminal justice work? The 'Right for the wrong reasons' debate*, Crime and Society Foundation, p. 18

there is simply too much bureaucracy associated with making a report; or because they do not want to be embroiled in a long, drawn-out process; or because they believe a conviction to be unlikely; or because they believe that the system will not deal with the offender effectively even if there is a conviction; or because they are frightened of reporting; or because, finally, the criminal justice system is something they view only with suspicion, fear and contempt: if these are the reasons that people do not report crime, then the criminal justice system is failing.

Not reporting crime is a sign that a person has no faith in the ability of the criminal justice system to take care of its side of the bargain.

These problems with the criminal justice system affect all parts of society, but they affect poor areas more than most. It is well-established that the probability of reporting crime in very deprived neighbourhoods is 'especially low'.[36] Residents in these areas are also less likely to take part in victimisation surveys, or report crime to the police, which means that even quantifying the levels of crime in deprived areas is fraught with difficulty.

A young man on an estate in Croydon told the Working Group:

> *No one reports nothing nowhere... If it [burglary] happened to me I'd take the law into my own hands – I don't see them giving out good enough punishment.*

2.6.2 LAWLESSNESS

As described in the Centre for Social Justice's report on gangs, *Dying to Belong*, victims and witnesses in deprived areas with high crime problems will frequently refuse to testify against a defendant, or even report an incident to the police, out of fear that they, their families or friends will suffer reprisals. They lack confidence in the ability of the police and the criminal justice system to protect them and prevent reprisal.

"RHYS WITNESS REFUSES TO TESTIFY

A relative of the teenager accused of murdering schoolboy Rhys Jones has refused to answer questions in court.

The 16-year-old, who cannot be identified but is related to Sean Mercer, 18, of Croxteth, was called as a witness at Liverpool Crown court.

He was asked several questions by Neil Flewitt QC, prosecuting, but said he was "too scared" to answer.

The judge held him in contempt of court and told him to report back to court on Monday with legal representation."

BBC News, 28 October 2008[37]

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36 Goudriaan H et al., 2006. 'Neighbourhood Characteristics and Reporting Crime: Effects of Social Cohesion, Confidence in Police Effectiveness and Socio-Economic Disadvantage,' *British Journal of Criminology* 46.4, 719-742

37 BBC News, 28 October 2008. 'Rhys witness refuses to testify'. Available at: http://news.bbc.co.uk/1/hi/england/merseyside/7695628.stm [Accessed 1 March 2009]

2.6.3 VIGILANTISM

Vigilantism is the situation that prevails when private 'justice' routinely replaces state justice. It is the antithesis of a society ordered by a commonly binding criminal justice system in which justice is administered without regard to standing or influence, on behalf of the weak and the strong equally.

CASE STUDY: ABSENCE OF THE LAW IN ANFIELD

Anfield is well-known as the home to Liverpool FC. It also comprises two wards that are both among the most deprived three per cent in the country.[38] Anfield has been selected for a multi-million pound, 15-year regeneration scheme, which it is hoped will transform the area.

It is also home to the 'G' family, a notorious family gang that controls the drug trade in the area. Two brothers are in prison, another has been murdered, but two remain free. Residents alleged to us that the gang has begun buying property within the regeneration zone – a smart investment for the future. They also claimed that the brothers coerced security firms contracted by the council to sub-contract to them, effectively creating a private police force which is used to control the drugs trade on a local estate and threaten rivals and anyone who objects to their activities. Prior to being imprisoned, Danny 'G' was shot by a 17 year-old whose family he had repeatedly threatened.

Liverpool Echo, 12 July 2008; interviews with residents

The case study above shows perfectly what happens when the criminal justice system loses the confidence of the public. An area controlled, even policed, by the biggest local gangsters. Constant threats and punishment of people who stand in the way of the gangsters. And a young man who takes the law into his own hands. None of these things are acceptable in a civilised society.

Some communities have long-standing, semi-organised criminal cultures. Anecdotal evidence abounds about local 'justice' that is completely divorced from the justice system. Burglary victims may be more likely to go visit 'the man in the pub' to help them reclaim their property, than report the crime to the police. A study conducted in the Salford area ten years ago found that one part of the city was effectively controlled by a criminal gang who would police any crime within their patch and administer vigilante 'street justice,' for example a 'smacking'.[39] Victims of crime who reported to the police had their names written up on a wall in the centre of the area as a warning to others.

There is a delicate line to be drawn between vigilantism and self-policing, where communities, families, institutions or areas police themselves, within

38 http://www.newheartlands.co.uk/liverpool-anfield-edge-hill-and-picton-factsheet.html?media_page=1

39 Walklate S & Evans K, 1999. *Zero Tolerance or Community Tolerance?* Ashgate. Cited in Maguire M, Reiner R & Morgan R (eds). *The Oxford Handbook of Criminology*, OUP, p. 569

the bounds of the law. However, what we are seeing in our communities is an indifference to the prescription of the law, because of hostility against it and fear of those locally who can mete out punishment. The only sustainable response is to ensure that the public has confidence in the system as a whole: that it will prevent crime, catch suspected criminals, assess culpability impartially, and punish them appropriately.

2.7 Cycles of Crime

We tend to think of crimes as discrete events, as particular acts. For the better-off, this is because crime impacts on their lives rarely, and so stands out as significant events. But this view of crime is not universal. Many offenders who appear in court are repeat offenders. Particularly in the case of theft and burglary, offenders get caught up with, rather than caught for, each and every crime. Similarly, a substantial number of victims are repeat victims. Crime is something that characterises daily living in parts of the country. Ken Pease goes so far as to say:

> *Our analysis shows clearly that offences of violence are primarily, and other offences substantially, the product of continuing predatory or parasitic 'relationships' rather than one-off events. The criminal justice system has ever been adept at turning lifestyles into events.*[40]

Some other aspects of these lifestyles are explored in Chapter 3.

If we think of crime as part of a lifestyle, it is clear that to reduce and control it will require close interaction between criminal justice agencies and social welfare agencies. Indeed the findings about 'area effects' on the likelihood of young people getting involved in crime (discussed in section 2.1.2 above) underline the fact that preventing crime cannot be left to the criminal justice agencies alone. Increasingly, the police have understood this; the reader is referred to the Centre for Social Justice's report on gang crime, *Dying to Belong*, which explores successful interventions for young people involved in gangs. Sadly, though, other criminal justice agencies have not been as forward-looking, and indeed some have even retreated from local interaction with non-criminal justice social welfare providers. This implicates the services provided by the courts and probation, as well as their administration, and will be referred to throughout the rest of this report.

2.8 Local Justice

In deprived areas there is more crime and more fear of crime, and deprivation makes it more likely that an individual will not have confidence in the way that

40 Farrell G & Pease K, 2007. 'Crime in England and Wales: More Violence and More Chronic Victims', Civitas Review, 4.2, 1-6, 1-6 p. 5

crime is being dealt with locally. Moreover, the lack of confidence in the criminal justice system is itself a driver of higher crime, leading to the growth of areas where the rule of law is irrelevant.

The situation outlined in this chapter has prompted the Working Group to consider how the criminal justice system can reduce crime and the fear of crime in deprived areas. We believe this is an essential focus since these areas suffer most from the consequences of crime. A robust criminal justice system is an important guarantor of social justice.

Part of the answer lies in local people taking more active ownership of the local criminal justice system. The criminal justice agencies – in particular the police, magistrates' courts and probation service – must re-focus on local issues and make it clear that they are the servants of local people.

Clearly, the police have a major part to play in this, and the Centre for Social Justice report, *A Force to be Reckoned With,* has proposals aimed at this, most powerfully through the creation of a locally elected Crime and Justice Commissioner to chair the Police Authority. Courts and sentencing policy, too, has an important part to play. Chapter 12 argues that the criminal justice system must be wrested away from central control and made clearly a matter for local administration, as far as possible maintaining a strong connection with a small geographical area. The system needs to be accountable, and seen to be accountable, to citizens.

THREE
Crime and Social Breakdown

This chapter will show the extent to which courts are involved in the lives of people in areas where there is more poverty and greater social breakdown. The criminal justice system must be for all people, and deal with victims and offenders from all parts of society; but recognising the circumstances of the greatest proportion of victims and offenders is important if we want it to achieve the purposes outlined in Chapter 1. Criminal justice policy must respond to the reality of victims and criminals.

Chapter 2 showed crime as geographically concentrated in poor communities, and sets the scene for our proposals in Chapter 12 concerning the localism of justice. This chapter looks more closely at the social and personal circumstances of victims and offenders, and in particular at the role played by drugs and alcohol in offending; Chapter 10 will look separately at mental health problems and the criminal justice system.

The picture painted in this chapter demonstrates the limitations of what we can expect from the criminal justice system – the social and communal problems associated with crime simply cannot all be tackled by the criminal justice system. On the other hand it is widely expected that the criminal justice system should do something useful where it can, and it does have a number of significant tools at its disposal.

3.1 Who Do the Magistrates See?

CASE STUDY: A TYPICAL OFFENDER

Jack is a boyish 24 year-old, under sentence at the Glasgow Drugs Court. He started using drugs at 12 and started on heroin at 16. He used 'one or two bags a day' – on average costing £30-40 a day. To fund this he stole SatNavs, and sold them for £40.

Jack was a one-man crime wave.

Sitting for a day in a magistrates' court, whether in Salford or South London, you would notice certain characteristics of most of the offenders and

offences. One magistrates' bench chair told us: 'The usual problems are drink, drugs, and problems of family life.' A senior prison worker reiterated the point: prisoners, he told us, were characterised by 'mental health problems, substance misuse, alcohol, and a history of being in care.'

> "Those convicted of crime are equally likely to be socially disadvantaged, being much more likely to be unqualified, be unemployed, have been excluded from school, have run away or have been taken into care as a child. The bulk of criminality brought in front of courts seems to come from the poorest and most excluded sections of the same poor communities who are the major victims of these crimes."
>
> John Denham MP, former Chairman of the Home Affairs Select Committee[2]

3.2 Drugs and Alcohol

A 2007 report commissioned for the independent UK Drug Policy Commission found that the UK currently 'has the worst drug problem in Europe' – with the highest rate of problem drug use and the second highest rate of drug-related deaths.[1] Drug use and dependency do not just impact on the users' lives, but on the lives of all those around them. In particular, it is highly correlated with criminal activity, as the public well knows. The British Crime Survey poll of the national population has found that the public views drug use as the number one cause of crime in Britain today, with 68 per cent of people polled selecting it as a major cause of crime, more than any other possible cause. Just over one in four people (26 per cent) went further, describing drug use as the main cause of crime.[3]

In the following sections we look at how alcohol and drugs are involved in offending: people committing crimes while under the influence, people committing crimes to feed an addiction, and people committing crimes where substance misuse is part of their lifestyle.

These problems are perennially unaddressed by the criminal justice system, even when the system identifies them.

Over one in four people described drug use as the main cause of crime, according to the British Crime Survey

3.2.1 DIRECTLY CAUSING CRIME

When talking about drug- and alcohol-related crime, we are not focusing on the crime which is directly classed as drug or alcohol crime, in which the substance use is itself integral to the conviction. In this category, there were 49,642 defendants taken to court on charges of producing, trafficking

1 Reuter P & Stevens A, 2007. *An Analysis of UK Drug Policy*, UK Drug Policy Commission

2 Denham J, 2006. 'Fairness and the criminal justice system', in Social Justice: Criminal Justice, ed. Shimshon B, The Smith Institute, p.29

3 Home Office, 2008. *Crime in England and Wales 2007/08: Findings from the British Crime Survey and police recorded crime*, Home Office, Page 96

4 Ministry of Justice, 2008. *Criminal Statistics, England and Wales 2007*, Supplementary Table S5.1. Available at: http://www.justice.gov.uk/publications/criminalannual.htm [Accessed 17 April, 2009]. This number combines summary and indictable offences (listed separately in the table).

or possessing drugs in 2007.[4] There were 19,845 defendants on charges of drunkenness.[5] We mean instead to focus on the crime which occurs because people are drunk or high, or which is committed to service an addiction.

The way crimes are recorded gives little insight into the involvement of drugs or alcohol in this kind of offending, except in very specific cases: for example, in 2006 there were 40 defendants proceeded against for 'Causing death by careless driving when under the influence of drink or drugs'.[6] Though this does not seem to be many out of the 1.73 million defendants who appeared in court that year,[7] it must be recognised that the actual charges brought against most offenders do no indicate the role played by drugs or alcohol in that crime. Various other sources suggest that a very high proportion of offenders have drug and alcohol problems, particularly in those kinds of crime that most people care about.

> "Victims of violent crime believed that their attacker was under the influence of alcohol in 47 per cent of incidents."

There are some crimes where drugs and alcohol appear to play a direct part in the commission of the offence. In the 2008/09 British Crime Survey, victims of violent crime believed that their attacker was under the influence of alcohol in 47 per cent of incidents (rising to 62 per cent where they didn't know the attacker, so-called 'stranger-violence'). This represents almost a million (973,000) incidents of 'violence against the person' where the victim believed the offender to be drunk. The victim believed the offender to be on drugs in 16 per cent – 334,000 – of violent incidents (these proportions are similar to previous years).[8]

Figure 3.1 gives another perspective on the relationship between offending and drinking. It shows the proportion of people who judge themselves to be violent after drinking (even if they do not actually commit a crime):[5]

Figure 3.1: Proportion of people (16+) who reported being violent after drinking

17-24	48%
25-34	36%
35+	24%
All ages	38%

Almost half of 17-24 year-olds in England report being violent after drinking. The problem gets worse the more heavily a person drinks: one survey found that twice as many binge-drinkers (male and female) reported that they had been violent in the previous year as moderate drinkers.[10]

Assault, criminal damage, and violent crimes are often committed by those who have been drinking excessively. Alcohol also plays a major part in many incidents of domestic violence and rape.

5 Ibid. Combines 'Simple' and 'with Aggravation' numbers.
6 Ibid
7 Ibid
8 Home Office, 2008. *Crime in England and Wales 2007/08: Findings from the British Crime Survey and police recorded crime*, Home Office, p. 57
9 Boreham R, 2007. *The Arrestee Survey 2003-2006*, Home Office, p. 7
10 Alcohol Concern, 2007. 'Alcohol and Crime Factsheet 10: Summary'. Available at: http://www.alcoholconcern.org.uk/servlets/doc/1206 [Accessed February 24, 2009]

The most serious violent crimes are also often prompted immediately by drug or alcohol use. A study of all people convicted of homicide in the three years 1996-9 found that alcohol and drug addictions were prevalent among homicide offenders. Two out of every five homicides were considered to be directly related to drinking, and one in five directly related to drug taking.[11]

Figure 3.2: Proportion of homicide convicts with alcohol or drug problems (excluding offenders with mental disorders)

History of alcohol misuse	40%
Alcohol thought to have contributed to the offence	55%
History of drug misuse	37%
Drugs thought to have contributed to the offence	20%

3.2.2 A CONTRIBUTING FACTOR TO CRIMINAL BEHAVIOUR

In addition to those crimes which are committed under the influence of drugs or alcohol, there is a broader category of crime which is indirectly caused by substance use.

Many crimes which do not overtly involve drugs are committed by drug users in order to feed their use or addiction. Acquisitive crimes – muggings, domestic burglaries, car thefts and shoplifting offences – are committed in large numbers by drug users and addicts, especially those who are poorer and therefore need the money for their habit. A study of street violence found that 60 per cent of these offences had been committed to fund a serious habit or recreational use of drugs, or while under the influence.[12] The Home Office similarly reported that 75 per cent of crack and heroin users claim to commit crime in order to feed their habit.[13]

Maintaining a heroin addiction is very expensive. Ben Virgo, a former drugs worker, told the Working Group that a serious heroin addiction may cost the addict £75 per day. This adds up to £525 per week. Detective Inspector Matt Bonner of the Hertfordshire Constabulary told the Working Group that if a person is stealing to fund this addiction he or she may well be stealing goods to the value of £2,000 per week. The resale price of stolen goods to a receiver will be significantly lower than their value, and people with addictions have less bargaining power than a non-addicted criminal who is not urgently craving a hit. DI Bonner told the Working Group:

> *The value of offending for an addict can run into millions. One lad, on the basis of his own admissions, stole £4 million. He would steal*

11 Shaw J et al., 1999. 'Mental disorder and clinical care in people convicted of homicide: national clinical survey', *British Medical Journal*. 318(7193), 1240-1244

12 Bennett T, 2006. *A Qualitative Study of the Role of Violence in Street Crime*, Economic and Social Research Council, p.7

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

cars. One time he stole a Porsche but he only got £500 for it [from the receiver]. But desperate druggies take whatever they can get.

Moreover, a disordered life spent servicing an alcohol or drug addiction is likely to diminish a person's capacity for forward planning, meaning that short-term solutions to more serious financial shortages become a way of life. The immediate desire to drink or score takes precedence over any longer term planning or preparation: for example in a survey of arrestees, only ten per cent of those who used heroin or crack every week were employed or in full time education, compared to 49 per cent of other arrestees.[14] In this case, though an offender might not be under the influence of a drug at a particular moment, servicing the addiction, and the disorder caused by the addiction, drives the crime.

3.2.3 ASSOCIATED WITH CRIME

An even broader category would include all those crimes committed by offenders with substance dependencies, regardless of whether the particular offence considered by the court was directly related to the substance abuse. One large survey looked at the substance use of people arrested (but not necessarily convicted) for certain common acquisitive, violent and sexual crimes. More than half the respondents were classed as dependent drinkers,[15] and more than half admitted to having taken an illegal drug during the previous month.[16] Of those who admitted to using heroin in the previous year, more than eight in ten were judged to be dependent on it.[17]

Another survey looked at those who had been charged and sent to prison; the proportion using drugs was even higher. Male prisoners are five times as likely to admit to having used an illegal drug in the year prior to their conviction than the average male population (66 per cent compared with 13 per cent); and imprisoned women are about seven times as likely to have used drugs in the previous year. Men in prison were 66 per cent more likely to have drunk hazardously, and women in prison were 260 per cent more likely to have done so, than their non-imprisoned counterparts.[18]

In a study of offenders sentenced for street violence (including car-jacking, street robbery, snatch thefts, and some aggravated burglaries), less than one in ten claimed never to have used illegal drugs. Fifty-nine per cent of the total sample reported using heroin and crack, mostly during their recent period of offending.[19]

In this broad category of crime associated with addiction, criminal careers may precede or begin concurrently with drug or alcohol use. The 'offending

14 Boreham R, 2007. *The Arrestee Survey 2003-2006*, Home Office, p. 7
15 Boreham R, 2007. *The Arrestee Survey 2003-2006*, Home Office, Table 3.15
16 Ibid, Table 3.1
17 Ibid, Table 3.11
18 Social Exclusion Unit, 2002. *Reducing re-offending by ex-prisoners*. Cabinet Office, p. 20
19 Bennett T, 2006. *A Qualitative Study of the Role of Violence in Street Crime*, Economic and Social Research Council, p. 7

behaviour' and drug taking may both be results of the same circumstances or personal or psychological problems.

Researchers have found that 'getting a buzz' is a commonly cited reason for offending among child and young adult street burglars,[20] and this motivation holds true for much drug usage as well. Professor Anthony Bottoms comments on interviews with prolific offenders in their early twenties from Sheffield:

> *Members of this sample were asked to rate various "obstacles to going straight or staying straight" and not fewer than 60 per cent of them rated "the need for excitement" as such an obstacle.*[21]

> "In 30 years the drugs problem has gone from non-existent to an epidemic. If that can happen in a generation, what more can happen in the next ten or 20 years?"
>
> Professor Neil McKeganey, *The Sunday Times Scotland*, 11 June 2006

Other researchers have also suggested that some violent drinkers get drunk in order to become more violent and aggressive – they want to start fights.

3.2.4 CHANGING CHARACTERISTICS OF DRUG USE

We have seen that drug and alcohol use and dependency is highly prevalent among suspects and offenders. In its sheer scale this is a relatively new phenomenon.

Some long-serving magistrates and District Judges told us the problems of drugs and alcohol, as they are presented at court, has become more severe. This is a reflection of wider social trends, which the Centre for Social Justice explored in *Breakdown Britain: Addicted Britain*.

Patterns of drug use are still changing. In the early 1990s, for example, commentators and policy makers took heart from the fact that heroin use appeared to be declining. However one recent review concludes that 'since the mid-1990s heroin use has seen a significant resurgence.'[22] In recent years cocaine has also become more heavily used.

Deprived areas have seen an increase in hard drug use. A Home Office sponsored study of drug markets in deprived communities found that

> *The availability and use of both drugs [heroin and crack cocaine] was reported to be increasing, with crack increasing more rapidly from a low base.*

Drug and alcohol problems are not mutually exclusive phenomena; very often problem drug users are also problem alcohol users. Drug and alcohol abuse

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20 Bennett T, 2006. *A Qualitative Study of the Role of Violence in Street Crime*, Economic and Social Research Council, p.7

21 Bottoms AE, 2007. 'Place, Space, Crime and Disorder', in *The Oxford Handbook of Criminology*, ed. Maguire M, Reiner R & Morgan R, 4th ed. Oxford University Press (OUP), p. 548.

22 South, N, 2007. 'Drugs, Alcohol, and Crime'. In Maguire M, Morgan R & Reiner R, eds. *The Oxford Handbook of Criminology*. OUP, 811-838, p.813

frequently go together, especially as the age of initiation for drugs has dropped over the last few decades. The problem is prevalent among young drug users. As Duncan Raistrick notes:

> *Drug misusers tend to have misused alcohol under age, younger than their peers and prior to use of most or all illegal drugs.*[23]

3.2.5 DRUGS AND ALCOHOL AT COURT

The previous sections have shown that while it is hard to say precisely what proportion of crime is directly caused by drugs and alcohol, nonetheless alcohol and drugs contribute greatly towards offending behaviour. Solving drug and alcohol addictions will result in less crime.

Figure 3.3: Average drug use across the general population

Source	Sample	Percentage reporting use during the previous year				
		Any Drug	Any Class-A	Heroin	Crack	Cocaine
British Crime Survey 2005/06	Household population aged 16 to 59	10.5	3.4	0.1	0.2	2.4
Arrestee Survey 2005/06	Arrestees aged 17+	59	35*	15	15	23
Community Penalties Criminality Survey 2002	Probationers aged 16+	61	39	22	19	18
Prisoner Criminality Survey 2000	New male prison admissions aged 16+	73	55	31	31	32

*Refers to use of heroin, crack or cocaine only

The top line of Figure 3.3 shows average drug use across the general population.[24] The rows below show different samples of offenders who use drugs. It is clear that each criminal population in question is many times more likely to be Class-A drug users than the general population.

As regards alcohol, the National Inspectorate of Probation found that:

> *nearly twice the number of offenders had alcohol misuse, rather than drug misuse, identified as a significant criminogenic factor.*[25]

The third category identified above (substance misuse which is part of a disordered lifestyle – see section 3.2.3) suggests that there are deeper problems

23 Raistrick D et al., 1999. *Tackling Alcohol Together*, p. 47

24 Figure 3.3: McSweeney T, Turnbull PJ & Hough M, 2008. *The treatment and supervision of drug-dependent offenders*, Institute for Criminal Policy Research, Table 2.1.

25 Her Majesty's Inspectorate of Probation, 2006. *Half Full and Half Empty: An Inspection of the National Probation Service's substance misuse work with offenders*, HMIP, p. 15

responsible for both offending behaviour and substance misuse. Longitudinal studies of criminal careers have shown the effect of family breakdown, economic dependency and educational failure on the likelihood of a person engaging in criminal activity. The following section looks at these briefly, and how they correlate with increased criminal activity. Poor mental health, and the quality of mental healthcare in the community, is also a significant factor, which is examined separately in Chapter 10.

3.2.6 FAMILY BREAKDOWN

Family life is not only essential for making people's lives go well, but its well-catalogued corrosion in British society at large – and especially amongst the most deprived and vulnerable section of society – has acted as a barrier to social justice.[26] Family structure is undeniably linked to outcomes for the children involved. In terms of criminality, *Breakthrough Britain* found time and time again that fractured and dysfunctional families propel the children they produce towards a life of close contact with crime and the criminal justice system:

- Seventy per cent of young offenders come from lone parent families.[27]
- Children with separated parents are more frequently involved in antisocial behaviour.[28]
- Controlling for other factors, 17 year-olds not living with two parents are 50 per cent more likely to take drugs.[29]
- Sixty-nine per cent of people polled cited lack of parental discipline as a major cause of crime, while a further 35 per cent cited family breakdown.[30]
- More than one million children currently live with parental alcohol misuse at home – a prime factor in domestic violence, neglect and child protection cases. A further 350,000 children live with parents who have problems with drug use.[31]

This is not only a major driver of crime for society generally, but a tragedy for the individual children involved; as a result of criminalisation, children are often academically and socially excluded, with increased barriers to employment and increased likelihood of drug and alcohol dependency. The failure of policy to help reverse problems stemming from family breakdown has left the criminal justice system to pick up the pieces.

Family breakdown does not just betoken problems for the next generation. Domestic violence affects a large proportion of families. The British Crime

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26 The Social Justice Policy Group, 2007. *Breakthrough Britain: Volume 1: Family Breakdown*, CSJ

27 Youth Justice Board, 2002.Review 2001/2002: *Building on Success*, Stationary Office

28 Rodgers B and Prior J, 1998. *Divorce and Separation: The Outcomes for Children*, Joseph Rowntree Foundation

29 McVie S and Holmes L, 2005. Family Functioning and Substance Use at Ages 12 to 17, Centre for Law and Society

30 Home Office, 2008. Crime in England and Wales 2007/08: Findings from the British Crime Survey and police recorded crime, Home Office, p.76

31 Advisory Council on the Misuse of Drugs, 2003. *Hidden Harm*, Home Office

Survey estimates one million domestic assaults in Britain annually. Up to one in ten women experience domestic violence each year, and in 90 per cent of the incidents children are in the same or next room.[32] Domestic violence is not only a serious crime in and of itself, but it has equally significant intergenerational effects on crime and social breakdown, as 'evidence suggests that children who have been physically abused or neglected are more likely than others to commit violent crimes later in life.'[33]

3.2.7 THE CARE SYSTEM

The significance of family breakdown in crime is evidenced by the life outcomes for those children who have been removed from their families into the care system (fostering and children's homes). Children taken into the care system are much more likely than other children to be involved in the criminal justice system:

- Twenty-seven per cent of all prisoners have come from the local authority care system, compared to two per cent in the general population.[34]
- Fifty per cent of offenders under the age of 21 spent time in local authority care.[35]

Poverty, addiction and family breakdown – including growing up in care – all make a person statistically more likely to fall foul of the law

The care system should provide a buffer between children and the world of criminality, in the absence of the relative stability of a functioning family. Yet, as the Centre for Social Justice argued in *Couldn't Care Less*, the care system lets many children slide into criminality.[36]

3.2.8 WORKLESSNESS AND EDUCATIONAL FAILURE

A large proportion of defendants appearing at court are unemployed. One barrister told the Working Group that out of the 90 briefs he had taken during his pupillage at magistrates' courts throughout the South East, only 'a handful' were not claiming Job Seekers' Allowance. More than half of those arrested for 'trigger offences' (common offences such as assault and criminal damage which trigger an automatic drugs test) were not in employment, training or education at the time of arrest.[37] If we look at the more focused group of offenders serving prison sentences, we find that 67 per cent had been unemployed prior to their imprisonment.[38]

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32 Green Paper, 2003. *Every Child Matters*, CM5860, TSO, p.16

33 US Department of Justice, 2000. 'Juvenile Justice Bulletin', p.3. Available at: http://www.ncjrs.gov/pdffiles1/ojjdp/179065.pdf [Accessed February 25, 2009]

34 Social Exclusion Unit, 2002. *Reducing re-offending by ex-prisoners*, Cabinet Office, p. 18

35 Ibid

36 Centre for Social Justice, 2008. *Couldn't Care Less*, Centre for Social Justice

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

38 Social Exclusion Unit, 2002. *Reducing re-offending by ex-prisoners*. Cabinet Office, p. 7

Educational failure is also a strong predictor of later offending. In the arrestee survey described above, 34 per cent left school *before* the age of 16; with a further 39 per cent leaving at 16. Moreover, more than one in five had been permanently excluded from school.[39] A survey of prisoners found that 49 per cent of male prisoners had been excluded from school, 30 per cent regularly played truant, and 52 per cent left with no qualifications.[40]

These figures compare to a national average of two per cent for exclusion, and 15 per cent with no qualifications.

3.2.9 BLACK AND ETHNIC MINORITY PEOPLE AT COURT

No discussion of courts and sentencing can avoid the key issue of race and representation at the courts. In discussing the prevalence of crime and the factors contributing to high crime areas we have identified factors such as poor housing, low levels of employment, and families under stress in deprived communities. These factors impact on BME communities and individuals living in them to a greater extent than in the population as a whole.

In addition, however, there is some evidence that BME offenders are charged with more serious offences than their white counterparts for similar kinds of criminal behaviour, are more likely to be remanded into custody, are less likely to receive community sentences, and are given disproportionately longer prison sentences.

The criminal justice system on its own cannot address all the factors that contribute to disproportionality in relation to BME groups but it can at least monitor the decisions it makes to ensure that it doesn't compound the problems. Our proposals for a more locally-based delivery of criminal justice, involving local communities in decision making and investing in groups and services that address offending behaviour (described in Chapter 12), will inevitably mean that in jurisdictions with significant BME populations there will be greater awareness of the issues for BME offenders. Recruitment of mentors and volunteers from minority groups and high levels of support from voluntary sector organisations working with BME communities and the criminal justice agencies will help to bridge gaps and ensure services will be more relevant and effective for BME offenders.

3.3 Dealing with Social Breakdown at Court

The previous chapter showed that the court 'clientele' is overwhelmingly drawn from deprived communities. This chapter has looked at the personal and social problems which most commonly characterise offenders and suspects who are dealt with in the courts; in particular substance misuse, family breakdown, educational failure and economic dependency.

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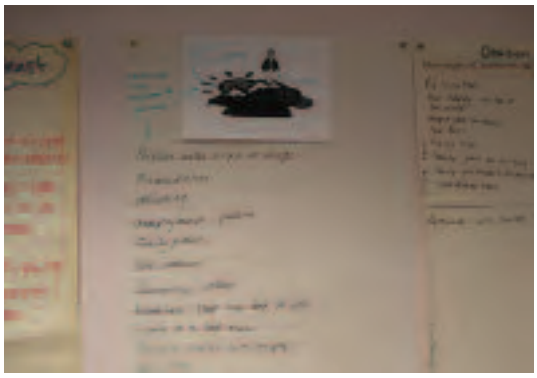
39 Boreham R, 2007. *The Arrestee Survey 2003-2006*, Home Office, p. 7

40 Social Exclusion Unit, 2002. Reducing re-offending by ex-prisoners. Cabinet Office, p. 5

Some of these problems are directly responsible for crime: for example, the addict who steals under the influence, or to fund his habit. Other problems may make a criminal lifestyle more likely: for example, under-employment and little chance of getting a job because of a poor education. Crime may also be just another part of a disordered lifestyle, characterised by little motivation or hope of achieving anything more stable, and a search for immediate distraction.

3.3.1 CRIME IS A SOCIAL PROBLEM

The criminal justice system is not the best solution to social problems. Far better is to deal with problems within communities and through other agencies which are not fundamentally coercive. Better still is to invest in prevention, to stop risks developing into problems. Tackling such problems through the criminal justice system can lead to a distorted rationale whereby we tackle social problems only because they cause crime, and judge success in tackling them by how far crime is reduced. On the contrary, drug addiction, to take one example, is not bad just because it encourages crime, but because it usually ruins the addict's life: it is worth tackling in and of itself.



A group of offenders listed the problems they typically faced

It is also highly inequitable if, in focusing resources for assistance on the criminal justice system, we divert funds away from those who have not committed a crime. A magistrate in Gloucestershire told us of two prolific burglars who appeared before her – they had not been caught, but had handed themselves into the police in the hope that they would receive the drug treatment that was not available to them outside of the criminal justice system. Furthermore, a member of the Glasgow Drugs Court social work team advised that it was easier to get access to housing through the criminal justice system.[41]

3.3.2 WHAT CAN CRIMINAL COURTS AND SENTENCES DO?

As section 1.4.1 showed, the public expects the courts to do something more 'useful' than just punishment, and courts are very well-placed to do this. The system is full of people who can be helped, and in helping them we may be able to lower offending and reoffending rates. Moreover, regardless of whether it would directly reduce crime, the criminal justice system would be able to show its usefulness in rehabilitating people. This would benefit not just offenders (who have been the focus of this chapter), but their families and communities as well.

For many, the courthouse is the first time that their problems are really identified.

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41 Verbal evidence from Glasgow Drugs Court professional, June 2008.

We can think of the courthouse as a 'waiting room'. The waiting room gathers together in one place all those people who are despaired of as being 'hard to reach' – those with the most acute, ingrained problems who do not refer themselves to social services or to the voluntary sector.

The crowd in the waiting room will only significantly diminish with a thorough and effective attempt to tackle social breakdown, in ways detailed in the Centre for Social Justice's *Breakthrough Britain* reports. But the waiting room provides an *opportunity* to help those who need most help, who have failed to seek (or been denied) help elsewhere, by identifying them: for example those with mental health problems who have not been effectively treated by the NHS. This identification is itself immensely valuable.

The probation service, as Chapter 9 explores further, is currently *de facto* the primary provider of social services for young men. This group often requires a different kind of support than can be provided by regular social services, and recognising this fact allows us to craft a role for a probation service with greater connection to local authority social services and voluntary sector organisations.

However, through the criminal justice system the state can make use of coercive tools that are not available under other circumstances. This does not mean that we can force people to mend their ways, but an extra means of persuasion and motivation can be brought to bear. This is particularly the case in dealing with substance dependencies, and is also highly beneficial when a sentence can provide both structure and firm but encouraging assistance to an offender through the probation service and other forms of supervision. The structure of sentences, and the role of the courts in overseeing and reviewing them, will also contribute to more effective rehabilitation, as Chapter 8 describes.

FOUR
From Crime to Court

Having described the situation of crime in our deprived communities, we now turn to how the criminal justice system deals with such crime. In this chapter we will look at two aspects of how crime reaches the courts. First, which offences actually make it to court? Secondly, how long does it take? Summary justice, dispensed by magistrates' courts for common local crimes, is supposed to be swift justice. Unfortunately this is not the case.

4.1 Police Justice Versus Court Justice

We noted above that only a small proportion of crime ever reaches the courts. Much is undetected and unreported – it is estimated that 'around 125 offences were committed[in 1999-2000] for every successful conviction.'[1] What about crime which is recorded by the police? For the 4,951,000 crimes recorded by police (in 2007/08), 1,733,000 were proceeded against in a court, which is approximately 35 per cent. This compares with 40 per cent in 1997. A further 675,000 offences were dealt with by police disposals (cautions or penalty notices), approximately 13.5 per cent of the total recorded, compared to six per cent in 1997.[2]

Who is delivering justice? The amount of crime dealt with by police cautions and penalty notices has doubled over the last decade

The number of offences dealt with through police disposals has more than doubled in ten years, from 282,000 to 675,000, while the proportion of defendants taken to court has reduced. The number used every year increased even as recorded crime dropped from its 2003/4 peak to just about 1997 levels.[3] Many of these offences are being dealt with by the police appropriately. However, commentators have suggested that these figures give us cause for concern. On the one hand, the figures support the argument that there has been 'net-widening,' whereby the police hand out cautions for 'offences' that previously might have been dealt with without a formal disposal. The curtailment of police discretion, and the concomitant growth of an 'arrest or ignore' culture (as documented in the

1 Garside R & McMahon W, eds., 2006. *Does criminal justice work? The 'Right for the wrong reasons' debate*, Crime and Society Foundation, p. 18

2 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.

3 Ibid

Centre for Social Justice report *A Force to Be Reckoned With*) has led to formal disposals being used where previously police interacted with petty offenders more informally (but frequently).

On the other hand, it appears that the police caution and other disposals are also being used for more serious offences, where instigating more formal court proceedings would be more appropriate.[4] Even looking just at cautions for indictable offences (which would rule out the net-widening effect) we find that there were 82,944 handed out in 2000 to over-18s,[5] compared to 129,892 in 2007.[6] Metropolitan Police Commissioner Sir Paul Stephenson has expressed concern that the balance between the police and magistrates administering justice is now "fundamentally wrong":

> *We do have to look again at the number of times that we do cautions and we have to look again at fixed penalty tickets…we have to look again at how we can make the summary justice system dynamic, faster and responsive so we can have magistrates giving the right sentence.*[7]

Several magistrates we spoke to echoed this concern.

This accounts for part of the decrease in the proportion of offences resulting in court proceedings. Another potential cause for this decline is the increasingly high bar for prosecution set by the Crown Prosecution Service (CPS). This issue is discussed in depth in *A Force to Be Reckoned With*. Suffice to say here that the role of the CPS as the gatekeeper to justice has not been sufficiently scrutinised.

4.2 Simple, Speedy, Summary?

Our second concern is whether the time taken between the offence being committed and the criminal justice response is swift enough.

The amount of time between a crime being committed and the offender being sentenced depends on the performance of a number of agencies involved. The time

> "We can create a closer connection, in time and in the offender's mind, between the crime and the punishment. When this connection is not close enough, the deterrent effect of the punishment is reduced and public confidence in how the crime has been dealt with is also reduced. Imagine if a year passed between the offence being committed and the case being concluded in court. And yet we know that this can happen: lawyers can prolong cases and there can be delays in court."
>
> Lord Falconer[8]

4 For further discussion see: the Centre for Social Justice, 2009. *A Force to be Reckoned With*, CSJ

5 National Statistics, 'People given a police caution: by type of offence and age, 2000'. Available at: http://www.statistics.gov.uk/CCI/Nscl.asp?ColRank=1&ID=5664&Pos=1&Rank=208 [Accessed 8 June 2009]

6 Ministry of Justice (2008), *Criminal Statistics, England and Wales 2007*, MoJ, Tables S3.7a

7 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 13/10/09]

8 Falconer C, 2006. 'What is criminal justice for?', in *Social Justice: Criminal Justice*, ed. Ben Shimshon, The Smith Institute, p. 11-12

between the offence and arrest depends on police; between arrest and charge on police and the CPS; between charge and first listing in a magistrates' court on the defence, the CPS, and courts service; between first listing and sentencing on all of the above, plus witness services and probation. It must be borne in mind, however, that the victim, the community and the defendant are interested in the overall speed of justice, not internal criminal justice distinctions.

Figure 4.1 below shows the constituent time intervals for some typical offences in the magistrates' courts.[9]

Figure 4.1: Time taken at various stages of the criminal justice process in magistrates' courts, for indictable crime categories and summary non-motoring (2008)

	Number of days from:			
Crime	**Offence to charge or laying of information**	**Charge or laying of information to first listing**	**First listing to completion**	**Offence to completion**
Burglary	51	8	35	94
Criminal Damage	37	12	30	79
Drugs Offences	52	12	23	86
Robbery	46	6	23	75
Sexual Offences	238	13	42	293
Theft and Handling Stolen Goods	41	11	30	81
Violence Against the Person	45	11	58	114
Summary Non-Motoring	82	39	16	137

Figure 4.1 shows that the time taken between the offence and a charge being laid is generally longer than the period that the case is with the court ('first listing to completion'). This reflects, in part, the need for police to investigate the crime and identify the suspect. (It must be stressed that 'completion' in the magistrates' court does not necessarily mean sentencing – many of these indictable offences will continue to trial in the Crown court.) It is notable, however, that summary non-motoring offences are dealt with much more slowly, pre-court, than indictable offences – even though these are invariably simpler cases.

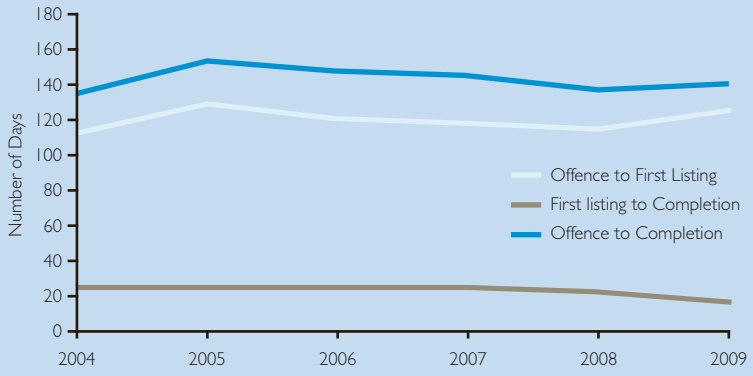
Efforts have been made to streamline the judicial process in the magistrates' courts, with the introduction of the Criminal Justice Simple, Speedy, Summary (CJSSS) protocols. It introduced various sensible pre-trial meeting arrangements, as well as imposing certain targets on the different agencies. CJSSS has indeed had an effect on the time taken between the charge being laid and the trial, and thereafter to the sentence. Trials have also been speeded up. This benefits witnesses and victims.

9 Figure 4.1: Ministry of Justice, 2009. *Time Intervals for Criminal Proceedings in Magistrates' Courts: December 2008*, MoJ, Table 7; Ministry of Justice, 2008. *Time Intervals for Criminal Proceedings in Magistrates' Courts: September 2008*, MoJ, Table 3

However, this picture is somewhat misleading, as the total amount of time between offence and sentence has remained virtually unchanged over the last ten years.

In the case of summary non-motoring offences, such as common assault or threatening behaviour, the average time between a suspect being charged and sentencing is 50 days.[10] However, before this takes place, an average of 92 days elapses between the offence being committed and the charge being laid. For at least part of this period a suspect is likely to be on police bail. On average, an offender committing a summary non-motoring offence will only be sentenced 137 days after the offence took place (just under 20 weeks); and this includes those cases (the majority) where an offender pleads guilty.[11] This compares to 123 days from offence to completion in 2000 – the majority of the increase coming in the time between offence and charging by police.[12]

Figure 4.2: How long it takes to deal with summary non-motoring offences



A similar picture emerges in the case of indictable and either-way offences (i.e. more serious offences). The average amount of time between first listing of a trial and its completion in the magistrates' court has decreased from 54 days in 2002 to a low of 37 days in 2008.[13] However, this time-saving has been entirely offset by an increase in the time between the offence being committed and the first listing of the case at court. The average overall time between offence and completion in the magistrates' courts is 112 days (about four months), which is slightly higher than the level in 2002.[14] Those defendants whose cases continue into the Crown court will have to wait another four to five months before their substantive trial begins.[15] This figure has also increased since 2002.

10 Ministry of Justice, 2009. *Time Intervals for Criminal Proceedings in Magistrates' Courts: March 2009*, MoJ, Table 3a

11 Ministry of Justice, 2009. T*ime Intervals for Criminal Proceedings in Magistrates' Courts: March 2008*, MoJ, Table 3a

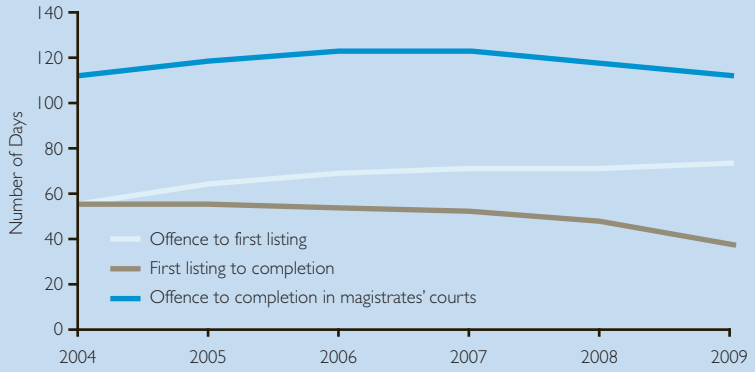
12 Ministry of Justice, 2008. *Time Intervals for Criminal Proceedings in Magistrates' Courts: September 2008*, MoJ, Table 3

13 Ministry of Justice, 2008. *Judicial and Court Statistics report 2007*, MoJ, Table 7.6; Ministry of Justice, 2009. *Time Intervals for Criminal Proceedings in Magistrates' Courts: December 2008*, MoJ, Table 1

14 Ibid

15 Ministry of Justice, 2008. *Judicial and Court Statistics report 2007*, MoJ, pp. 112-113

Figure 4.3: How long it takes to deal with indictable and triable either-way offences in the magistrates' courts



What explains the diverging trends in efficiency before and after charging? Why are police and prosecution taking significantly longer to charge suspects with an offence? While the CPS has a target for time taken from charge to completion, it has no corresponding target for the time from arrest to charge. It is therefore in the interest of the CPS to charge offenders as late in the process as possible, delaying trial while the case is prepared – the criminal justice equivalent of the NHS practice of keeping patients waiting in ambulances outside casualty departments in order to avoid starting the clock on casualty waiting time targets.

> "It is not uncommon in London to have muggers released on bail eight or nine times before they face trial for their first attack."
>
> Lord Stevens, former Commissioner of the London Metropolitan Police[16]

We have encountered a widespread view that the CPS is also responsible for many of the delays in the Crown court.

Of course many trials will be complicated and require more time. However, guilty pleas and less serious offences should be dealt with much more quickly than is currently the case.

4.3 Virtual Justice

An experiment in Brixton police station has connected the custody suite to Camberwell Green magistrates' court with a video link. Under the 'virtual justice' scheme a first hearing, where the defendant can enter a plea, can be held a few hours after arrest. This can dramatically increase the speed with which an incident is resolved, reduces the risk of intimidation (particularly in domestic violence cases) or absconding, and also reduces costs incurred by extra time spent in prison on remand and transport to and from courthouses.

16 The Guardian, 6 March 2002. 'Sir John Stevens calls for criminal justice reform'

The Working Group is supportive of the expansion of this scheme (dependent on its effectiveness being demonstrated by the pilots) but is concerned that proper consideration be given to the concerns of the victims, who must remain fully notified about developments.

4.4 Proposals

4.4.1 CPS REFORM FOR SPEEDIER JUSTICE

Speed is important in dealing with offences and with offenders, but the obstacles to the speedy disposal of criminal cases are many and various, ranging from the speed with which a prosecution is brought, the speed of the courts in allocating time for hearings, the need for adequate time to be given for lawyers to prepare a defence and the rights of victims to be notified of hearings. The experience for example of the Salford Community Court (see section 8.1) shows that it is possible to make impressive improvements to the speed of the court system; however the overall speed with which offences are dealt with does not increase, because more time is spent by the police and the CPS before offences are brought to court. The reasons for delays resulting from interactions between police and CPS, between the CPS and the court system, and the CPS and witnesses and others are extremely difficult to pin down, although we encountered a high level of dissatisfaction with the performance of the CPS.

Moreover, the excessive use of police disposals is in part due to the reluctance of police to engage with the CPS.[17]

The Working Group therefore recommends that the functioning of the CPS is made the central focus of a further policy review by the CSJ.

4.4.2 VIRTUAL COURTS

We propose the expansion of virtual court pilots as a quick way of starting simple cases.

We acknowledge that consideration must be given to victim satisfaction with such speedy, summary justice.

17 Centre for Social Justice, 2009, A Force to be Reckoned With, CSJ, p. 135

FIVE
Community Sentences and Short Prison Sentences

Chapters 2 and 3 looked at crime, poverty and social breakdown. We now turn to what the courts can do about these problems.

The kind of crimes that this report is implicitly concerned with are mostly dealt with by fines, community sentences, and short prison sentences. This chapter looks at these criminal justice responses.

Magistrates' courts sentence many more people to community sentences than to prison. In 2007, 182,000 offenders were sentenced to community orders, and a further 25,000 to suspended sentence orders (which are effectively community sentences backed by a stronger threat of imprisonment for breach), compared to 51,000 sentenced to immediate custody.[1] The average custodial sentence at the magistrates' court was 2.9 months,[2] and as Figure 5.1 below shows, the majority of all custodial sentences (imposed by all courts) last less than six months.[3] Magistrates' courts issued a further 939,000 fines, although about 60 per cent were for summary motoring offences.[4] There were also 91,500 conditional discharges.[5]

Though public debate about the criminal justice system often fixates on the prison service, the probation service is truly the backbone of our sentence options. It oversees all community sentences and prisoners on release from longer prison sentences. Short prison sentences also deserve close attention given how frequently they are used to deal with crime in comparison with longer sentences (only 27 per cent of prison sentences imposed are longer than a year).[6]

This chapter looks at the general structure of a probation order, and then looks at reoffending (or more properly, reconviction rates) for community sentences and short prison sentences. The overall picture is one of little success in rehabilitation, and little apparent improvement.

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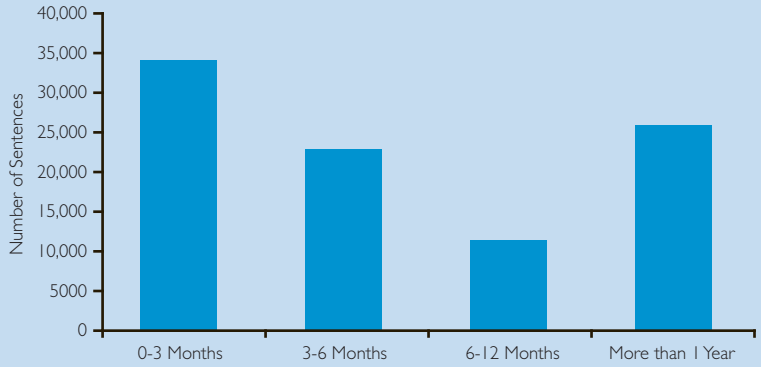
1 Ministry of Justice, 2008. *Sentencing Statistics 2007* (England and Wales), MoJ, p. 2.
2 Ibid, Table 2.1
3 Ibid, Table S5.8
4 Ibid, p. 69
5 Ibid, p. 70
6 Ibid, Table S5.8

Figure 5.1: The number of immediate custodial sentences imposed, by length, 2007



5.1 What is a Community Order?

Probation, community sentence, punishment in the community, community punishment order, community rehabilitation order, community order, suspended sentence order – there have been a variety of names to denote the court disposal which is neither immediate custody nor a fine. Throughout this chapter we will use the phrase 'community sentences' and 'probation order' interchangeably to denote both 'community orders' and 'suspended sentence orders'. (Though technically a suspended sentence is a custodial sentence, in reality the only difference from a community order is that breach is more often, though not necessarily, punished by imprisonment.) The box below outlines the main features of current community orders.

WHAT IS A COMMUNITY SENTENCE?

After an offender has been found guilty, the court will adjourn for the preparation of a Pre-Sentence report (PSR) by the probation service. The adjournment may be for a few hours or several weeks. The PSR gives a recommendation to the judge as to the sentence which the probation service considers most appropriate to the offender's circumstances. It can recommend both the type of sentence (e.g. custodial or community-based) as well as the content of a community sentence. The court is under no obligation to follow the recommendation but mostly they do (especially in magistrates' courts).

Community sentences are sentences served in the community. Since the Criminal Justice Act 2003, there are two kinds: 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, though in practice requirements are often not available (see section 6.1.1 below). The requirement options are listed here in order of decreasing frequency of use:

- Supervision (Requirement to attend meetings with a probation officer at specified intervals.)
- Unpaid Work (40-300 hours, to be completed within 12 months.)
- Accredited Programme (Mostly cognitive behavioural therapy programmes, such as 'Enhanced Thinking Skills' or 'Drink Impaired Driving'.)
- Drug Rehabilitation (Methadone prescription, random drug tests and addictions counselling.)
- Curfew (Requirement to stay at a certain address for a maximum of 12 hours a day)
- Specified Activity (Activities include education or drug centre attendance)
- Alcohol Treatment
- Mental Health (Treatment under auspices of a doctor in community.)
- Exclusion (Offender not allowed to go to specified place)
- Prohibited Activity
- Residence (Requirement to live in certain place)
- Attendance Centre (18-24 year-olds only)

If an offender fails to comply with his order, either by committing a new crime or not abiding 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.

Supervision, or supervision coupled with another requirement, such as an Accredited Programme, is the most common community order, used in 35 per cent of cases. (The corollary is that there is no supervision in the other 65 per cent.) Unpaid work is used in 33 per cent of sentences.[7] Unpaid Work is only occasionally accompanied by Supervision.[8]

Sheffield 'Addressing Substance Related Offending' team

5.2 Why do we have Probation?

The diversity of the terminology for probation orders suggests they have different virtues, to be promoted at different times.

5.2.1 ALTERNATIVE TO PRISON

At the most essential level, probation acts as an intermediate punishment between fining and imprisonment. We have a probation service because it is inappropriate – and prohibitively expensive – to send all offenders to prison, yet some crimes deserve more than a fine. Even if only interested in retribution, it makes good sense to have a credible alternative to prison; and community sentences can offer this.

5.2.2 REHABILITATION

Probation is seen to offer a better chance for rehabilitation than a sentence in an often overcrowded prison. The service has its roots in the late 19th century,

7 Ministry of Justice, 2009. *Offender Management Caseload Statistics 2008*, MoJ, Table 3.9
8 Ibid, Table 3.10

when concerned citizens would undertake to work with criminals in lieu of punishment. The idea was that these supervisors could divert offenders from punishment by giving an undertaking to the court that the criminal would remain sober and not cause any public nuisance or crime, the overriding goal being reformation of character. A guarantee of a reduction in reoffending was seen as more valuable than a punishment; and the supervisor was liable through a bond placed with the court.

The idea of working with offenders to reduce reoffending rather than just punishing them appropriately took hold, and resulted in the creation of a statutory, court-controlled probation service. Through the early 20th century, probation continued to be viewed as a chance to rehabilitate criminals, though increasingly the probation services (which were locally administered by Courts Boards) perceived their work as a kind of psychologically-based medical intervention: probation was a 'treatment' which, properly administered, would 'cure' criminals of their criminality.

5.2.3 REAL-WORLD CONTINUITY

To allow an offender the greatest chance to reform, we must make every effort to ensure that the positive aspects of his or her life are not disrupted. Community sentences, for this reason, can be be useful where prison cannot; they need not disrupt those features of an offender's life – positive relationships, jobs, activities and accommodation – the stability of which holds the best hope for an offender desisting from crime in the long run.

If an offender is on a particular programme which aims to tackle the root causes of his offending behaviour, then a community sentence gives the opportunity to address these problems in the milieu in which they developed. This means that if success is achieved it is more likely to be permanent, unlike programmes in prison or in residential facilities where there is a risk that offending behaviour will be re-established on resettlement into the community. Lasting rehabilitation has to take place in the real world.[9] A community sentence also gives the offender the opportunity to take action to help himself, which in a prison setting is much more difficult.

As a corollary, it has long been recognised that the prisoners released on parole or licence require support and supervision, which is (in theory at least) provided by the probation service.

5.2.4 REPARATION

One of the attractive features of community sentences is that they are seen as potentially more 'useful' than prison sentences. Even if rehabilitation does not work or is not needed, the offender can still do something useful through unpaid work. Reparations can be made either to the community or to the victim directly.

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9 Chitty C & Harper G, 2005. *The impact of corrections on re-offending: a review of 'what works',* Home Office RDS, p.27

5.2.5 SYMBOL OF JUSTICE IN THE COMMUNITY

A community service, properly tailored, enforced and visible, can reassure the residents of an area that crime is being tackled and that the criminal justice system is working to help them. It brings the consequences of justice back into the community, reassuring those who are afraid of crime and warning those who are considering breaking the law.

5.3 Reoffending and Reconviction

The previous sub-sections identify five reasons why probation is important and, if properly carried out, highly desirable. It has the potential to be an inspirational part of the criminal justice system. The reality at present, however, is less enticing and has greatly undermined confidence in sentencing.

Approximately half of all offenders commencing community sentences are reconvicted at least once for a crime committed within two years of commencing the sentence.[10] The latest available figures (2007) show that 36.1 per cent are caught reoffending within one year.[11] Of course the actual number of offenders in both cases will be higher, since these figures include only those who are discovered, prosecuted and convicted – even police cautions do not count. On another measure, every group of 100 offenders starting a community sentence in 2007 was convicted for 121 new offences during the course of the year. Not all offenders starting community sentences will reoffend; taking just the sample of those convicted of reoffending, each group of 100 reoffenders was convicted for 335 new offences in the course of the year.[12]

The average community sentence lasts about 15.4 months.[13] This means that much of this reoffending is happening during the time the sentence is being served. In this sense community sentences do not protect the public against further offending.

Reduction in reconviction is often taken as a proxy for rehabilitation: if someone is convicted less frequently, this may be evidence of less criminal activity. Unfortunately, the high rate of reoffending suggests that, for many, probation does not change lives or rehabilitate. The vast majority of community sentences in any given year are handed to offenders who have been convicted or cautioned several times before. Figure 5.2 shows that almost nine in ten offenders commencing community sentences had been cautioned or sentenced previously.[14] Four in ten had more than seven previous convictions or cautions.[15] This suggests that previous experience of probation does not stop offenders from reoffending.

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10 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

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

12 Ibid

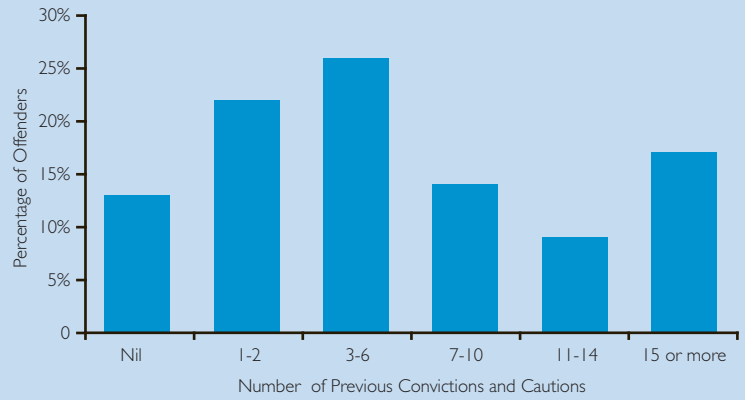
13 Ministry of Justice, 2009. *Offender Management Caseload Statistics 2008*, MoJ, Table 4.2

14 Figure 5.2: Ministry of Justice, 2009. *Offender Management Caseload Statistics 2008*, MoJ, Tables 4.8

15 Ministry of Justice, 2009. *Offender Management Caseload Statistics 2008*, MoJ, Tables 4.8

However, it might be argued that these rates would have been even higher had it not been for the probation service, and that the service is achieving success in rehabilitation despite the evidence stated above. We explore these arguments below.

Figure 5.2: Offenders commencing community sentences, by the number of previous convictions and cautions, 2007



53.1 DOES PROBATION REDUCE OFFENDING AGAINST THE PREDICTED RATE?

The Ministry of Justice tells us that, in 2004, 50.5 per cent of offenders reoffended in the two years following the start of the community sentence, compared to a predicted rate of reconviction of 54.1 per cent. Probation, it is claimed, is responsible for the decrease, and is therefore (modestly) successful in rehabilitation.

However the comparison is not particularly durable. The basis of the calculation of expected reconviction is the OASys (Offender Assessment System), and it is used by the probation service to calculate the risk that an offender poses to the community through reoffending. It takes into account an offender's age, background and criminal history, and matches this to historical rates of reconviction based on these categories. It is a crude and hypothetical measurement; a comparison against it is not as reliable as a comparison done with a matched group of real offenders, some of whom would randomly be assigned to supervision and the others given no supervision. Moreover, it became apparent to the Public Accounts Committee, on questioning the probation service, that not all offences committed within two years of conviction were counted. Those offences recorded more than six months after the end of the two year period, but which occurred during the two years, were not included in the calculation of the actual offenders' reconviction record.[16] The OASys predictions about reconviction, by comparison, do take all reconvictions for crimes committed in the two year period into account.

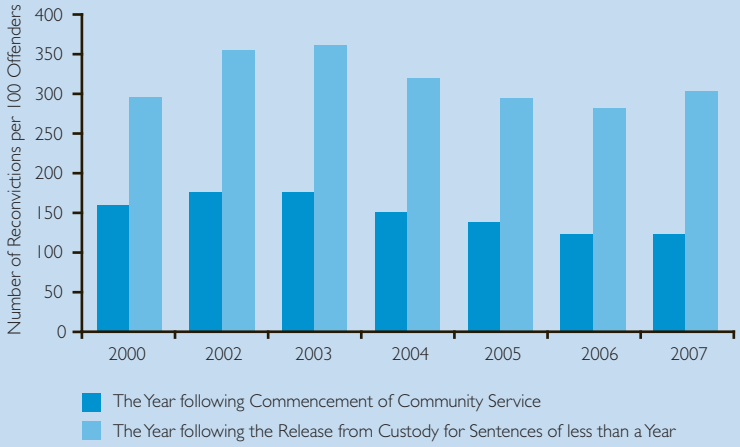
16 House of Commons Committee of Public Accounts, 2008. *The supervision of community orders in England and Wales*, The Stationery Office.

5.3.2 HAS PROBATION SUPERVISION IMPROVED?

The Ministry of Justice claims that the frequency of reoffending for those serving sentences in the community (including suspended sentence orders) has dropped since 2000. The number of further (convicted) offences per 100 offenders during the year following the start of a community sentence rose from 159 in 2000 to a peak of 175 the following year, from where it declined to 121 in 2007.[17]

However, despite the government's claim to have made 'considerable progress',[18] it seems unlikely that these statistics provide good evidence of successful rehabilitation as a result of community orders. Figure 5.3 shows that it is not only on community sentences that offenders have been reconvicted less frequently.[19] The trend appears to be exactly the same for ex-prisoners released from short sentences – a rise till 2003 and a dropping off thereafter. This reduction cannot be explained as successful rehabilitation, because offenders on prison sentences of less than a year have *no supervision at all* on release from prison. No-one has claimed that short term prison rehabilitation has improved dramatically in the past few years, and there is no probation-related reason why the short sentences group should be reoffending less frequently. If the trend for both categories is the same, it suggests that there is something apart from probation supervision that is having this effect on both sets of statistics.

Figure 5.3: The frequency of reconvictions per 100 offenders



It has been suggested to the Working Group that the real reason for the apparent drop in reconviction rates is that the police are handing out more cautions instead of instigating court proceedings, as we discussed in Chapter 4. More cautions and other immediate disposals mean fewer convictions, and so

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

18 Ministry of Justice, 4 September 2008. 'Reducing re-offending statistics', Press Release

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

the claim that reoffending (as measured by reconviction) has been reduced is suspect. In support of this, it is notable that the reduction in reconviction shown in Figure 5.3 coincided with the introduction of the Offences Brought to Justice Target for the police, under which a caution was given the same weight as a successfully prosecuted trial. One probation officer in the South of England told the Working Group that police in his area were particularly keen on cautioning offenders on probation, rather than charging them:

> *Reconviction is all about whether people are being re-arrested. You see a huge amount of cautions for people while they're on the order, but it doesn't count as conviction. I've seen in the past few years that the police are doing more cautioning and less arresting...What every government says is that they're reducing reoffending. What I say is that they're reducing arresting.*

5.3.3 NOT A MEASURE OF REHABILITATION

Even if we trust the statistics, it is hard to treat any putative reduction in reconviction as a measure of rehabilitation, since these measures of crime in the two years following the commencement of the sentence only tell us about what happens in the year of the sentence – a period during which they are supposed to be under observation, and facing the threat of further sanctions. The enforcement and sanctions regime has been toughened up in the last few years, perhaps increasing the deterrent effect of committing further offences while under sentence. Generalised probation supervision may stop a person from offending when he is actually being watched as detection becomes much more likely; and encouragement and befriending by a sympathetic probation officer may help. But the problem is that once the sentence is over, both of these factors disappear.

To measure the rehabilitative power of the community order we would have to know about the frequency of reoffending once the order is complete and the offender is no longer under any supervision; and on this the Ministry of Justice is silent.[20]

The preceding sections have shown that there is little compelling evidence that the current regime of community sentences is reducing reoffending. The next section examines the rate of reoffending (reconviction) following release from prison on short sentences.

5.4 Short Prison Sentences

As Figure 5.3 above shows, offenders leaving short prison sentences are convicted at about double the rate of offenders on community sentences. They are generally prolific offenders. Figure 5.4 below compares the number of prior

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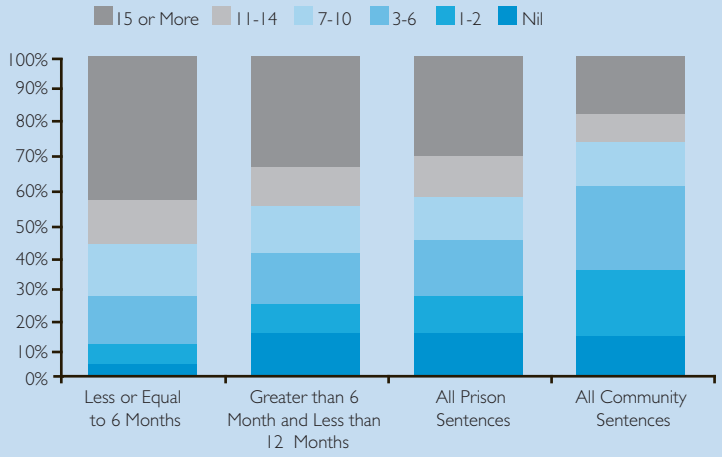
20 Ministry of Justice, 2008. *Re-offending of adults: results from the 2006 cohort, England and Wales*, MoJ, Table A5

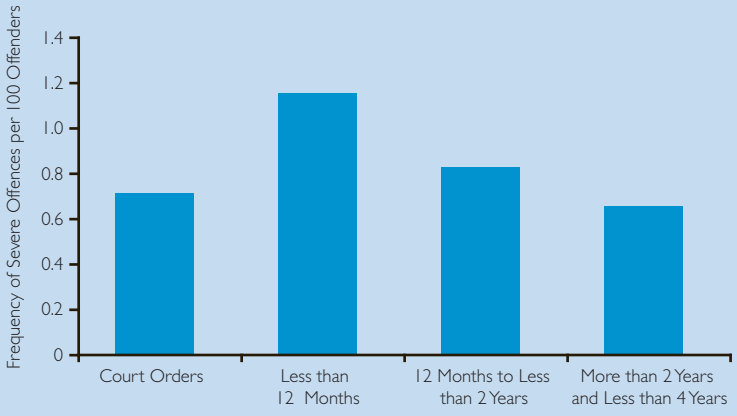
convictions for offenders starting different types of sentences.[21] Prisoners on short sentences have the most prior convictions out of all offenders. Almost three out of five prisoners serving short sentences of six months or less had more than 11 previous cautions and convictions; more than 40 per cent had 15 or more previous cautions or convictions.

Figure 5.4: Proportion of offenders with previous convictions or cautions, by sentence type



This offending is not just on the less serious end of the spectrum. Figure 5.5 shows that offenders released from short prison sentences are more likely to commit more severe offences as well, compared to both those on community sentences and other prison leavers.[22]

Figure 5.5: The frequency of severe offences committed during the year after release from prison and start of community sentence, per 100 offenders (2006)



21 Figure 5.4: Ministry of Justice, 2009. *Offender Management Caseload Statistics 2008*, MoJ, Tables 4.8 and 7.32

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

This demonstrates how short-sighted it is to have no supervision for prisoners released from short prison sentences. Their licence conditions are largely meaningless; if they reoffend they are likely to be sentenced for the new offence anyway, rather than returned to prison for the remainder of a sentence which may only last a few more weeks.

We can assess short prison sentences according to the criteria that we established for community sentences. They do not achieve much in the way of rehabilitation or community protection in the longer term; there is no reparative element; and, since most prisoners are not housed in their local area, there is little visible evidence for a community that justice is being done. Moreover, prisons are widely thought of as a school for crime: though some may be deterred by their experience of prison, others will make new contacts and learn new skills.[23]

Nonetheless, both long and short prison sentences provide a period of detention during which the community is given some respite from the offender's crimes. While short sentences may offer little by way of rehabilitation, they do at least provide this respite. While each particular offender on a short sentence may only be incarcerated for a short time, communities benefit, in this sense, from the cumulative effect of the frequent use of short sentences. Moreover, many magistrates we spoke to said that the short prison sentence was a necessary tool in their sentencing armoury, to back up a credible threat of escalation.

Both community sentences and imprisonment have an important role to play in our sentencing structures. There is clearly huge room for improvement in both. The next chapter diagnoses their failings before beginning to look at solutions.

23 For further discussion see the Centre for Social Justice, 2009. *Locked Up Potential.* CSJ, p. 164

SIX
Sentencing: Failures and Omissions

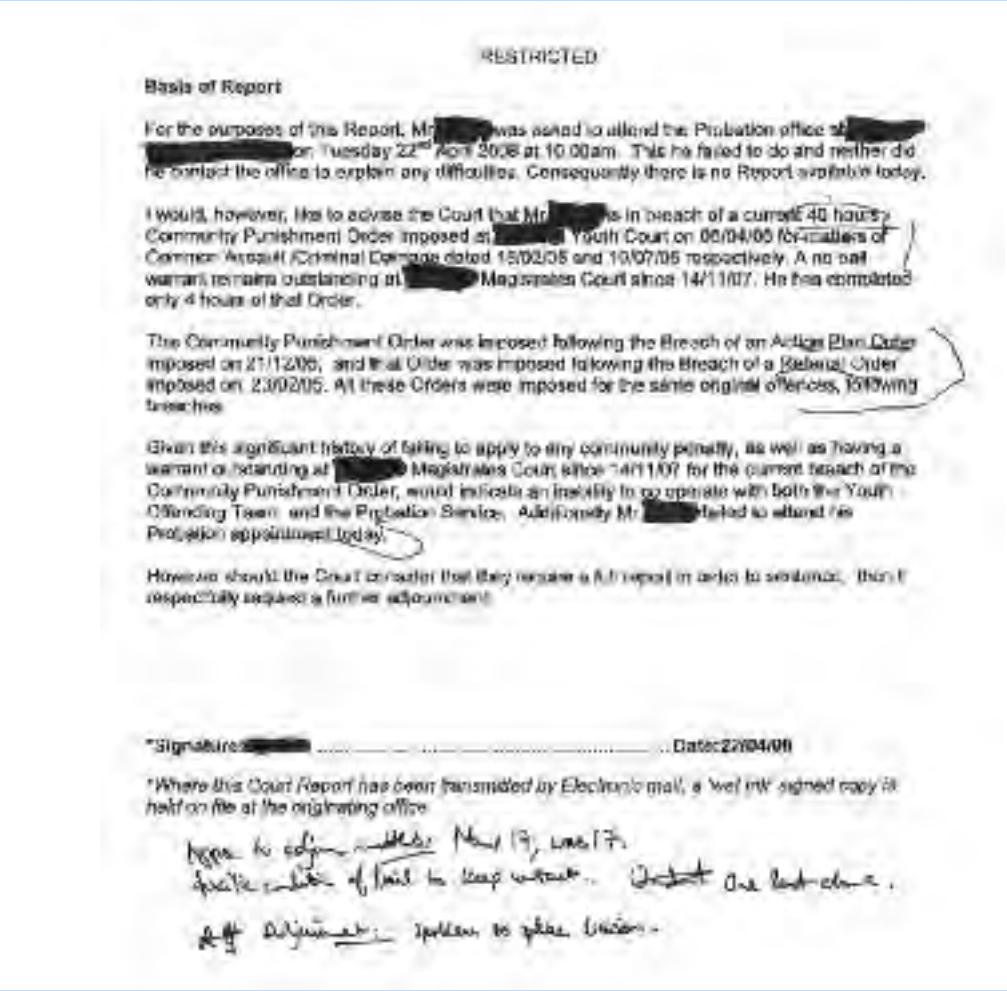
The Working Group has identified several key problems with community sentences which contribute to the failures described above. We look at the availability of sentencing options; underfunding means that probation cannot offer certain programmes. When sentences are imposed, the probation service does not, in some cases, carry them out properly. Additionally, courts sometimes impose unsuitable sentences for offenders, either not demanding enough or setting them up for failure. When offenders do not comply, the breach proceedings are unduly restrictive on magistrates. We look at the special case of unpaid work – an extremely attractive sentence to the courts, the public and many offenders. Section 6.2 looks at the problems of short prison sentences. Thereafter we look at research demonstrating what works in terms of reducing reoffending. In those cases where a community sentence can be avoided, we look at the situation regarding fines.

The myriad problems that beset sentencing are illustrated by the following case study.

CASE STUDY: AN OFFENDER'S ENTANGLEMENT IN THE SYSTEM

Below we reproduce a pre-sentence report prepared by the probation service at a large London court. The story it tells is fairly typical, and illustrates much that is wrong with the management of community sentences.

Offender 'X' committed an offence of Common Assault in February 2005. A week later he was sentenced to a Referral Order (a kind of youth community sentence). In July 2005 he committed Criminal Damage, a crime in its own right and a breach of the Order. He was sentenced for breach in December 2005, five months after the offence. The new sentence, an Action Plan Order, was itself breached and he was sentenced for this in April 2006. He was then sentenced to a Community Punishment Order of 40 hours work. He completed only four hours of this (two sessions at the most). For failing to comply, he was ordered to attend court in November 2007, 19 months after the sentence was imposed. He failed to appear, and he failed to appear again at a hearing to sentence him for his previous failures, in April 2008.



RESTRICTED

Basis of Report

For the purposes of this Report, Mr [redacted] was asked to attend the Probation office at [redacted] on Tuesday 22nd April 2008 at 10.00am. This he failed to do and neither did he contact the office to explain any difficulties. Consequently there is no Report available today.

I would, however, like to advise the Court that Mr [redacted] is in breach of a current 40 hours Community Punishment Order imposed at [redacted] Youth Court on 06/04/05 for matters of Common Assault /Criminal Damage dated 15/02/05 and 10/07/05 respectively. A no bail warrant remains outstanding at [redacted] Magistrates Court since 14/11/07. He has completed only 4 hours of that Order.

The Community Punishment Order was imposed following the Breach of an Action Plan Order imposed on 21/12/05, and that Order was imposed following the Breach of a Referral Order imposed on 23/02/05. All these Orders were imposed for the same original offences, following breaches.

Given this significant history of failing to apply to any community penalty, as well as having a warrant outstanding at [redacted] Magistrates Court since 14/11/07 for the current breach of the Community Punishment Order, would indicate an inability to co-operate with both the Youth Offending Team and the Probation Service. Additionally Mr [redacted] failed to attend his Probation appointment today.

However, should the Court consider that they require a full report in order to sentence, then I respectfully request a further adjournment.

*Signature [redacted] ..... Date: 22/04/08

*Where this Court Report has been transmitted by Electronic mail, a 'wet ink' signed copy is held on file at the originating office

An offence committed in February 2005 was still unpunished in April 2008, more than three years later.

This story illustrates the challenge facing the probation service, and the failures of the criminal justice system's response. Orders are not properly enforced and breach proceedings are sluggish. Sentences are not monitored by the court to see whether they are being properly carried out. It also illustrates the particularly challenging clientele with whom the probation service typically deals – people who have little personal motivation to comply. As a result of these factors the young man in question was caught up in the legal system and its procedure for more than three years, for small (but common) offences that should have been dealt with immediately.

6.1 Community Sentences

This section identifies several areas of concern about community sentences: the availability of the statutorily determined community sentence options and offending programmes; whether sentences are suitably targeted to offenders' needs by the courts; whether they are carried out as intended by the court; and the procedure for dealing with offenders who breach the terms of their order. We will consider 'Unpaid Work', as an example of a popular sentence, in its own right in section 6.1.5. This section focuses on the

> "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

structure of these community sentences; Chapters 9 and 12 look at the nature of the probation service and its centralisation.

6.1.1 AVAILABILITY OF SENTENCING OPTIONS AND OFFENDING PROGRAMMES

A major complaint heard by the Working Group was about the unavailability of useful requirements (as listed in section 5.1). A study by the National Audit Office found that

> *Three out of the four probation areas that were covered in the interviews still did not have all of the requirements, while respondents from the fourth area seemed to think that everything was available but continued to demonstrate some uncertainty*[1].

The Audit Office found that, most commonly, the alcohol treatment requirement, attendance centres and mental health requirements were unavailable.[2] A National Association of Probation Officers (NAPO) study found shortages both in the types of sentences available, and the availability of 'offending behaviour programmes' which are supposed to encourage rehabilitation. NAPO found a variety of problems in 34 out of 35 probation areas including:

> *the non-availability or restricted availability of Unpaid Work, cancellation of one-to-one programmes, major problems and delays with Domestic Violence Programmes, and the non-availability of Drink Impaired Driving Programmes, Substance Abuse Treatment, and Community and Internet Sex Offender requirements.*[3]

Every magistrate to whom we spoke mentioned the shortage of one requirement or another. Commenting on this situation, the chairman of NAPO said that:

> *What is clear is that if the resource issue is not addressed immediately the sentencers in many parts of the country will not be able to impose the sentences of their choice. That inevitably will lead to more reoffending and more victims of crime.*[4]

As a result magistrates sometimes feel that they have no option but to sentence an offender to a short prison sentence for lack of a more suitable option.

Even in those cases where an option is available, there is often significant delay. Only 41 per cent of offenders start their offending behaviour programme within six

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1 Mair G & Mills H, 2009. *The Community Order and the Suspended Sentence Order three years on*, Centre for Crime and Justice Studies, p. 18. A National Audit Office report 'The Supervision of Community Orders in England and Wales' (NAO 2008) also noted that there were specific barriers to the provision of alcohol treatment and mental health treatment requirements.

2 National Audit Office, 2008. *The Probation Service- The supervision of community orders in England and Wales*, The Stationery Office

3 National Association of Probation Officers, 2008. *Restrictions on sentencing*, www.napo.org.uk.

4 National Association of Probation Officers, 2008. *Restrictions on sentencing*, www.napo.org.uk

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.[5] In some cases this is because offenders are undertaking other programmes first; but in many cases it is not clear what, if anything, is actually being supervised up until this point. The delay before starting the required programme means that six per cent of offenders do not complete the course because their sentences are exhausted before reaching the end.[6]

The shortage or non-availability of useful requirements, and particularly of offending behaviour programmes, is largely due to a lack of funding – and, more specifically, a lack of funding earmarked within the criminal justice system to run and develop this kind of programme.

6.1.2 UNREALISTIC REQUIREMENTS

It had been feared that the introduction in 2003 of the sentencing menu would encourage sentencers to load up on requirements, thereby making breach more likely. This has fortunately not materialised. However, there is a problem with orders not being properly tailored to individual case circumstances, as we see from the very high non-completion rates of cognitive behavioural programmes, which are designed to make offenders think about the consequences of their actions (participation in such programmes is frequently required by the courts). Most offending behaviour programmes are subject to very high attrition rates. Of those 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. (Twenty per cent did not get to start.)[7] This suggests that a sizeable portion of the rehabilitative programmes imposed by courts are inappropriate to the offender; or possibly that offenders are not being properly prepared for the programmes.

> "I think sometimes programmes are given to people that they aren't necessarily going to benefit from. Sometimes people will just go along and they sit there and they listen and they'll attend every time but they won't actually get anything out of it."
>
> Probation officer[8]

6.1.3 NOT WHAT THE COURT ORDERED

Our concerns about the enforcement of community sentences by probation are not just in relation to whether offenders are reoffending. It is also about whether the probation service is conducting the sentence in the way that the court intended.

There is often a gap between the level of interaction with the offender assumed by the sentencer and the reality. Where a magistrate imposes, for example, an 18-month supervision order, the level of supervision may be, at most, an hour or two a week at the beginning, and by the end of the order there may be no contact at all in more than a week. The question therefore arises: how much can ever be achieved with limited resources?

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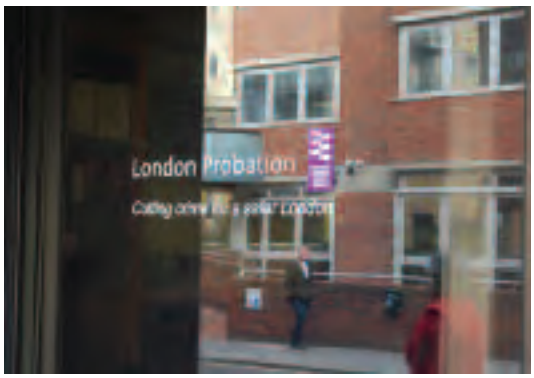
5 Ministry of Justice, 2009. *Offender Management Caseload Statistics 2008*, MoJ, Table 3.2

6 The National Audit Office, 2008. *The National Probation Service: The supervision of community orders in England and Wales*, The Stationery Office

7 Hollis V, 2007. *Reconviction Analysis of Interim Accredited Programmes Software (IAPS) data*, RDS NOMS, p. 6. Calculated from raw data.

8 Mair G & Mills H, 2009. *The Community Order and the Suspended Sentence Order three years on*, Centre for Crime and Justice Studies, p. 19

> "I feel a bit like, if they don't want to do that [a requirement] in the first place, they'll go but they won't necessarily engage. And because it's a partnership programme [the providers] just tell us whether they've attended or not, they don't tell us that this guy attended and he wasn't engaging, he wouldn't talk to us and all that kind of stuff. They probably would if after a while it was still happening, but they can't be breached because they don't engage in a partnership programme. Which begs the question: how good is that programme, how relevant?"
>
> Probation officer[12]



This tapered supervision occurs even when the order is carried out according to the probation service practice. The situation is made even worse when the probation service does not enforce the terms of the service properly.

There has been, over the last six years, an intentional tightening up of the policing of community sentences across the whole of the National Probation Service. In 2001, when the National Probation Service adopted a new slogan, 'Enforcement, rehabilitation and public protection', it signalled that enforcement was to be its 'highest priority'.[9] As a result of this renewed focus, the probation service has become more active in punishing those who breach the terms of the order: timely enforcement of sanctions against breaches has risen from 40 per cent in 2000 to 94 per cent last year.[10]

The National Audit Office study of community sentences found that there was still great cause for concern about the enforcement and oversight of these sentences. One concern was about the willingness of probation officers to accept excuses made by offenders as to why they failed to attend an appointment or work placement. As Ian Davidson MP put it:

There is a very strong perception that being put on your community structure is a soft option. This can only surely be corroborated by the idea that people are able [to excuse themselves with] self-certificated sick, forgot, confusion, slept in, [with] no detail, no reasoned detail. People are trying it on quite clearly...[11]

Furthermore, the probation service in many areas finds itself unable to offer certain offending behaviour programmes, due to a lack of funding or other shortfalls. Offenders cannot begin their stipulated programme, let alone complete it. This frequently makes it impossible for sentences imposed by the judge or magistrate – who may be unaware of the shortage or unavailability – to be carried out as he or she originally intended.

This is true not just of rehabilitative programmes, but punishment and community safety aspects of a community sentence as well. Curfew requirements, for example, appear to be loosely enforced. Her Majesty's Inspector of Probation found that enforcement action against breaches was 'insufficiently stringent':

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9 National Probation Service, 2001. *A New Choreography*, Home Office, p. 24

10 House of Commons Committee of Public Accounts, 2008. *The supervision of community orders in England and Wales*, The Stationery Office.

11 House of Commons Committee of Public Accounts, 2008. *The supervision of community orders in England and Wales*, The Stationery Office

12 Mair G & Mills H, 2009. *The Community Order and the Suspended Sentence Order three years on*, Centre for Crime and Justice Studies, p. 19

> *In this respect [Curfew] differed significantly both from other community requirements and from what, we believe, the courts and the public might reasonably expect.*[13]

6.1.4 INFLEXIBLE RESPONSE TO BREACH

It is desirable for a sentence to be served as the court intends; the current situation, however, is a gross bureaucratic parody.

Probation staff are required to report a breach of the sentence to the court after the second 'unacceptable failure to comply'. (Both 'technical' breaches and new offences are judged in the same way.) Breaches of community orders therefore result in a 'more onerous' sentence than the original. This distorts sentencing practice. While probation officers should be obliged to record and report all breaches of an order to the court, this obligation currently limits both the officer's and the sentencer's professional discretion in formulating an appropriate response to the circumstances of the particular breach by the particular offender.

The breach regime has resulted in many people being imprisoned for failure to comply, and sometimes for technical breaches. Commonly though, having to impose a 'more onerous' sentence results either in pointless additional requirements or in mockeries of the law as sentencers scramble to honour the letter of the law. An offender who is not complying with his work requirement is unlikely suddenly to respond positively if another ten hours are added as is frequently the case; and a common practice is to fulfil the sentencing obligation by adding a curfew requirement, active between the hours of 3am and 4am – which technically makes the order 'more onerous'. If sentencers find that their discretion is being inappropriately circumscribed, they naturally and rightly will seek out ways of avoiding an inappropriate outcome. Similar widespread distaste has been shown by sentencers for the obligation imposed on them to add a £15 victim surcharge to any fine. The ensuing consequences in relation to sentencers' reluctance to use the fine in the Crown court are addressed in section 6.5.

6.1.5 UNPAID WORK

Unpaid work encapsulates many of the positive aspects of community sentences which were identified in section 5.2 above. It is popular with the courts and general public because it is felt to be useful. Even if an offender has no intention of reforming, work achieves reparation to the community. Offenders themselves are often in favour of unpaid work, particularly work in which they have a great deal of contact with the public and where the work is clearly useful to an identifiable group of people – for example serving food at an old age home.[14]

Visible unpaid work can also act as a 'positive control signal', demonstrating to other residents that they are cared about and that their own efforts to maintain order and decency will be supported by the state.[15] In this context,

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13 Ibid

14 Bottoms A, 2008. 'The Community Dimension of Community Penalties', T*he Howard Journal of Criminal Justice,* 47(2), 146-169, p. 153

15 Ibid, p. 157

> "...I see the benefit of it for other people, because, obviously, there's a couple of benches there that I've been working on...they go to a veteran's home...like, somebody else is benefiting from my crime if you know what I mean."
>
> Male offender at Salford Community Justice Magistrates Court[20]

unpaid work would be focused on cleaning up the litter, graffiti and mess which make people feel that an area is disordered, and, it is suggested, makes offending more likely.[16]

In 2006-7, 6.6 million hours of unpaid work were completed, an increase of 26 per cent since 2002,[17] though this was less than was ordered by the court. Only a third of all community orders and a quarter of all suspended sentences contained a work requirement.[18]

Seventeen out of 42 probation areas reported in 2008 that there was either no unpaid work available, or there were severely long waiting lists.[19] Parts of the country where it was available reported six-month waiting lists; and in many areas probation managers have advised probation officers not to recommend unpaid work in Pre-Sentence reports, due to lack of availability.

In addition to the apparent resource shortage, offenders must be deemed suitable for the kind of unpaid work which the probation service is able to arrange and provide locally. Many offenders are deemed unsuitable for unpaid work because of their actual or claimed incapacity to do work. Judge Phillips at the West London Drugs Court told us that he was not allowed to sentence addicted offenders to any kind of unpaid work.

6.2 Disruptive Short Prison Sentences

High reoffending rates for this cohort demonstrate how short sentences, as they currently operate, serve neither the public nor the offender (see section 5.4).

Evidently, they are ineffective at rehabilitation. In part this is because of prison overcrowding, and the daily crisis management this creates. During an offender's short but chaotic custodial sentence, he or she is unable to access vocational courses or substance treatment due to prison timetables, frequent relocation around the estate and inadequate resources. The organisational burden is worsened by the variety in length, as well as start and release dates, of short sentences.

We query whether very short sentences, with a stay of just a few weeks, are long enough to engage offenders effectively in any rehabilitative programme, even if it is well-organised.

The Working Group was also shown that short sentences can disrupt family relationships and jeopardise employment and accommodation arrangements – influences which, if stable, decrease the likelihood of reoffending on release.

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

17 Solomon E & Silvestri A, 2008. *Community Sentences Digest* 2nd ed., Centre for Crime and Justice Studies. p. 23

18 inistry of Justice, 2009. *Offender Management Caseload Statistics 2008*, MoJ, Table 3.9

19 National Association of Probation Officers, 2008. *Restrictions on sentencing*. Available at: http://www.napo.org.uk/cgi-bin/dbman/db.cgi?db=default&uid=default&ID=181&view_records=1&ww=1 [Accessed March 4, 2009]

20 1 Brown R & Payne S, 2007. *Process Evaluation of the Salford Community Justice Initiative*, MoJ, p. 39

Having a prison record makes getting a job harder in the future. Furthermore, offenders released from a custodial sentence of less than 12 months receive absolutely no resettlement support or aftercare from the probation service.

Defenders of the short prison sentence point to the beneficial impact of incarceration – that it removes prolific or dangerous offenders from the community and gives the community a short respite; and also to its use as a deterrent, pointing out that many offenders seek to avoid such sentences. However, it seems doubtful that the threat of a week or two incarceration would provide a sufficient deterrent against committing crime *in general*, especially since the chances of getting caught are relatively low for the kind of crime that merit such sentences.

HMP Highdown, a Category B prison

The Working Group does not think that short sentences are necessarily useless, however. For offenders locked in social breakdown and entrenched dysfunctionality, a well-structured month or thereabouts in a secure, ordered environment could prove a positive experience. Within such a period of time, offenders would be able to access rehabilitative programmes which set a new life direction away from criminal behaviour. The ultimate success of such an intervention, however, would also require follow-through in the community subsequent to release. For those who are already serving community sentences and are therefore under greater supervision, the deterrent effect of a very short prison spell – a week, rather than a month, thus avoiding disruption to family life – as a sanction for non-compliance is very real.

6.3 'What Works' in Sentencing?

The previous sections looked at the shortcomings of community sentences as they are currently constituted. What, then, should sentencing be doing?

One strong perspective on this comes from the field of 'what works' social policy research.[21] There has been burgeoning interest over the last two decades in the 'what works' agenda, which uses empirical studies to gauge the effectiveness of particular criminal justice interventions.

6.3.1 RESULTS OF DIFFERENT 'WHAT WORKS' STUDIES

These studies have shown that certain probation practices do in fact work in the reduction of reoffending. A major Home Office review in 2005 identified the following factors which, it is argued, contribute toward reductions in reoffending (rather than being merely correlated with lower offending):[22]

21 See, for example: Chitty C and Harper G, 2005. *The impact of corrections on re-offending: a review of 'what works'*, Home Office RDS; Washington State Institute for Public Policy, 2006. *Evidence-Based Adult Corrections Programs: What Works and What Does Not*, WSIPP; Raynor P, 2007. 'Community penalties: probation, 'What Works', and offender management'' in *The Oxford Handbook of Criminology*, ed. Maguire, Morgan, and Reiner, OUP.

22 Chitty C & Harper G, 2005. *The impact of corrections on re-offending: a review of 'what works'*, Home Office RDS, p. xi. Available at: http://www.homeoffice.gov.uk/rds/pdfs04/hors291.pdf [Accessed December 22, 2008]

- Offending behaviour programmes;
- Post-criminal justice employment schemes;
- Proper reintegration into society – especially for former prisoners;
- Drug and alcohol treatment programmes.

A recent, major evaluation of restorative justice schemes (discussed below) has found that some types of restorative justice also significantly decrease the frequency of offending.[23]

Finally, the Washington State Institute for Public Policy (WSIPP) has conducted a very thorough review of 571 crime reduction programmes from around the world, assessing not just their effectiveness in reducing crime but the overall cost-benefit calculation. Of the community-based sentences, the following were deemed most cost-effective:

Figure 6.1: WSIPP analysis of effective community-based sentences, and estimated social benefit per participant

Community-based sentences	Effect on crime outcomes	Benefits (total) minus costs (per participant)
Intensive supervision	-16.7%	$13,738
Cognitive behavioural therapy	-6.3%	$10,299
Drug treatment in the community	-9.3%	$10,054
Adult drug courts	-8.0%	$4,767
Employment and job training in the community	-4.3%	$4,359
Electronic monitoring to offset jail time	0%	$870

Of the *in-prison* programmes (not listed above), education both vocational and general, prison work and drug treatment were found to have the most benefit.[24]

Offending behaviour programmes are a well-established part of community sentences, though as we saw above provision for them is patchy, they are frequently unavailable, and suffer from very high attrition rates (see section 6.1 above). We also note that cognitive behavioural therapy programmes are currently popular because they are relatively easy to evaluate and show positive results in controlled assessments; but rolled out widely, with low programme integrity and potentially inappropriate targeting, their long-term efficacy has been questioned. As Kevin Howells writes in a discussion of poor experimental results from an anger management programme applied to violent offenders:

> *It is a very different task conducting anger management with someone who has no other serious problems apart from anger control itself than it is conducting the same program with an offender who*

23 Shapland J et al, 2008. *Does restorative justice affect reconviction?*, Ministry of Justice Research Series 10/08, p. 4. Available at: http://www.justice.gov.uk/restorative-justice.htm [Accessed February 22, 2009]

24 For further discussion see the Centre for Social Justice, 2009. *Locked Up Potential,* CSJ

> *has, for example, an antisocial personality disorder, severe substance abuse problems, limited verbal skills, and absence of family support.*[25]

Chapter 7 below deals with addiction treatment programmes in general, examples of which both the Home Office and Washington State reviews found to be beneficial.

A key theme in both reviews is the value of programmes which prepare and assist the offender post sentence.

6.3.2 CONTINUED SUPPORT ONCE THE SENTENCE STOPS

The importance of aftercare has been recognised for those leaving prison. A Home Office review in 2005 of 'what works' in reducing reoffending notes:

> *For most prisoners, efforts to cease offending constitute a long-term process, and participation in programmes whilst in custody is only part of the rehabilitative process. Factors such as employment and stable accommodation have a role in ensuring that gains achieved in prison are maintained after release and in reducing the likelihood of reoffending. It is important, therefore, for prisons to plan and arrange adequate aftercare and support before prisoners are released, as is shown by both British and American research.*[26]

Yet as the Centre for Social Justice's report on prisons, *Locked Up Potential*, demonstrates, this aftercare is completely absent for the majority of those sentenced to custody, and there is no supervision or aftercare provided at all for offenders leaving prison on short sentences. As section 5.3 argued, this is a dangerous omission as short-sentence prison leavers are the group most likely to reoffend, and most likely to commit serious offences.

More broadly, however, aftercare is essential to the success in the long run of any intervention, including those which take place during community sentences. It is important that treatment is not severed in the transition from criminal justice services to general services. Failure to connect up with aftercare services is one of the major problems of conducting social services through the criminal justice system. Chapter 9 looks at how the probation service should be organised to achieve better continuity.

6.4 Restorative Justice

Restorative justice is a process which allows the victim of a crime to meet the offender either in a controlled, mediated interview or in a conference with

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25 Howells K et al, 'Brief anger management programs with offenders: Outcomes and predictors of change. *Journal of Forensic Psychiatry and Psychology*, 16(2), 296-311

26 Chitty C & Harper G, 2005. *The impact of corrections on re-offending: a review of 'what works'*, Home Office RDS, p. xvi

other offenders and victims. It is an opportunity for victims of crime to make clear to the perpetrator the effect of their crime, thus facilitating closure.

Restorative justice is sometimes described as an alternative to criminal justice sentencing. The Centre for Social Justice report on policing, *A Force to be Reckoned With*, recommended that it play an important role in a police officer's use of structured discretion to deal with crime without necessarily involving the whole criminal justice system.[27] *Locked Up Potential* explored the use of restorative justice in a prison setting.[28] For our purposes, we consider its use as part of a community sentence.

> "It's made me look at myself, what kind of person I am. I want to change."
>
> A participating prisoner

> "I feel I have made a difference. I saw a glimmer of hope amongst those prisoners, and that made it worth it."
>
> A volunteer victim

Restorative justice conferencing embodies many of the virtues of probation which we identified in section 5.2. It is reparative, in that the victim is himself or herself making an apology. It is symbolic of community justice as the offender must publicly accept their guilt. Moreover, there is now fairly robust evidence that it reduces reoffending and helps towards rehabilitation by making offenders viscerally aware of the effect of their actions.

A recent, major Home Office-funded study evaluated a number of restorative justice schemes in England and Wales. Offenders who pleaded guilty were enlisted before they were sentenced, and their victims were contacted to see if they were willing to participate.[29] At the different sites, between a half and third of victims agreed to take part in the process. At this stage, three of the trial sites used the volunteers to conduct carefully designed, randomised, controlled trials – the gold standard in social research. The volunteers were randomly assigned into two groups: one group progressed to conduct restorative justice conferencing, and the offenders from the other group were used as a control. There were about 350 restorative justice participant offenders with a control group of the same size.

While the study did not show any significant decrease in the absolute proportion of offenders who were reconvicted, it did detect a significant reduction in the *frequency* of reconviction by an average of 27 per cent (that is to say, the total number of offences committed by the restorative justice groups were lower than the control groups).[30] This means a significant decrease in the overall amount of new crime committed by these offenders. Moreover, a cost-benefit analysis of the most successful site, in Northumbria, estimated that £9 of costs to future victims and the criminal justice system was saved for every £1 spend on the conferences.[31]

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27 The Centre for Social Justice, 2009. *A Force to be Reckoned With*, CSJ, p. 112

28 The Centre for Social Justice, 2009. *Locked Up Potential*. CSJ, p. 195

29 Shapland J et al, 2008. *Does restorative justice affect reconviction?*, Ministry of Justice Research Series 10/08, p. 4. Available at: http://www.justice.gov.uk/restorative-justice.htm [Accessed February 22, 2009]

30 University of Cambridge, 27 June 2008. 'Restorative justice reduces crime by 27%', Press Release. Available at: http://www.admin.cam.ac.uk/news/press/dpp/2008070807 [Accessed March 4, 2009]

31 Ibid

These trials broadly confirmed the findings of a survey of international evidence on restorative justice.[32]

A cost-benefit analysis of the most successful restorative justice conferencing programme found that £9 of costs to future victims and the criminal justice system was saved for every £1 spent on the programme.[33]

6.5 Fines

We have concentrated so far on community sentences and short prison sentences. Magistrates' courts also frequently impose fines. Fines are a mundane but effective penalty in appropriate cases, and can be usefully applied to offenders who will not 'benefit' from a community sentence.

The confidence of sentencing courts in the effectiveness of fines is undermined by two factors. The first is a perception that they are simply not enforced in a large number of cases, a problem which the Courts Service has addressed recently with considerable success. A further problem is that the information available to the sentencing court as to the financial means of a defendant is unreliable, since a claim that a defendant is on benefits is routinely not checked, nor are statements about income levels verified in any way. The administrative difficulties of requiring documentary proof of benefits, and if necessary cross-checking an assertion that a defendant is on benefits or has a particular income level with social security or tax offices, are not insuperable and need to be overcome if the fines regime is to be properly used.

6.5.1 VICTIM SURCHARGE

As the Working Group reviewed policy on fines, we became aware of the great frustration and anger caused by the so-called £15 'victim surcharge'.

This was originally introduced to 'rebalance' the criminal justice system towards the victims.[34] At present it is imposed on top of fines in many categories of offences, but not custodial sentences or community sentences. As it is only added to fine sentences, it is on the whole paid by those who break the law without directly involving a victim, such as motoring fines.

The victim surcharge is supposedly used (although not strictly hypothecated) to fund services for victims. However, this surcharge is universally disliked by all involved, including by the sentencing courts which are required to impose it. The Working Group believes that the victim surcharge raises little or no extra money, because frequently the courts choose to reduce the amounts of fines so that the fine plus victim surcharge are within the ability of the offender to pay. Moreover, the results from the first full year of the scheme showed that the scheme raised only a small fraction of the

32 Sherman L & Strang H, 2007. *Restorative Justice: the evidence*, The Smith Institute

33 University of Cambridge, 27 June 2008. 'Restorative justice reduces crime by 27%', Press Release. Available at: http://www.admin.cam.ac.uk/news/press/dpp/2008070807 [Accessed March 4, 2009]

34 *The Daily Telegraph*, 6 December 2008, '800,000 criminals evade new 'victims surcharge"

revenue expected: while the government estimated that it would raise about £16 million through the scheme, the actual revenue was £2 million.[35]

6.6 Summary

The major challenge for the probation service is to reduce the amount of reoffending of those who are on an order. Despite the recent apparent reduction in the rate of reoffending (measured by reconvictions but excluding cautions) it seems unlikely that this is the result of a change of probation practice. Similarly, the current regime of short prison sentences leads to mass reoffending once out in the community.

It is unrealistic to expect the probation service magically to transform disrupted lives of people who are unwilling participants. Nonetheless, there are clear areas for concern. First, suitable programmes must be resourced properly and made available to sentencing courts. Secondly, they need to be correctly targeted; if, for example, it is deemed unlikely that an offender will bother to attend a course, he should not be signed up for it, but given an unpaid work requirement instead. The probation service also needs to be more transparently accountable to the courts. Both courts and probation need to be allowed to exercise some degree of professional discretion.

6.7 Proposals

6.7.1 OVERHAUL OF SHORT SENTENCES

Abolish very short sentences

The practical outworking of sentencing structures on magistrates' powers means that magistrates are able, in effect, to send someone to prison for about six weeks, or two months at the most (see section 11.4.3). As we ascertained in section 5.4 above, the offenders sentenced to short sentences are among the most prolific offenders. The public benefit from their rehabilitation would be immense.

For the reasons outlined in section 6.2 above, we believe that 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 doubtable deterrent effect on general crime, and the lack of any follow-through.

The Working Group proposes that very short prison sentences, where the period of incarceration under sentence is less than four weeks, be abolished as a primary sentence for a crime.

Under such a proposal, all those who at present receive nominal custodial sentences of less than approximately eight weeks (i.e. four weeks of actual time in prison) would no longer receive a custodial sentence, but a community

35 Ibid

sentence backed by the threat of custodial sanctions for non-compliance. This type of community sentence is discussed more fully in section 8.5.3.

We also stress that the important consideration here is the actual amount of time that the offender would spend in prison – so the sentencing court would have to take into account those decisions about early release and risk which are currently taken 'at the back door' of the prison through Home Detention Curfew and End of Custody Licence, as we describe in section 11.4.1. If, after the up-front calculations are made, it is deemed that the offender deserves a sentence which would lead to less than four weeks of actual time in prison, the sentence would become a community sentence backed by a custody sanction.[36]

Court-structured sentences

The Centre for Social Justice prison reform review, *Locked Up Potential*, recommended new targeted and tailored interventions for short-term prisoners. Our Working Group believes that a court-mandated, structured prison sentence would aid the development of this.

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). Moreover, since the court would order that certain rehabilitative programmes take place, the prison would then be held responsible for carrying out the court's order (see below).

The Working Group proposes that the court be given power in appropriate cases to mandate the structure of short prison sentences.

The needs and circumstances of the particular offender would determine the contents of a particular sentence. By way of example, imagine that a pre-sentence report identified that the offender had poor reading skills, was unemployed, and had a partner with whom he was in a difficult relationship. The court would mandate a reading course and a relationship programme, perhaps based on the Time for Families model (see section 12.4). Sometime before release, a probation officer would meet up with offenders to plan for their continued employment or training post-release.

It remains to be seen in practice how precisely a court could define the services to be undertaken on sentence. But there is no reason why, for example, if it is known that a particular prison has a drugs course in operation, the sentencing court should not have the power to require that the prisoner attend.

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 sentence. In just the same way that more serious community sentences are subject to review, the prison sentence, which is supposed to be more severe than a community sentence, would be subject to similar oversight by the court.

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36 We also stress that these proposals do not affect the status of civil sentences of committal.

This proposal also signals a decisive shift away from the centralising trends that we describe in Chapter 12 where authority over the criminal justice agencies accrues at the centre. Instead, the courts would be directly responsible for the sentences they hand down; and the local Criminal Justice Board would be accountable for providing the structured programmes both in and out of prison that would be needed by courts in its area in order to make their sentences effective.

Accountability of sentence provider

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.

The Working Group proposes that the prison governor should be held responsible for the successful completion of the prison-based part of the court order.

We do not suggest that the governor must appear at court every time a sentence is not carried out. Nonetheless, 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 (as described in section 12.5) which would be responsible for resolving difficulties in the practical provision of sentences of the kind which the courts think it most appropriate and effective to impose.

Standardised starts

If we are serious about wanting to provide education or rehabilitative programmes, then there is a need for standardised start and end dates for these courses. Consequently prison sentences of this order need to take on a more standardised form. Educators and those working to help prisoners would greatly benefit from 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.

The Working Group proposes a study assessing the feasibility of limiting magistrates' custodial sentencing powers to 'four weeks plus', 'eight weeks plus', or 'twelve weeks plus'.

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.) Knowing that an offender would be in place to start a particular course on a

particular day, and consequently knowing the end date and day of release, would allow for proper planning around an offender's needs and also the prison's capabilities.[37]

6.7.2 SUPPORT AND SUPERVISION FOR PRISONERS RELEASED FROM SHORT SENTENCES

The fact that the vast majority of prisoners released each year receive no statutory support or supervision in the community is damaging for both the public and the offender. High and expensive levels of reoffending by this group demonstrate this (see section 5.4).

Post-sentence supervision in the form of Custody Plus was the most far-sighted creation of the Criminal Justice Act 2003. It was never introduced. It is sometimes argued that it was shelved for reasons of expense; however, given the high cost of reoffending, we believe any new public expenditure required to resource Probation Officers properly to provide such support or to establish mentoring schemes such as the one proposed in *Locked Up Potential*,[38] would be recouped relatively quickly as a result of even a relatively minor reduction in recidivism. Moreover, the government did find the money to implement other, less necessary criminal justice reforms such as the creation of NOMS, as we discuss in Chapter 12.

Post-release supervision for offenders serving short sentences will not just promote better rehabilitation. It will also 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 jail, it is simply misleading to pretend otherwise.

The Working Group therefore proposes that all prisoners released from prison, regardless of their sentence length, should be automatically considered for appropriate support.

6.7.3 SUPPORT AND SUPERVISION OF PRISONERS RELEASED INTO THE COMMUNITY

Post-release supervision and resettlement support is crucial to our vision of sentences that work. The imprisonment part of a custodial sentence must be

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37 In debating the sentencing powers of the magistracy, the Working Group discussed an alternative scenario under which magistrates' courts should no longer have the power to sentence offenders to custody. If a magistrate thought that a particular crime deserved a custodial sentence, they would in this scenario commit the offender to the Crown court for sentencing. It is suggested that this would make magistrates consider non-custodial sentences more closely; and that, in committing for sentencing they could remand offenders to custody if they were considered to be dangerous, thus creating scope for a 'short sharp shock'; and that, finally, Crown courts are better placed to oversee sentences (in line with the proposals of section 8.5.3). There are however problems with this proposal. First, there is no evidence that magistrates are especially eager to sentence offenders to custody. Secondly, a committal to the Crown court would add to the delay in disposing of cases as well as creating additional work in the Crown court. The average period of committal is four to five months (Ministry of Justice, 2008. *Judicial and Court Statistics report 2007*, MoJ, pp. 112-113). Thirdly, even assuming that the Crown court could deal rapidly with cases in which the offender is remanded in custody, this might create a 'short sharp shock', but it would be very difficult to structure this time on remand in the beneficial manner we discuss in this section. It would serve no rehabilitative purpose.

38 The Centre for Social Justice, 2009. *Locked Up Potential.* CSJ, p. 222

seen as *just one constitutive part of the sentence*. It should not be thought of as the sentence proper, nor should it necessarily be considered the most important part of the sentence. Rather it must be integrated properly into a larger whole which includes post-release support.

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 potentially frayed family relationships, evidence suggests there is a very high risk of reoffending within a short period of time.[39]

Released prisoners with a history of drug or alcohol abuse have, in the absence of coordinated and continued support in the community, a particularly high risk of returning to their habit, as well as to criminal behaviour in order to pay for it. The absence of such support can also undermine any progress made during expensive models of custodial treatment.

The importance of providing support for all prisoners planning for resettlement, particularly in finding somewhere to live and work, cannot be stressed enough. For longer sentences, this could well include both transferring prisoners to accommodation where day-release for work is allowed for a period before formal release, and also ensuring the availability of supported housing after release, so as to achieve gradual and sustainable resettlement.

Supervision on release from prison would also allow probation officers to interact with ex-offenders routinely, and thus be aware early if things start going wrong.

It should also be added that there is at present no system of support for prisoners who are released from remand in prison after an acquittal. This is anomalous, since such prisoners are likely to be just as much in need of support for their immediate needs and for resettlement as prisoners who have spent an equivalent time in custody post sentence. This is a gap in the system which needs to be plugged.

The Working Group proposes that 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.

With regard to prison leavers, we direct the reader to the specific and detailed recommendations for continued housing, employment and family support made in *Locked Up Potential*.[40] We agree that special attention should be paid to offenders leaving prison at the end of short sentences.

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

40 The Centre for Social Justice, 2009. *Locked Up Potential*. CSJ, Ch. 8

Any expansion of the open prison estate to achieve this should ensure establishments are rooted in the community with close access to homes and work opportunities. At present too many are located deep in the countryside, away from such opportunities.

6.7.4 CONTINUITY IN SERVICES WHEN SENTENCES COME TO AN END

In addition to the loss of support which prison leavers experience when they complete the incarceration section of their sentence, many offenders on community sentences and on parole experience a similar discontinuity when they reach the end of their sentence. Where the offender is receiving treatment within the criminal justice system for a specific problem such as drug addiction, or even where he or she is simply in need of continuing support and advice, it is important that the system does not simply 'dump' the offender at the end of the sentence period. We should develop a system which delivers 'joined-up rehabilitation'.

The Working Group therefore recommends 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, as we explore in section 12.4 below.

6.7.5 ABOLISH THE 'MORE ONEROUS' BREACH REQUIREMENT

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 judgements of sentencers and probation officers should be respected.

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

The court should instead have the power to trigger a review of the sentence as an alternative to breach proceedings when the terms of community sentence are breached. This is explored more fully in section 9.4

6.7.6 EXPAND RESTORATIVE JUSTICE CONFERENCING

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. Nonetheless, considering restorative justice as a replacement for a sentence is problematic: it is unfair to those offenders whose victims are unwilling to meet, and would create an inducement to feign cooperation and remorse.

We propose that restorative justice conferencing be added to the 'menu' of community sentence requirements. We also believe that it is particularly

> "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

appropriate for use as part of the deferred sentence (see section 8.3), especially given its requirement for victim consent.

6.7.7 MORE UNPAID WORK AS A SENTENCE

Unpaid work is popular with both magistrates and the public. Especially in the light of current changes to incapacity benefit rules (to change the emphasis towards what a person can do, rather than what he or she cannot do), there is a need to widen the types of work which are made available for offenders to carry out. Too often sentencers are confronted by apparently able-bodied and coherent defendants who claim to the courts (very often successfully) that they are unable to undertake unpaid work. 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.

We envisage that the devolution of budgets to local areas will encourage more effort to be put into this.

The Working Group proposes that the range of work made available for offenders under Unpaid Work schemes 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.

6.7.8 INCREASING THE RATE OF FINES

The Working Group proposes that a court considering a fine should have routine access to information about how much benefit an offender receives.

> "Seventy-three per cent of the public thinks that the agencies who deal with taxes and benefits should be able to share information with the Courts Service concerning offenders' earnings, to allow judges to set more appropriate fines."
>
> YouGov poll commissioned by the Centre for Social Justice, January 2009

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; and that, if necessary, information given by defendants about their income levels should be routinely cross-checked with social security offices.

6.7.9 ABOLISH THE VICTIM SURCHARGE

The Working Group proposes that the 'victim surcharge' should be abolished.

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

However, we acknowledge that the surcharge has provided useful funding for victim services, primarily in the field of domestic violence, and so we would want to ensure that this funding was replaced.

SEVEN
Dealing with Substance-Abusing Offenders

This chapter looks at how the criminal justice system typically deals with substance-abusing offenders. Despite a high prevalence of such offenders in the criminal justice system, and evidence that they are a group which offends prolifically, addiction treatment options are under-used; and despite evidence for the effectiveness of particular models, the drug treatment programme as a whole is not very successful. We situate this failure in the 'maintenance' model of treatment currently in vogue in England and Wales. Chapter 8 below looks at addiction courts as one example of more innovative sentencing structures.

7.1 Prevalence

In Chapter 3 we saw the prevalence of substance misusers at the court. One study showed that half of arrestees for certain common crimes were classed as dependent drinkers,[1] and more than half admitted to having taken an illegal drug during the previous month.[2] In a study of offenders sentenced for street violence (including car-jacking, street robbery, snatch thefts, and some aggravated burglaries), less than one in ten claimed never to have used illegal drugs. Fifty-nine per cent of the total sample reported using heroin and crack, mostly during their recent period of offending[3] (see section 3.2.3).

Records from the Ministry of Justice show that 22 per cent of those on community sentences have drug misuse problems, and 46 per cent of them have alcohol misuse problems.[4] While this is significantly lower than the 39 per cent of offenders on community sentences who said they had used a Class-A drug in the previous year (see Figure 4.3 above), the true figure for those with serious substance misuse problems is probably somewhere in between these two percentages.

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1 Boreham R, 2007. *The Arrestee Survey 2003-2006*, Home Office, Table 3.15
2 Ibid, Table 3.1
3 Bennett T, 2006. *A Qualitative Study of the Role of Violence in Street Crime*, Economic and Social Research Council, p. 7
4 Solomon E & Silvestri A, 2008. *Community Sentences Digest* 2nd ed., Centre for Crime and Justice Studies. pp. 27, 29

7.2 The National Options: Drug Rehabilitation Requirements and Alcohol Treatment Requirements

Drug-dependent offenders can be sentenced to community orders or suspended sentence orders with a Drug Rehabilitation Requirement (DRR) attached to it (formerly this was a free-standing sentence called a Drug Treatment and Testing Order). The sentence typically involves regular contact with the probation service, a methadone prescription for heroin addicts, as well as drug tests – though positive tests (i.e. proof that the offender has been using) do not immediately result in breach. For offenders in 'higher sentencing bands', the DRR may contain cognitive behavioural classes focused on tackling an addiction.

Drug Rehabilitation Requirements help offenders deal practically with their addiction

The sentence can last a minimum of six months and a maximum of three years, and a drugs team worker estimated the average to be about a year. A section 178 review (the legal basis for drugs court reviews, discussed in Chapter 8) can be attached to the order, so that the sentence is reviewed by the judge.

For alcohol-dependent offenders there is the Alcohol Treatment Requirement (ATR), which is also introduced as a module of a community sentence. It is designed to tackle entrenched alcohol dependencies. For those not sentenced to an ATR, probation may still recommend various alcohol-related offending programmes.

7.3 Under-Used

As Figure 7.1 demonstrates, the relevant treatment is not often provided for offenders.

Figure 7.1: The under-use of treatment and rehabilitation requirements on community sentences

Factor underlying (sic) offending	Incidence amongst offenders on community sentence (%)[5]	Relevant requirement	National use of requirement in 2008 (%)[6]
Alcohol Misuse	46	Alcohol Treatment	2.2
Drug Misuse	22	Drug Rehabilitation	5.8

The table suggests that relevant treatment is provided in under five per cent of cases for alcohol abusers, and only 26 per cent of cases for drug abusers on community sentences. This indicates a serious shortage of intervention, and we

5 Solomon E & Silvestri A, 2008. *Community Sentences Digest* 2nd ed., Centre for Crime and Justice Studies. pp. 27, 29

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

stress that the figures for incidence used in the table are the most conservative figures available (see section 7.1 above).

In interpreting this data, there are a number of factors to consider. First, it might be thought that many of these offenders were already receiving addiction treatment with an NHS Primary Care Trust. However we know that characteristically many offenders have not received proper treatment.[7]

As regards the alcohol order, it is intensive and designed for those with serious dependencies. The National Audit Office suggests that it is under-used,[8] and the National Association of Probation Officers found that it was the order most likely to be completely unavailable in many probation areas. This shortage appears not to have improved since the availability was described as 'scarce' in a 2006 report by HM Inspectorate of Probation. The report noted as well that there were no targets for Alcohol Treatment Requirements: in current conditions this means that their development is unlikely.[9]

There is very little treatment available for drug and alcohol addictions in the criminal justice system apart from the ATR and the DRR. Clearly recognised problems are simply not being addressed.

7.4 Are the Programmes Effective?

In addition to the shortage of treatment, we have serious concerns about the quality of treatment available. As we recognised in section 6.3, there is evidence suggesting that certain drug and alcohol treatment programmes effective in reducing crime do exist. However, most of these assessments are based on programmes abroad or on one-off pilots. They do not assess the national situation in England and Wales with regard to the DRR and ATR. While it is undoubtedly true that well-designed programmes can help, the current regime of addiction treatment in England and Wales leaves much to be desired.

7.4.1 ALCOHOL TREATMENT REQUIREMENT

Anecdotal evidence from magistrates we spoke to suggested that some of the alcohol cognitive behavioural programmes were popular and had a good reputation, particularly those targeted at drink-driving. However, as regards the formal Alcohol Treatment Requirement, the fact that it is very rarely used means that there is little data on its effectiveness across the country. As the Centre for Social Justice report *Locked Up Potential* showed, the situation with in-prison alcohol treatment is much the same – there is almost no evaluated alcohol treatment in the prison estate.[10]

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7 McSweeney T, Turnbull PJ & Hough M, 2008. *The treatment and supervision of drug-dependent offenders*, Institute for Criminal Policy Research, p. 16

8 The National Audit Office, 2008. *The National Probation Service: The supervision of community orders in England and Wales*, The Stationery Office, p. 26

9 Her Majesty's Inspectorate of Probation, 2006. *'Half Full and Half Empty: An Inspection of the National Probation Service's substance misuse work with offenders'*, HMIP, p. 3

10 The Centre for Social Justice, 2009. *Locked Up Potential.* CSJ

7.4.2 DRUG REHABILITATION REQUIREMENT

Drug treatment is under-provided in relation to the scale of the drug problem. Moreover, the quality of such treatment available nationally leaves serious cause for concern. The DRR is characterised by very high reconviction rates; the primary reason (discussed below) is a reliance on maintenance rather than recovery.

Of those who commenced Drug Treatment and Testing Orders in 2005 (the forerunner to the Drug Rehabilitation Requirement), 70.3 per cent reoffended during the year following the commencement of their order,[11] and 81.1 per cent within two years.[12] This compares to an average of 48.5 per cent of all those commencing community orders (including DTTOs) reoffending within the same period.[13] Those on DTTOs also offended much more prolifically during the year following the start of their community order – 306.9 convictions per 100 offenders in the year, compared to a weighted average of 126.4 convictions per 100 offenders for other community sentences (excluding DTTOs).[14] Offenders on DTTOs commit almost two and a half times as many offences as others on community orders – and this takes into account only crimes for which they are convicted.

These figures demonstrate that drug-addicted offenders are generally highly prolific offenders; but they also suggest that drugs orders are not having a transformative effect on offenders' lives, as many continue to offend as before.

Section 5.3.1 described the method of comparing actual reconviction rates for an order with a statistically generated 'hypothetical' reconviction rate of someone not subject to that order. Such comparisons were done a few years ago for drug treatment options. Some of the cognitive behavioural substance misuse programmes (attached to community orders) have shown a hypothetical decrease in the proportion of offenders reoffending against the predicted rate, though mainly in those who completed the programme (i.e. not including those who started but dropped out).[15] The same study also showed that those who were sentenced to DTTOs (the precursor to the Drug Rehabilitation Requirement, i.e. the full drugs order, and not just a discrete cognitive behavioural programme) between the years 2002 and 2004 were more likely to reoffend than was statistically predicted.[16] There was also a very high drop-out rate: in 2007–2008, more than half of all drug requirements or

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11 Ministry of Justice, 2008. *Re-offending 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 reoffending, 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.

12 Ibid, Appendix I, Table A5. Available at: http://www.justice.gov.uk/docs/re-offending-adults-2000-05-appendix-i.xls

13 Ibid

14 Ministry of Justice, 2008. *Re-offending of adults: new measures of re-offending 2000-2005 (England and Wales)*, MoJ, Table A5. The weighted average is calculated from the table.

15 Hollis, V., 2007. *Reconviction Analysis of Interim Accredited Programmes Software (IAPS) data*, RDS NOMS, Table 8

16 Hollis V, 2007. *Reconviction Analysis of Interim Accredited Programmes Software (IAPS) data*, RDS NOMS, Table A2

orders were not completed.[17] While individual programmes have been successful, the current national strategy, according to this measure, is not successful.

7.5 Not the Fault of a 'Criminal Justice' Approach

These equivocal outcomes for drug and alcohol related requirements are sometimes accounted for by a contention that the threat of a sanction for non-compliance is not sufficient to deter someone trying to kick an addiction. If an addicted offender is not committed to the idea of kicking his habit then critics argue that treatment will not work, regardless of whether there is a sanction. Moreover, critics suggest that if a person has not accessed treatment in the community voluntarily, then that is evidence that he is not motivated. If this is the case, a criminal justice sanction for non-compliance with drugs treatments is useless and therefore wasteful of resources.

Against this conventional wisdom, however, a study by a team from King's College London has recently shown that court-mandated drug treatment is equally as effective in tackling addiction as the same treatment voluntarily undertaken.[18] The authors suggest that the reason for this is that some degree of coercion is present in all positive attempts a person makes to change his or her life: for example, an addict trying to get free of drugs might have received an ultimatum from a parent or partner. The study shows that, of the court-mandated, 'coerced' group, two-fifths said they did not feel any external pressure to be in treatment; conversely, half of those who came through non-criminal justice routes cited pressure from family and friends as their reason or attending.[19] Court-mandated drug treatment offers a focused opportunity to engage.

The study shows therefore that that the success rate of court-mandated drug treatment is as effective, or ineffective, as those who were not so coerced. The poor results from drug rehabilitation requirements therefore suggest that the fault lies in the underlying approach to treatment of drug addiction in England and Wales. In November 2008 it was revealed that only 3.6 per cent of the 82,000 people who commenced drug treatment (not just in the criminal justice system) in 2007 were helped to become drug-free, despite a targeted £500 million annual spend.[20] Criminal justice drug treatment is performing no worse than our general drug treatment, so we need to look at criminal justice treatment in this broader context, as the problem appears to lie in the method not the administration of drug treatment.

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

18 McSweeney T et al, 2007. 'Twisting Arms Or a Helping Hand?: Assessing the Impact of 'Coerced' and Comparable 'Voluntary' Drug Treatment Options', *British Journal of Criminology*, 47(3), 470-490

19 Ibid, p. 475

20 BBC news, 2 October 2008, 'Record number treated for drugs'

7.6 Shortcomings

There are several shortcomings of criminal justice drugs policy.

7.6.1 MANAGING THE ADDICTION, NOT OVERCOMING IT

Dealing with addiction in the criminal justice system may lead to an approach whereby the purpose of tackling the addiction is merely to reduce crime. This is part of a harm-reduction philosophy, the goal being to minimise harm to the offender and broader society (through less reoffending). Prescribing methadone is supposed to release the addict from the need to steal in order to feed his addiction.

We have already queried, in Chapter 3, whether the relationship between drug addiction and offending is as causal and linear as the above statement implies. The evidence as to whether methadone replacement itself results in less crime is still disputed: a recent Scottish study found 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.'[21]

There is a deeper objection to this replacement method, however, which is that such intervention does not actually tackle the underlying personal problems or attitudes which are encouraging both offending and drug dependency. The practical effect of the focus on maintenance has been the closure and chronic underfunding of programmes (often necessarily residential) which aim ultimately to get offenders drug-free. We should stress that total freedom from addiction is what addicts themselves say they want: the major Drug Outcome Research Study in Scotland found that 56.6 per cent of drug treatment clients entering treatment hope for recovery from drug use through abstinence.[22] Though there is no law against sending offenders to residential rehabilitation, it is done very infrequently. That such residential treatment could not be mandated by the court was lamented by Judge David Fletcher of the North Liverpool Community Justice Centre.

> "I would appreciate the opportunity to require and mandate residential drug treatment."
>
> Judge David Fletcher, North Liverpool Community Justice Centre, in evidence to the CSJ

Experienced addiction workers know that, very often, complex psychological traumas underlie addictive behaviour – many people who use drugs do so as a way of coping with personal difficulties. Judges and court workers also testify to the large number of people who simply have difficulty coping with normal everyday life.[23]

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21 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

22 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

23 South N, 2007. 'Drugs, Alcohol, and Crime', in M Maguire R Morgan & R Reiner, eds. *The Oxford Handbook of Criminology*. Oxford: OUP, pp. 811-838

There is no doubt that methadone and other opiate replacements can play a part in drug treatment. Equally, there is little public argument with the idea that being drug-free is better than being on methadone. However, the evidence is equally clear that on the whole, once people with addictions are transferred onto methadone, they are left there by the health services, and do less well than those in residential treatment. According to Professor Ian McKeganey:

> *The ones who have been on the methadone programme, the proportions who have achieved abstinence after three years is not even in double figures in terms of percentages - it is around 7 per cent. The proportion that become abstinent who have had residential treatment approaches 30 per cent.*[24]

> "The government is afraid of abstinence."
>
> Levi Sudak, Drugsline, in evidence to the CSJ

Scotland has recently seen a radical shake-up of its drugs policy; the focus has now shifted to supporting abstinence-based treatment. The situation is different south of the border. In a press release in November 2008 the NHS announced that 'abstinence-based drug treatment will grow by more than 2,000 places a year following over £54 million of government capital funding' through the creation of 500 'extra beds for residential and in-patient drug treatment'.[25] The accuracy of this release was immediately questioned by a number of organisations who pointed out that this money was first set aside in 2006, that the terms of the scheme make no reference to a goal of abstinence, and finally that it is left deliberately vague as to whether the 'extra' 500 beds is a figure that takes into account the widespread closures of residential rehab clinics through lack of referrals from Local Drug Action Teams.[26] The reality is that, in the last two years, 15 of the UK's 100 residential drug rehabilitation centres have closed.[27]

> "To detoxify someone off methadone is one of the hardest detoxes there is. I would rather take the heroin; it's much easier coming off heroin than coming off methadone."
>
> Dr Neil Brenner, The Priory, North London[28]

7.6.2 METHADONE: ADDICTIVE

Methadone is a more addictive substance than heroin. The withdrawals are stronger and longer. This means daily disruption in the form of visits to chemists and nurses. Paradoxically, the very success of the National Treatment Agency's treatment targets (focused on getting people into treatment, both in and out of the criminal justice system) has created a pool of dependent methadone users.

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24 In evidence to the CSJ, cited in: Social Justice Policy Group, 2007. *Breakthrough Britain: Volume 4: Addictions*, CSJ, p. 23

25 NHS, 2008, 'Government support for abstinence-based drug treatment', Press release

26 Addiction Today, 30 November 2008, 'When is £54 million not £54 million?'. Available at: http://www.addictiontoday.org/addictiontoday/2008/11/q-when-is-54million-not-54million.html [Accessed March 4, 2009]

27 *The Independent*, 1 February 2009, 'UK drug rehabilitation service is 'collapsing"

28 Social Justice Policy Group, 2007. *Breakthrough Britain: Volume 4: Addictions*, CSJ, p. 27

7.6.3 A MAINTENANCE REGIME ONLY TARGETS HEROIN

Criminal justice addiction treatment is built on the model of a heroin user who does not have concomitant problems with alcohol and other drugs. As we heard from our visit to Glasgow Drugs Court, and as is well attested in relevant literature, there is very little in the way of pharmacological intervention for cocaine or crack or other stimulants. Yet Figure 3.3 above shows that a significant proportion of those at different stages of the criminal justice system report crack and cocaine problems. A survey of arrestees showed that 11-15 per cent admitted to having used crack in the previous month; and 55 per cent of referrals to drug treatment via the criminal justice system reported a problematic use of crack.[30] The Arrestee Survey showed that more than 90 per cent of crack users had never engaged in treatment, even though a majority said they would have liked it.[31] The current maintenance-focused treatments are simply not geared to tackle this kind of addiction.

> "I often wondered what message this gives to young people with addiction: 'We don't really care about what would happen to you. As long as you do not kill or mug anybody, you may go along and shoot yourself to oblivion in our Heroin Galleries and live in the land of your bliss as long as you like.' Harm reduction has a place in treatment. But it should open many other doors including the path towards abstinence."
>
> Dr Kah Mirza, Lecturer and Consultant Adolescent Psychiatrist at the Institute of Psychiatry[29]

Pharmacological intervention coupled with cognitive behavioural therapy programmes (which constitute the totality of most Drug Rehabilitation Requirements) may have a small effect on reducing crime by stabilising some offenders, but without serious efforts to tackle the underlying personal circumstances and problems which lead to drug addiction, along with a motivational therapeutic relationship with someone whose goal is to help the addicted person towards independence from all drugs, we will continue to see underwhelming results.

7.7 Proposals

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

Addiction treatment is underfunded and wrongly targeted, and in common with non-criminal justice treatment, focused on maintenance rather than recovery. The critical change needs to happen outside of the criminal justice system, in broader drug treatment. The example of offenders turning themselves in because they cannot access treatment outside of the system is a shocking indictment.

Our proposal in section 12.6.2 for pooled sentencing budgets and continuity between criminal justice interventions and regular social

29 Social Justice Policy Group, 2007. *Breakthrough Britain: Volume 4: Addictions*, CSJ, p. 9
30 McSweeney T, Turnbull PJ & Hough M, 2008. *The treatment and supervision of drug-dependent offenders*, Institute for Criminal Policy Research, p. 19
31 Ibid, p. 16

services should result in better treatment in the system. The creation of 'addictions courts' (section 8.5.1) rather than drug-specific courts should focus attention on the mental and situational aspects of an addiction, rather than the particular manifestation of, say, a heroin addiction.

> "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

7.7.1 RECOVERY NOT MAINTENANCE

For some offenders, the moment of coming to court is when they realise they might need help; and it also presents an opportunity to offer this help. There must be provision for those who say they want to go into residential rehabilitation, and their desire to become drug free should be respected and reinforced.

7.7.2 EXPAND THE AVAILABILITY OF RESIDENTIAL ADDICTION REHABILITATION

Many people with addictions want to become abstinent, not just 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.

Many addicted offenders currently sentenced to prison would benefit from treatment in a drug-free environment. As *Locked Up Potential* showed, drugs are widely available in many prisons,[32] and the Working Group heard anecdotal evidence that drugs are available even in many drug-free wings.

The Working Group therefore proposes a reversal of the closures of residential rehabilitation centres; and that it be made easier for probation services to utilise residential rehabilitation centres.

Furthermore, we propose the piloting of secure residential drug treatment facilities, with a focus on abstinence, as an alternative to certain short prison sentences.

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 (discussed in section 8.3 below).

7.7.3 SENTENCING TO DRUG REHABILITATION

Offenders who express a desire to go into drug rehabilitation should be given the chance to do so. The power for the court to mandate this as a type of custodial sentence, in appropriate cases, would greatly appeal to many magistrates and judges, and would force the creation of the requisite number of places, both secure and open.

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32 The Centre for Social Justice, 2009. *Locked Up Potential*. CSJ, p. 128

The Working Group proposes a review to 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.

This proposal should be considered alongside the proposal made in section 6.7, regarding the sentencer's continued involvement in the sentence.

EIGHT
Problem-Solving Courts

In discussing community sentences we identified several problems with the way they are resourced and overseen. This chapter looks at a new model of overseeing sentences: a continued engagement by the judge or magistrate with the offender and with the probation service over the course of the sentence. New sentence structures will also allow for greater discretion and local tailoring of sentences. Finally, the role of the courthouse in identifying those with problems is developed.

> "If someone's inclined to play the system, our current sentencing structures just reinforce that behaviour."
>
> District Judge John Feinstein, Salford Magistrates' Court

There are a growing number of drugs courts and community justice centres in England and Wales. Though the details vary, these courts are generally characterised by the expanded use of a sentence review, whereby the judge or magistrate reviews the offender's progress on his community sentence; and the coordination of the sentence with statutory service agencies. The power of sentence review is available to sentencers at any court, but it is rarely used outside of the specialist courts.

These specialist courts also, generally, make an effort to connect with the local community in which they are situated – in the way that magistrates' courts are theoretically supposed to do – through open-days, consultations with local schools and residents groups and so on. The Working Group visited three community justice centres around England: the North Liverpool Community Justice Centre (which has been established the longest); the Salford Community Justice Magistrates' Court, and the West London Drugs Court. By way of comparison we also visited the Glasgow Sheriffs' Drugs Court.

8.1 Community Justice Centres

The Community Justice Centre in North Liverpool is presided over by Judge David Fletcher. The court has two distinct purposes: to connect with the community it serves, restoring confidence; and to facilitate 'problem-solving' sentencing in a bid ultimately to reduce reoffending.

Community groups, such as the Breckonfield and North Everton Neighbourhood Council, work with the court, informing it about local

conditions and problems. Open days are held for the community to become familiar with the court, including 'You be the Judge' events, where members of the public were given the opportunity to judge and sentence a mock-defendant.

The court building itself houses probation, social services, housing, addiction workers, Youth Offending Teams and other social support agencies. Offenders are encouraged to make contact with these agencies regardless of the severity of their offence.

For more serious offences, the court invokes section 178 review powers on community sentences, bringing the offender back for review every six to eight weeks. At these sessions, the probation officer gives a progress report in the presence of the offender, highlighting successes and failures such as obtaining negative drug tests, or otherwise. The officer also reports on compliance with other aspects of the community sentence. The judge praises, encourages or castigates the offender as appropriate.

While it was clear that the encouragement from the judge was valued by defendants, several offenders we spoke to in private told us that their main reason for complying was the threat of going to prison. In this they were misinformed, as the judge had no power to impose any interim sanctions, and no obligation to imprison them for breach of the community order – as is the case with a regular community sentence. In order to 'breach' the offender, formal proceedings would have to be begun by the probation service and a special breach session held (rather than the review session). While in the short term offenders may be confused by the power of the review court, in the longer term this useful fiction cannot be sustained.

> "You feel more satisfaction with the work you're doing when you can address the defendant in plain language. And defendants have sometimes been more forthcoming than their solicitor would like."
>
> Pauline Holt, Magistrates' Bench Chairperson, Salford Magistrates' Court

The Salford Community Justice Centre is based in an existing magistrates' court (unlike the North Liverpool site which was purpose-built); consequently it is not able to collocate social services. The magistrates at the court are trained to use the section 178 review, although it is difficult to schedule offenders to appear before the same panel of magistrates at each review. The magistrates' bench chairperson at the Centre told us that she and her colleagues enjoy conducting the reviews, as they learn more about offenders and their communities than they did under previous arrangements. The court staff too were enthusiastic about events that would open the court to the public (similar to the North Liverpool court).

8.1.1 ARE COMMUNITY JUSTICE CENTRES SUCCESSFUL?

The Working Group is supportive of the 'community justice' aims of the Community Justice Centres; better connection with local residents allows courts to reflect public concerns more accurately, and subsequently impose sentences somewhat in accord with local concern about crime. The collocation of social services at the courthouse is also welcome, though expensive.

Many of the goals of community justice appear to be aimed at reinvigorating the connection with local areas which is the particular strength of the magistrates' courts system. However, some of these efforts seem somewhat superficial. The most recent review of the various community justice initiatives found that they have little impact overall on community confidence and engagement – indeed confidence in the criminal justice system in the North Liverpool area has declined. As we will argue in Chapters 11 and 12, the dissatisfaction with the justice system cannot be solved by a particular court's public relations campaign. The problem is rooted in the increasing centralisation of the system and reduced local ownership of the response to local problems. As for problem-solving and reducing reoffending, the Working Group was impressed by the collocation of services on site at the courthouse at North Liverpool, and the preparedness to deal quickly with problems identified in pre-sentence reports. The reviews were constructive and encouraging for offenders. Moreover, a 2007 Ministry of Justice report[1] claims a greatly reduced time between first hearing and sentencing at the North Liverpool Community Justice Centre compared to the national average waiting time – although it is confused on this matter.[2] However, the latest assessment of the initiatives found little to suggest they were effective in reducing reoffending. Both Salford and North Liverpool had slightly higher one-year reconviction rates than Manchester Crown Court, though there was some evidence that the frequency of reoffending decreased.[3]

Straight comparisons like this are difficult to make because the closer supervision of offenders under community justice initiatives means that they are more likely to be caught offending or breaching. But the apparent failure in this regard of the UK community courts model, compared to some of their international counterparts, may be a product of the fact that the our courts have no power at the sentence review to adjust the terms of the sentence or impose any sanctions for non-compliance. In this sense, the review is empty theatre; an opportunity to encourage those are who are successfully completing their order to continue in the same vein, but without any power to help turn around those who are slipping.

Even so, we should praise two other, unintended consequences of the review; the court is implicitly put in charge of those carrying out the sentence, and the particular judge or magistrate is better informed as to whether the sentence proved appropriate in the circumstances.

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1 McKenna K, 2007. *Evaluation of the North Liverpool Community Justice Centre*, Ministry of Justice

2 Ibid. McKenna claims that it is 26 days between both 'first hearing to sentence' (pp iii, 13 and 73) and 'arrest to sentence' (p 24) at the NLCJC. These claims are incompatible. Moreover, it compares this to a national average time of 147 days, though this is at different points claimed to be the time from 'an offence being committed to conclusion of a case' (p 13), 'arrest to sentence' (p 24) and 'first hearing to sentence' (p 73).

3 Jolliffe D and Farrington DP, 2009. 'Initial evaluation of reconviction rates in Community Justice Initiatives', MoJ Research Summary 9/09

8.2 Drugs Courts

Drugs Courts have become increasingly popular around the world – there are more than 2,000 in the USA and others in Chile, Canada, Australia, Ireland, Scotland and Puerto Rico. They are a direct response to the growing prevalence of drug-dependent offenders in the criminal justice system. Broadly speaking, they are sentencing courts which oversee highly structured sentences managed by a team of social support workers, including probation, addictions counsellors and nurses. They involve regular drug testing.

A rigorous survey of empirical studies conducted by the Washington State Institute for Public Policy, found that US drugs courts achieve, on average, an eight per cent reduction in the recidivism rate.[4]

There are a growing number of drugs courts in England and Wales, and the Working Group visited the West London Drugs Court.

The West London Drugs Court is a sentencing court which supervises community orders with a Drug Rehabilitation Requirement. Presided over by the charismatic Judge Justin Phillips, the court oversees Drug Rehabilitation Requirements with review powers. Orders last approximately 18 months, with reviews approximately every six weeks. The drugs court programme is open to those who plead guilty, and who are heavily addicted.

> 'The crucial thing was the very informal environment of the drugs court, although it's still a very nerve-wracking experience, because he's still a judge and he can still send you to prison… There was this, 'look, you're on a review, we want you to get drug-free,' and they start talking to you, and Judge Justin, in my case, was saying, 'Come on, you've got to give some negative tests', and there was encouragement, which is such a different way of interacting with someone in authority, it was a bit disconcerting in a sort of nice way… not what you expect. And then you start to think that they actually cared about you as a person, not a criminal . . . you know, they saw beyond, behind the very unpleasant exterior, and that really sort of resonated. It wasn't until I was sentenced to detox that I became drug free. This is when the drug court really kicked in, because then you're coming back and you're supplying, for the first time in a year, negative tests.'
>
> Former addict and repeat offender, in evidence to the CSJ Addictions Working Group

Judge Phillips fully involves himself in offenders' progress; he told the Working Group that he hands out his mobile phone number to offenders and recounted how one had called him asking to be talked out of relapsing. He conducts the reviews very informally, seeking to create a strong personal rapport with the offenders.

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4 Washington State Institute for Public Policy, 2006. *Evidence-Based Treatment of Alcohol, Drug, and Mental Health Disorders: Potential Benefits, Costs, and Fiscal Impacts for Washington State*, WSIPP, p. 9

The Drugs Court has developed strong links with Narcotics Anonymous, a voluntary sector peer support organisation which promotes abstinence-based rehabilitation:

> *Narcotics Anonymous encourages its members to abstain completely from all drugs including alcohol because NA members have discovered that complete and continuous abstinence provides the best foundation for recovery and personal growth.*[5]

Judge Justin Philips encourages the complete rehabilitation of those who come before the West London Drugs Court

Judge Phillips himself told the Working Group that abstinence is 'the goal' of his court, and that while methadone should be used in treatment, people with addictions 'should not be on it for ten years'. He himself attributes the success of the court to this attitude. He told the Working Group

> *Abstinence is the goal... That's why I involve the Narcotics Anonymous.*

8.2.1 GLASGOW DRUGS COURT

By way of comparison, the Working Group also visited the Glasgow Drugs Court, which is the most established drugs court in the UK (though under a separate criminal justice system). The order is well-structured for dealing with the behaviour of addicts, and there is a great deal of professional support. However, as the following description will show, progress is still not always smooth.

> "Being on this order changed my life. When I wake up now I don't think, 'Where do I go to get my fix?' Just that's a high."
>
> Offender under review at the West London Drugs Court, in evidence to the CSJ

Entry

The Glasgow Drugs Court is intended to supervise fairly serious offenders. Only those who pleaded guilty and face custodial sentences, can be recommended to the court. While the offender's suitability for the order is assessed, he or she is sometimes put on a 'structured deferral of sentence', containing some of the drugs order requirements, to see if they are likely to comply with the tougher restrictions.

The offenders we saw under review were all prolific offenders with very complicated personal histories: 'Gillian' had 69 previous convictions, mostly for shoplifting, and had been in rehab seven times. 'Donald' started using cannabis and ecstasy at 14 years-old, and heroin at 21, and had served multiple prison sentences for supplying.

Programme structure

The programme begins with a four-week mandatory initiation, and then moves on to tackling drug use, medical health (recovering addicts become

5 http://www.ukna.org/info/what-is-na.htm [Accessed 29 April 2009]

aware of health problems masked by substance misuse), social circumstances and employability. Finally an exit strategy is planned. There are both regular and randomised drugs tests. Orders typically last 18 months, much longer than the comparable prison sentence for the crime.

Support

Each offender on the programme is supervised by a court social worker (Scottish probation officer), and supported by a nurse, addiction counsellor, defence solicitor and pharmacist. The whole order is overseen by the Sheriff (a judge who sits in a middle-tier court). Some of the orders contain a residential rehabilitation placement: women offenders, for example, often go to the 218 Project charity. The team told us that methadone prescription alone, without the various other supports, would achieve very little; and also that the rehab was only worthwhile when it was followed through with a structured re-entry into the community.

The review

Offenders are reviewed every four to six weeks by the Sheriff. On the morning of the review the Sheriff assembles the whole team to hear an update of the offender's progress: not just about the drug treatment, but about their whole rehabilitation, including broader issues such as time-keeping, family relationships, motivation and peer groups. The Sheriff is fully informed about the offender's progress; and also about whether the team is fulfilling its responsibilities. Permission to discuss these issues in the absence of the offender or his lawyer forms part of the terms of the order.

The review itself is conducted with all offenders sitting in the courtroom and watching each others' review. Depending on how much progress the offender has made, the Sheriff is either congratulatory or asks the offender to account for failures. Clear expectations, with clear consequences, are set for the next review. Where it is clear that the offender is not motivated to comply, the court will look at revoking the order and passing a custodial sentence.

Sanctions and rewards

The Sheriff has complete power to extend or reduce the length of the order. Moreover, he can impose an interim 28-day prison sentence (N.B. 14 days in prison) for non-compliance, often without revoking the order.

Progress

The drugs courts allow for a much more sensitive response to the problems facing an addict who is trying to kick an addiction, compared to a normal community or prison sentence or even some non-criminal justice treatment. Progress through any form of drug treatment is not smooth; the Sheriffs and drugs workers said there was a pattern of relapse which had to be accounted for in overseeing the order. For example, 'Andrew' had been recovering well,

with a reducing methadone script, until he relapsed at the seven-month mark. He started buying heroin again with the money that he had been saving up to furnish a new home for his family. In such circumstances, in the Glasgow drugs court, allowances are made with clear expectations that if there is not a swift and clear improvement by the time of the next review, the order will be revoked. The value of the drugs court programme is that someone takes notice and is there to help the offender through it, both by encouragement, support, and the threat of sanctions.

The addiction team at the Glasgow Drugs Court

The offenders to whom we spoke themselves praised the structure and clear expectations of the court: 'It's written down in black and white, and you're going again in front of that Sheriff.'[6] They found the sanctions salutary: on a probation order 'you can get away with murder' but on the drugs court order 'you've got the jail hanging over your head'. We witnessed the surprising episode of an offender asking the Sheriff to extend the length of the order, and subsequently explaining an unexpected, late relapse by saying 'I think I got anxious – it would have ended two weeks after this hearing.'

Outcomes

Just over half complete their orders. Ninety per cent have two or fewer reconvictions during the full 18 months. Given the rate of prolific offending highlighted above for those on DTTOs in England (306.9 per 100 offenders in the year following commencement of the order), this is a distinct improvement. Moreover, had they not been on this programme they would have faced a shorter prison sentence and then been out in the community with little support and a similar pattern of offending.

While the structure of the order is impressive and the results laudatory, we noted that the goal was stabilisation on methadone, rather than a full rehabilitation from all drugs.

8.2.2 WHAT MAKES FOR SUCCESS? INTERNATIONAL EVIDENCE

The US National Association of Drugs Court Professionals summarised the key components of an effective drugs court:

- 'review hearings before a judge in court to assess progress;
- mandatory completion of drug treatment;
- random and frequent drug testing; and
- the use of progressive negative sanctions for non-compliance and positive rewards for achievements.'[7]

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6 Interview with Glasgow Drugs Court offenders.

7 Cited in McSweeney T, Turnbull PJ & Hough M, 2008. *The treatment and supervision of drug-dependent offenders*, Institute for Criminal Policy Research, p. 31

The American drugs courts are also much more likely to promote abstinence as the goal of the order itself. Visitors to the successful American drugs courts also cite the flexibility of the order, and the connection to a myriad of local support agencies, as being crucial to their success. The English drugs courts allow the formation of a beneficial, motivational relationship between the offender and the judge. Offenders on drugs courts programmes often stress how the judge is the first authority figure to praise them or give them encouragement. The value of this relationship has been acknowledged.

However, though the English courts can encourage and support offenders to comply, they cannot under current law use any sanctions to censure non-compliance. Like all judges, they are simply obliged to re-sentence the offender after two strikes. The review in this sense is both toothless and blunt.

This contrasts with the powers found in Scottish and many US drugs courts. They are able both to change the terms of the sentence, within bounds, both to lengthen and shorten it; and they are also able to order interim sanctions or rewards depending on the offender's compliance.

The effect of this is to make the review a meaningful process. If the review is essentially an opportunity for the judge to pat the offender on the back it will be useless. The offenders we spoke to all mentioned that part of the reason they complied was because they thought the judge could 'sanction' them if they didn't comply. No doubt as drugs courts become a more established part of the criminal justice system offenders would realise the true state of affairs. The 'cosmetic' nature of the review powers may also explain why it is rarely taken up outside of the specialist courts.

The Working Group was also very impressed by the pre-review meetings between the different support agencies in the Glasgow drugs court; this is a feature of all courts which are members of the International Association of Drug Treatment Courts. This is not replicated in any of the English problem-solving courts. As well as allowing for a more informal and honest exchange of information regarding the offender, it allows the judge to hold the other agencies to account more fully than in open court.

8.3 Deferral of Sentence

Before full admittance to the Glasgow Drugs Court, offenders are given a 'structured deferral of sentence'. In deferring sentence, the court waits to impose a full sentence for a set period. Currently, in England and Wales, this can be for up to six months. It is not to be confused with a suspended sentence (which is effectively a community sentence) in that a suspended sentence is a formal sentencing option, whereas a deferral of sentence is a pre-sentence holding option. The court has great freedom in setting the terms of the deferral period; the only restriction is that the offender has to agree to the terms (as well as subsequently abiding by them).

The Working Group found this model very attractive. It gives the court great freedom to tailor the terms of deferral to target offenders' precise needs and

challenges – for example, an agreement not to go to certain pubs, or to undertake certain job-training opportunities. Because the offender has to agree to the terms in the first place, there are fewer legal hoops and procedures to pass through, compared to if these restrictions were part or a community sentence (which is, of course, imposed).

The fact that the offender voluntarily agrees to the terms makes it more likely that he or she will abide by them. Similarly, it gives the court a 'testing period' in which to gauge whether an offender is likely to be motivated to comply with any formal requirements imposed on a community sentence.

The court remains in direct control of the offender during the period of deferral, and has discretion over whether or not the offender is complying satisfactorily. The judge can bring the deferral to a close without instigating slow-moving breach proceedings. Moreover, because sentencing has only been deferred, if the offender fails to comply with the terms, the original, full sentence can be imposed.

The deferral of sentence has many extremely attractive aspects. However, though it is available for sentencers in England and Wales it is used very rarely, on the guidance of the Sentencing Guidelines Council. The Council advises that it is only for use for the small group of offenders where the sentence would be close to the threshold between a fine and community sentence or community sentence and prison, to help the court decide on which sentence is appropriate.[8]

> "They self-select. They put themselves in jeopardy. The most recent lad I dealt with had been out of prison for five months. He admitted two or three hundred offences. He would have got two years, now he's looking at four or five. When we first started the programme we thought the incentive was that they'll latch onto it as a way of avoiding custody. But it looks like the attraction is the genuine opportunity to rehabilitate."
>
> Detective Inspector Matt Bonner, Hertfordshire Constabulary, in evidence to the CSJ

Nonetheless, there have been attempts in England to use the deferral of sentence creatively.

The Choices and Consequences Programme in Hertfordshire is a great example of collaboration between police, prosecution, courts and probation, with a clever use of the deferral of sentence option.

The programme offers a structured deferred sentence, followed by a long community sentence. The programme is targeted at prolific burglars and thieves. Eligibility is assessed at the police custody stage, at which point a burglar who wants to be part of the programme has to make a full statement about his criminal history. Though he may only have been caught for one offence, to be considered for the programme he has to tell the police about all other offences. The accuracy of each admission is investigated by the police (who have an incentive to improve their clear-up rate).

The effect of making these admissions is fairly serious for the offender, as admitting to a string of previous offences makes the likely sentence imposed by the judge more onerous. According to Detective Inspector Matt Bonner, of the

8 Sentencing Guidelines Council, 2004. *New Sentences: Criminal Justice Act 2003: Guideline, Sentencing Guidelines* Secretariat, p. 14

Hertfordshire police, this is a way of weeding out those who are not serious about taking the rehabilitative opportunities on offer, as it significantly raises the stakes. If an offender on the deferred sentence fails to comply, he will be sentenced not just for the offence he was caught for, but for all admissions as well.

If, during the deferral period, the offender complies fully with the court's terms, the likely prison sentence he would have received is commuted to a community sentence, during which support is continued. If the offender does not comply during this period, he is sentenced to prison for the original sentence (and not, as on a suspended sentence, for the remainder of half the term).

8.4 Other People at Court

It is not just those found guilty at court who could benefit from assistance. As we have noted, the courts draw from the 'hard to reach' sections of society, whether as victims, suspects or offenders. 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 the support available. In some courts, help desks run by charities have proved to be effective at both providing this information, and improving the payment rates of fines by helping defendants fill in the forms correctly.

CAMBERWELL GREEN AND GREENWICH MAGISTRATES' HELP DESK

The Help Desk is run by a charity called the London Magistrates' Courts Help and Information Service. The Help Desk Service provides:[9]

- information and guidance on the court processes and procedures;
- assistance in reading and completing court forms and related documents;
- help in completing court "means forms" accurately, which provides information to the court on a defendant's income and expenditure – information used in levying of fines;
- identifying key issues of court users – for example debt, housing, welfare benefits;
- a 'listening ear' for those users who find the court process difficult;
- referral of acute cases to dedicated partner agencies offering advice or specialist support;
- signposting to other external agencies for general advice or assistance;
- occasionally `McKenzie Friend' (legal advice) assistance in court.

It is staffed by volunteers, including ex-offenders.

9 The London Magistrates' Courts Support and Information Service, 31 March 2008. 'Annual Report and Financial Statements: Year ended 31 March 2008', The Charity Commission. Available at: http://www.charity-commission.gov.uk/registeredcharities/ScannedAccounts/Ends81\0001064281_ac_20080331_e_c.pdf [Accessed 29 March 2009]

8.5 Proposals

8.5.1 ADDICTION COURTS

The Working Group recommends the increased use of specialist courts, and the development of courts to deal with offending associated with alcohol addictions as well.

These have the necessary expertise to deal with drug-addicted offenders, and are supported by the necessary addiction treatment specialist on-hand at the court and throughout the terms of the community order.

While drugs courts have been adopted at a slow rate, there is no analogous support for alcohol-addicted offenders. We believe that the model of a drugs court could equally apply to this group; though the medical aspects of the intervention may differ, the underlying addiction treatment is analogous.

8.5.2 EXPAND THE USE OF THE SENTENCE REVIEW

Review gives the opportunity for a figure of authority to provide encouragement and motivation to an offender, particularly when it is at regular intervals to allow the setting and achieving of personal targets and goals. A review also provides a feedback mechanism for the sentencer to gauge whether the sentences are effective, in particular instances and in general. Finally, it allows the court to scrutinise the work of the probation service and other partners, and maintain judicial control of the sentence.

For such reviews to be fully effective, it is very important that the offender is brought back before the same judge or group of magistrates each time. When reviews are carried out by magistrates, this can cause administrative difficulty in reconstituting the same panel of three justices each time, but it is important that these administrative difficulties are overcome.

The Working Group proposes that the power to conduct reviews in England and Wales 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.

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

> "71 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

8.5.3 GIVE THE REVIEW COURTS REAL CLOUT: INTERIM CUSTODIAL SANCTIONS

Encouragement and support is an important part of the success of the sentence review, and we discuss this further in Chapter 9, which deals with the role and manner that the probation service should adopt in dealing with offenders under sentence. But the evidence suggests that the sentencer's authority needs

to be backed by the ability to impose swift, summary sanctions for non-compliance, short of full breach proceedings, and should have the power to reward progress materially.

The Working Group recommends that sentencers must have the power to impose interim sanctions in response to breach, such as a short, sharp prison spell, as well as the power to give rewards.

It is important to note that 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. That said, the decision to impose the custody sanction would have to be taken by the judge or magistrate in the context of a sentence review, and we envisage that the court would generally issue a warning at a review prior to the imposition of the sanction.

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.

It was suggested to the Working Group that custody should only be imposed if the reason for the breach were serious enough to warrant custody in its own right. However, thinking back to the case study given at the beginning of Chapter 6, if we only allow the court to punish a community order with another community order, then there is little sanction at all for persistent non-compliance (though we accept that there remain positive reasons for complying). If a person does not comply with an order, he will be breached, and given another community order; breached and given another one; and so on. If an offender is not minded to comply with one community order, it is likely that he will not be minded to comply with another one. Moreover, responding to non-compliance in this way serves to entangle offenders in the criminal justice system over a longer period than necessary. The 'softer' response is in this respect much more damaging, criminalising people much more effectively as they remain circulating in the system.

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.

8.5.4 ENCOURAGE USE OF DEFERRAL OF SENTENCE

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 treatment requirement or another therapeutic sentence. If no

real motivation is shown, the court has the discretion to re-sentence more appropriately.

The Working Group proposes increasing the attractiveness of the deferred sentence 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.

8.5.5 ACCESS TO INFORMATION AND OTHER AGENCIES

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.

We recommend the expansion of Help Desk schemes beyond a few London magistrates' courts. We would also like to pilot 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.

NINE
Probation and Social Support

Previous chapters have looked at what happens during community sentences and after short prison sentences, and also the court's role in organising the sentence. This chapter looks at what needs to change in the probation service.

One of the most distinguished criminologists of the 20th century, Max Grünhut, once summed up the virtues of probation as follows:

A probation officer advises a 'Persistent and Prolific Offender'

Probation is the great contribution of Britain and the USA to the treatment of offenders. Its strength is due to a combination of two things: conditional suspension of punishment, and personal care and supervision by a court welfare officer.[1]

Both the threat of sanction and the offer of personal care are equally important. Part of the duty of the probation service is to make sure that the threat of a court order is credible and speedily enforced. In the case of a person under sentence, the sanction is much more certain than for an offender at large, since he is likely to be under closer observation.

But the probation officer has another role, as Grünhut's analysis suggests, as the provider of 'care' and 'supervision'. The role of the probation officer has within it a special potential for motivating and encouraging the offender.

9.1 Disordered Lives

Chapters 5 and 6 above looked at failings in the management and funding of community sentences and the consequent high recidivism. However, the Working Group recognises that we cannot simply blame the probation service for failing to stop all reoffending. Many of those put on probation orders are characteristically living very disrupted lives, as we saw in Chapter 3. Crime, for many offenders, is a lifestyle. They are on probation unwillingly, and reforming them is unlikely, especially as there is no follow-up after the sentence is complete.

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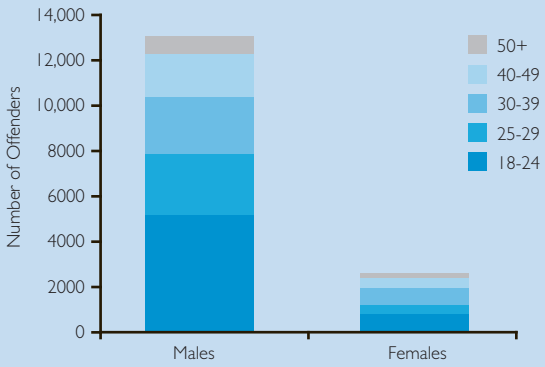
1 Cited in Raynor P, 2007. 'Community penalties: probation, 'What Works', and offender management'. In Maguire M, Morgan R & Reiner R, eds, *The Oxford Handbook of Criminology*, OUP, pp.1061-1099, p.1062

Criminal justice rehabilitation can be drastically improved, and we will suggest how below. But as we have made clear from the start of this paper, improvement must be based on knowledge of the actual circumstances of offenders, allowing correctly targeted interventions.

The essential point to realise is that the probation service is, *de facto*, a social service provider. The vast majority of offenders on probation are male, and more than half of this caseload are between the ages of 18-29 (see Figure 9.1).[2] They are a group who are likely to be ignored by non-criminal justice social work, or at least have low priority behind young women, single mothers, children in care, and pensioners.

A survey of arrestees found that, of those who had taken heroin, just over two-fifths had never received treatment and only 30 per cent were in treatment at the time of arrest. In the case of crack cocaine users, more than 90 per cent had never received treatment. In both groups a majority of those who hadn't received treatment indicated that they would like treatment.[3] As we argued in Chapters 2 and 3, the 'waiting room' at the courthouse is useful for identifying those who have not been reached by statutory social services, or who are not considered high priority.

Figure 9.1: The age and sex of offenders on all community sentences, 2007



9.2 Motivation

For many offenders, probation supervision will be an opportunity to start working towards desisting from crime and changing their lifestyle. A study of 113 young prolific offenders in Sheffield found that:

> *A majority said they had made a definite decision to try to stop (56%). Some others wanted to stop but, realistically, said they didn't know if they could (37%). Only a few said they were unlikely to stop (5%).*[4]

2 Figure 9.1 Ministry of Justice, 2009. *Offender Management Caseload Statistics 2008*, MoJ, Table 3.4

3 McSweeney, T., Turnbull, P.J. & Hough, M., 2008. *The treatment and supervision of drug-dependent offenders*, Institute for Criminal Policy Research, p. 16

4 Shapland J, Bottoms AE and Muir G, 2009. 'Perceptions of the Criminal Justice System among Young Adult Would-Be Desisters'. In *Forthcoming publication*.

Many studies acknowledge that personal motivation to change one's life is absolutely crucial to the success of any intervention. In the case of criminal behaviour and drug dependencies, the key factor in success is for the person *himself* to change his behaviour. Without some motivation on his part we would be wasting our time. However, motivation to change has been established as a good predictor of successful rehabilitation regardless of whether a person has been helped by particular interventions in the past.[5] Evidence, however, may be misleading. A common point of contention in studies of the effectiveness of criminal justice intervention is whether positive results are reliable; they may be largely explained by the group's *willingness* to be helped – they agreed in the first place to undergo the treatment.[6] Similarly, studies which purport to show the impact of particular programmes on reoffending often only look at the group which completed the programmes, and not at the group of all those who started, which would include those who quit. A Home Office-sponsored study of probation-accredited programmes notes:

> *These results should be treated with caution because those who completed the programmes may have been those offenders with more positive attitudes to change and therefore who might have reduced their re-offending regardless of participation in a programme.*[7]

Most offending behaviour programmes are subject to very high attrition rates. Of those due to undertake such programmes in 2004, 32 per cent completed them, compared to almost half (48 per cent) who started but did not finish. (Twenty per cent did not get to start.[8]) This suggests that a sizeable portion of offenders on any given community order have little interest in helping themselves.

The wish to avoid further sanctions can well provide a motive for an offender to comply with an order; and indeed making this threat credible is an important part of the probation officer's (and court's) responsibility. However, as our case study at the beginning of Chapter 6 showed, this is not always enough to gain compliance; and moreover, there is a big difference between complying with an order and committing oneself to changing one's life. The probation officer has a role here too.

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5 LeBel T et al, 2008. 'The 'Chicken and Egg' of Subjective and Social Factors in Desistance from Crime', *European Journal of Criminology*, 5, 131-159

6 See, for example: Shapland J, 2008. *Does restorative justice affect reconviction?*, Ministry of Justice Research Series.

7 Hollis V, 2007. *Reconviction Analysis of Interim Accredited Programmes Software (IAPS) Data*, RDS NOMS, p. 11

8 Ibid, p. 6. Calculated from raw data.

9.3 Problems of the Probation Service

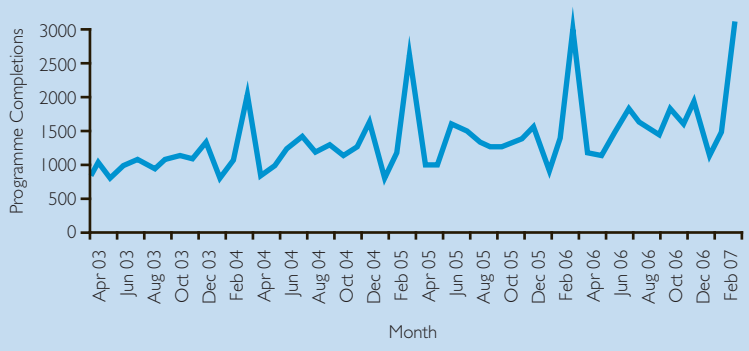
9.3.1 ENFORCER OR FRIEND?

Crudely characterised, the probation service has moved from one extreme to the other: from being a friend of the offender to being an agent of enforcement. From the sixties through to the nineties, the motto of the probation service was 'Advise, assist and befriend'; in 2001, it changed to 'Enforcement, rehabilitation and public protection'. It is sometimes suggested that probation officers must make a stark choice between 'enforcing and managing' and 'advising, assisting and befriending'. However this is a false dichotomy. Community orders provide a valuable space for a particular kind of encouragement. Ideally, the role is analogous to a schoolmaster: the probation officer must stress that there are rules which, if broken, will entail serious consequences; nonetheless the probation officer is ultimately interested in promoting the offender's welfare.

9.3.2 MORE INTERESTED IN MEETING TARGETS

The current organisation of the probation service means it is more focused on meeting government targets than on fulfilling the will of the court or assisting offenders. Figure 9.2 shows that the completion of accredited programmes reaches a peak every year just before the end of the financial year, when reports to the centre are due.[9]

Figure 9.2: Completion of accredited programmes reaches a peak just before the end of the financial year



9.3.3 NOT LOCALLY CONNECTED

Chapter 5 argued that the probation has a particularly valuable role in demonstrating to the public that justice is present in their community. In part this can be achieved by the presence of probation services where offenders and their families live. The probation service used to have offices dispersed around

9 The National Audit Office, 2008. *The National Probation Service: The supervision of community orders in England and Wales*, TSO, p. 36

probation areas, with small offices in deprived areas. Many of these have disappeared now, and so the service is no longer physically present.

This 'flight' of the probation service from deprived areas is a matter of great concern. This is directly related to the creation of the National Probation Service, explored further in Chapter 12. The NPS took over the ownership of probation service property which had previously belonged to local Probation Boards. Small offices, often in high-crime, high-deprivation areas, were closed, and staff moved to city-centre locations. David Hancock, a former chief probation officer, writes:

> *The move to a smaller number of larger city or town-centre offices . . . [has also had] the unintended consequence . . . that probation staff became more distant from the community they served.*
>
> David Hancock, former chief probation officer[10]

As a result of these closures the probation service lost vital bases in high-crime areas, losing close local contact in the process. In addition to losing knowledge and connection with local areas, this makes it harder for criminals to travel to probation offices (a problem especially acute in rural areas and less densely populated cities). Concurrently, probation officers have lost the habit of making home visits, which used to promote a better understanding of how people lived and also what opportunities and challenges they faced.

The property strategy thus significantly changed the nature of the relationship between the probation service and offenders and communities, and changed the nature of the work that probation officers were able to do.

It is not just in their physical location that the probation service has become more distant from the community it serves. The increasingly managerial approach to probation – 'offender management' – has, according to the probation officers we spoke to, fundamentally changed the nature of the probation officer's role. In the old probation model, supervision was based on a close familiarity with the offender and his personal circumstances – family, friends, community, occupation, skills, and so on. This is no longer the case.

9.3.4 DETRIMENTAL CHANGES IN ORGANISATION

Recent changes to the probation service have made it less able to promote rehabilitation.

The probation service's annual offender caseload has increased 47 per cent between 1997 and 2006 as the courts have imposed more community sentences.[11] The number of probation service employees has more than kept pace with this increase in workload – there has been a 123 per cent increase in

10 Canton R and Hancock D, 2007. *Dictionary of probation and offender management*, Willan Publishing, p. 138

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

the number of probation staff. However, the increase in the number of fully qualified probation officers has been dramatically less, at only 16 per cent between 1997 and 2006; and in fact, since 2002, the number of fully qualified and trainee probation officers fell by nine per cent. The ratio of offenders to fully qualified probation officers increased between 2002 and 2006 from 31:1 to 40:1.[12] Fully qualified probation officers have been replaced by cheaper and less qualified 'Probation Services Officers' (the equivalent of PCSOs compared to regular police), and there was a 70 per cent increase in the number of people in senior management between 2001 and 2006.[13] This is matched by an increase of 150 per cent (from 84 to 210) in the number of central government staff with responsibility for probation – almost certainly an under-estimate.[14]

Probation staff spend a great deal of time entering data into computers for central collation. However, according to the National Audit Office, the feedback from the National Probation Directorate was reported to have been found of little use to the probation areas.[15]

> From a professional perspective, the ability of staff to invest time in developing such relationships [of trust between probation officers and offenders] had been compromised by increased probation caseloads, competing demands from different initiatives, and an emphasis on compliance and enforcement which had adversely affected performance, reduced levels of face-to-face contact with offenders, and militated against the formation of such an alliance.[16]

9.3.5 TRAINING

Training for probation officers has changed significantly in recent years: it has moved away from its social work roots. The Diploma in Probation Studies is more vocational than it was previously, involving less theory and more 'on the job' training. While in one sense desirable, there has been a shift in emphasis. The changes

> *ensure that [trainee probation officers] spend less time on social work theory and instead learn more about making community service punishment orientated.*

Though the Working Group does not want to return to an era in which it was a proud boast of probation officers that they would never 'breach' an offender,

12 Ibid, p. 3
13 Ibid, p. 15
14 Ibid, p. 20
15 The National Audit Office, 2008. *The National Probation Service: The supervision of community orders in England and Wales.*
16 McSweeney T et al, 2007. 'Twisting Arms Or a Helping Hand?: Assessing the Impact of 'Coerced' and Comparable 'Voluntary' Drug Treatment Options', *British Journal of Criminology*, 47(3), 470-490, p. 483

the shift towards prioritising enforcement has resulted in a loss of personal connection with the community and with offenders. As Professor Sir Anthony Bottoms observes:

> *If offenders are to feel that probation supervisors can assist them in dealing with such issues, they need to be confident that the supervisors really do understand the social world that they inhabit. Office-based staff who rarely visit the deprived areas in which offenders disproportionately live are unlikely to inspire such confidence.*[17]

The changes have resulted in low morale in the probation service: Harry Fletcher (Chairman of the National Association of Probation Officers) estimated that, in 2007, there were 1,000 vacancies in the national service, mostly because experienced staff were leaving.[18] The probation service nationally experiences high levels of sick-leave: the average for 2007-2008 was 12.1 days,[19] compared to a public sector average of 7.2 days and a private sector average of 5.8 days.[20]

The overall picture is of a service which has become more bureaucratic, less highly skilled, and more dissatisfied than once it was.

9.4 Encouraging Rehabilitation

The probation service needs to do what the courts ask of it. However, this does not mean that the probation officer must turn into an 'offender manager'. The probation service has only two strong cards: the potential to form a beneficial relationship with the offender, and the threat of sanction. However, current probation policy generally ignores the former. One study showed that

> *Relationships are important in creating an environment where offenders feel they can trust the officer and, to a large extent, have some desire to comply with the conditions of release.*[21]

The paper highlighted practice in Maryland, USA, where the probation service saw a marked increase in compliance, and less reoffending, when they adopted a motivational approach which asked offenders to identify needs and goals, and then held them to those targets. The trial achieved a 42 per cent reduction in re-arrests compared to the control sample.[22]

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17 Bottoms AE, 2008. 'The Community Dimension of Community Penalties', *The Howard Journal of Criminal Justice*, 47.2, 146-169, p.162

18 Cohen N, 18 February 2007. 'It would be a crime to privatise the probation service', *Comment is free.* Available at: http://www.guardian.co.uk/commentisfree/2007/feb/18/comment.politics1 [Accessed January 27, 2009]

19 Solomon E & Silvestri A, 2008. *Community Sentences Digest* 2nd ed., Centre for Crime and Justice Studies. p. 40

20 *The Times*, 23 October 2008. 'A Sickening State'

21 Taxman FS, 2008. 'No Illusions: Offender and Organizational Change in Maryland's Proactive Community Supervision Efforts', *Criminology and Public Policy*, 7.2, p.283

22 Taxman FS, 2008. 'No Illusions: Offender and Organizational Change in Maryland's Proactive Community Supervision Efforts', *Criminology and Public Policy,* 7.2, p.293

In the longer term, an additional role of a probation officer is to help remove the stumbling blocks that lie in the way of a law-abiding lifestyle. Probation officers can help the homeless find accommodation, or more suitable accommodation, if a move away from unhelpful associates is required. They can help find offenders employment opportunities, or help them find teachers to learn the skills needed for employment. They can connect them to voluntary sector groups skilled in personalised support.

9.5 Brokerage and Continuity

The probation service's particular strengths should be local knowledge, experience in dealing with people whose lives are heavily disrupted, as well as motivating them to change through mentoring, encouragement, and the threat of sanctions. They cannot be expected to do all this and cater to offenders' more general needs as well. While recognising that probation officers have specialist knowledge of dealing with people in very difficult circumstances, there is no strong reason, for example, why the probation services should run their own vocational training schemes, educational classes, or have their own job-finding agencies. These are specialisms for which it would be better to engage voluntary, private or statutory agencies, apart from the criminal justice system.

A visit to the Northumbria Probation Area team

Moreover, a 'brokerage' role would create a more natural framework for continuity in services once the sentence is complete. The amount of time under sentence that a person receives is not related directly to his or her treatment and support needs. Once someone has accessed treatment through the criminal justice system, this should not necessarily be cut off or diminished once their sentence has expired. The coercive element of the sentence cannot continue, but it is crucial that supportive relationships can be carried over. The continuity between sentence and 'real life' which has been identified as necessary for successful rehabilitation (see section 6.3) is made harder if criminal justice 'social work' is kept completely separate from regular social work.

There needs to be a close working relationship between the probation service and broader social services, as well as voluntary sector organisations (see section 12.4) to provide planned continuity between a person's support during sentence and after sentence.

9.5.1 AFTERCARE: IN BY THE BACK DOOR

Monitoring of prison leavers on short sentences was one of the key ideas in the Criminal Justice Act 2003, but it has never been implemented. Professor Sir Anthony Bottoms told the Working Group that the absence of supervision for those completing short sentences was 'completely barmy.'

However, a form of Custody Plus has been introduced by the back door in three London boroughs. The London Diamond Initiative puts extra

resources into geographical areas identified as having many offenders, particularly those serving short sentences, and which have a high churn in and out of the criminal justice system. It uses a combination of extra police, PCSOs and probation staff to stay in contact with offenders in these areas. At the moment, offenders must give their consent to be monitored under this programme.

The germ of the model for the London Diamond Initiative came from Justice Reinvestment, a concept pioneered in Oregon and Connecticut, USA, where local government is given the choice about how to spend money set aside for criminal justice interventions. These states, in the face of burgeoning prison populations and unsustainable costs, refocused spending on prevention and close working with high-offender areas. Early results are promising.[23] Our government has not relinquished any financial control to the London boroughs involved in this trial; however, by targeting resources at released offenders through different channels, it appears to have recognised (in this small trial) the benefits of after-release supervision.

9.6 Accountability

The probation service was not, historically, particularly accountable for the service it provided. Making local probation services accountable to the Justice Minister (as described in Chapter 12) did not solve this problem, as they are still not accountable to the people who matter – the local public, and the local courts and magistracy who are imposing the sentences. Moreover, it has encouraged bureaucratisation and target-chasing in a service which previously was focused on helping offenders.

9.7 Proposals

9.7.1 LOCALISATION

Control of local probation services must be localised. The Working Group proposes that they should be held accountable to a local Criminal Justice Board as discussed in section 12.6.1. Requiring Chief Probation Officers to report to the Criminal Justice Board will allow local scrutiny to ensure probation officers are upholding the sentences the courts have required. Moreover, 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.

The Working Group recommends, therefore, that probation boards regain offices in those deprived areas where there is a high volume of clientele.

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

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23 Allen R & Stern V, eds, 2007. *Justice Reinvestment - A New Approach to Crime and Justice*, International Centre for Prison Studies, pp. 12-13

9.7.2 LOCAL PROBATION DROP-IN CENTRES

The Working Group recommends that 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.

9.7.3 RESTORE 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. The London Diamond Initiative (see section 9.5.1) has reintroduced this in collaboration with local police, though at the moment only with offenders who agree to be part of it.

It is imperative that the probation service rediscovers the practice of widespread home visits.

9.7.4 BENIGN AUTHORITY

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. Local scrutiny by the Criminal Justice Board will ensure that the probation service is diligent in carrying out the courts' orders, without having to ignore the motivational aspect of their work.

9.7.5 BROKERAGE

The Working Group recommends that probation utilise existing social services and voluntary sector organisations as far as appropriate.

Probation areas should conduct an audit of which of the services that they provide are duplicates of services run by social services, voluntary or private groups, catering to mainstream clientele.

TEN
Mental Health

In the course of our review, the Working Group became acutely aware of the problem of mentally ill offenders in the criminal justice system. Offenders with mental illnesses are a highly prevalent group whose needs are largely unmet. We begin by looking at how mental health problems are related to some crime and the prevalence of such problems in the criminal justice system. We then focus on severe mental illnesses and look at the theory and reality of diversion and treatment.

10.1 Mental Health Problems

Mental health problems are rife in the criminal justice system, and are often compounded by substance abuse. People with mental health issues often cycle in and out of both the justice and the community care system. Having a criminal record can stigmatise patients; yet for many, robust treatment which tackles multiple problems is only available once a more serious offence has been committed.

On recognising the prevalence of mental health problems among offenders who present themselves at court, we were immediately struck by the difficulty of defining 'mental health disorder'. Some severe mental health problems – psychoses – are categorised and readily recognisable by professionals: schizophrenia, for example. Some are categorised, but much harder to identify: autism or ADHD.

We start by noting that only a small proportion of violent crime is committed by those with serious mental illnesses. One study conducted in America found that, at most, three per cent of violent crime is directly related to a severe mental disorder;[1] another, using Swedish data, calculated that men diagnosed as having severe mental illness committed about five per cent of all violent crime committed by men. The picture for women is somewhat different: the rate of severe mental health disorder among violent offences committed by women is higher, at 10.4 per cent, and even higher if we restrict it to the rate among women in the 25-39 age bracket (14 per cent) and 40 and

1 Peay J, 2007. 'Mentally Disordered Offenders'. In Maguire M, Morgan R & Reiner R, eds. *The Oxford Handbook of Criminology*. OUP, pp. 496-527

above (9 per cent).[2] The data suggests that severe mental disorders are more important in explaining violent crime among women and older people: groups that are otherwise generally less criminally active.

The same Swedish data did suggest that more than 90 per cent of murderers had a psychiatric diagnosis (though this is a broader category than 'severe mental disorder');[3] the researchers note that this was significantly higher than a similar study conducted in the UK, which found that about 60 per cent of murderers had a mental disorder, though mostly not a severe mental illness.[4]

10.2 Prevalence

Despite only a modest proportion of crime being committed by those with mental health problems, our prisons are full of people with poor mental health. The statistics below show the prevalence of various kinds of mental health problems among men and women in prison. The figures for those on remand show the very high proportion who are caught up in the criminal justice system, even if ultimately they are diverted or found not guilty (N.B. the proportions given for women elide this distinction because the sample size was smaller):[5]

- Seventy-eight per cent of males on remand (and 64 per cent of those under sentence) and 50 per cent of female prisoners had at least one clinically assessed personality disorder. The most common was antisocial behaviour disorder, followed by paranoid personality disorder.
- Ten per cent of males on remand (and seven per cent of those sentenced) and 14 per cent of female prisoners had a clinically assessed functional psychosis (including schizophrenia, bipolar and severe or recurrent depression) during the previous year. This compares to a general population rate of 0.4 per cent.
- Ten per cent of males on remand (and 39 per cent of those sentenced) showed significant neurotic symptoms compared to 12 per cent of all men.
- Seventy-five per cent of females on remand (and 62 per cent of those sentenced) showed significant neurotic symptoms, compared with 18 per cent of all women.
- Fewer than one in ten showed no evidence of any of the five disorders considered in the study (personality disorder, psychosis, neurosis, alcohol misuse and drug dependence).

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2 Fazel, Seena, and Martin Grann (2006). 'The Population Impact of Severe Mental Illness on Violent Crime'. *American Journal of Psychiatry* 163, no. 8, p1402. 'Severe mental disorder' in the study refers to schizophrenia, paranoia, delusional disorders, psychotic disorders and manic episode and a few similar.

3 Fazel S & Grann M, 2006. 'Psychiatric Morbidity Among Homicide Offenders: A Swedish Population Study', *American Journal of Psychiatry*. 161(11), 2129-2131

4 Shaw J et al., 1999. 'Mental disorder and clinical care in people convicted of homicide: national clinical survey', *British Medical Journal*. 318(7193), 1240-1244

5 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 August 12, 2008]

These figures show that mental health problems are much more prevalent in prison than in general. In particular the prevalence of functional psychoses is much higher – more than 20 times – than among the population at large.[6] The consistently higher figures for those on remand gives an indication of the number of mentally unwell offenders who get caught up in the system initially, before some are diverted.

> "If you put someone unwell in a crack-infested housing estate, you shouldn't be surprised they end up living in a somewhat criminal manner."
>
> Dr David James, in evidence to the CSJ

In general, severe mental disorders are not direct causes of crime. Mental disorders on the whole do not result in people being violent, but rather makes them vulnerable to falling foul of the law unwittingly. A former Canadian prison worker told the Working Group that in Canada the jails are full of people with mental health problems who have committed public order offences, or traffic violations, suggesting not a dangerous insanity but a difficulty in conforming to social norms which results in the system sweeping vulnerable people into jail.

Some researchers have also argued that the stark difference in mental disorder prevalence rates between prisoners and the general population can be largely explained by the fact that both mental disorder and incarceration are correlated with deprivation, addiction, low educational attainment and so on – the comparison of prevalence rates within prison and within deprived communities is much less marked.[7] This is both because of higher prevalence rates of mental health problems in deprived areas, and because such factors 'underpin poor quality of care in the community.'[8]

Nonetheless, the criminal justice system is faced with dealing with many people who (whatever other problems they face) have mental health problems. It has also been observed that for some, mental health problems are identified for the first time at court.

Despite the high prevalence of mental health disorders among offenders, mental health treatment is only rarely used as part of sentencing (see Figure 10.1).

Figure 10.1: 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[9]	Mental health treatment	0.32[10]

6 Teplin L A, 1990. 'The prevalence of severe mental disorder among male urban jail detainees: comparison with the Epidemiologic Catchment Area Program', *American Journal of Public Health.* 80, 663-669, p.? ? It must be stressed that estimates of comparative prevalence vary. Teplin's data showed that prisoners are 2-3 times as likely to have severe mental health problems as the general population.

7 Draine J et al, 2002. 'Role of Social Disadvantage in Crime, Joblessness, and Homelessness among Persons with Serious Mental Illness', *Psychiatric Services.* 53.5, 565-573

8 Peay J, 2007. 'Mentally Disordered Offenders'. In Maguire M, Morgan R & Reiner R, eds. *The Oxford Handbook of Criminology*. OUP, pp. 496-527, p.505

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

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

Offenders with mental health problems form a significant part of those in the criminal justice system. The way the criminal justice system deals with such offenders – in theory at least – depends on the severity of their illness. There is great clarity about what theoretically should happen for those with psychoses – the seriously mentally ill – though the reality falls far short of the model. For those with personality disorders and other illnesses the system is sadly confused.

If society believes that the criminal justice system should help those whom it can, the mentally ill, particularly the severely mentally ill, should be a focus of our concern and resources. A YouGov poll commissioned by the Working Group found that 74 per cent of the public supported more use of secure mental health care instead of prison for diagnosed offenders.[11] Their problems are in the main fairly well-defined, making targeted assistance easier and more effective. Moreover, proper treatment of the mentally ill has been shown to have significant effects on reducing reoffending.

We will begin by looking at provision for those with psychoses, before looking at the less clear cut case of those with personality disorders.

10.3 Psychoses

10.3.1 THE INTENTION OF THE SYSTEM

The criminal justice system in England and Wales takes a very pragmatic attitude towards offenders with psychoses, as laid out in the Mental Health Act 1983. The aim is to take those who are very unwell and divert them into healthcare services, out of the criminal justice system. These are people who are very clearly unwell; and whose offences are in many cases directly or indirectly related to their illness. In this regard, England and Wales are different from many other European countries and the United States, where the issue of culpability for an offence is a significant factor in determining the sentence. In England and Wales the state of mind of the person at the time of the offence – whether they fully realised what they were doing and whether they knew that it was wrong – is considered unimportant. In such systems a person may only be diverted if he is considered unfit to plead, or has an organic brain illness, such as Alzheimer's. Our criminal justice system considers these factors only in the case of murder. For most other offences, a psychiatric report confirming that the offender or suspect is in need of treatment is enough to divert them from traditional criminal justice punishments.

10.3.2 OUTCOMES OF DIVERSION

The most recent Home Office study of court diversion schemes was largely positive about the effectiveness of diversion (when it happened as intended):

- Of those cases in which there were court admissions to treatment, only 28 per cent of offenders were reconvicted in the two years after discharge. This

11 YouGov poll commissioned by the Centre for Social Justice, January 2009

is approximately half the comparable average rate for those released from prison or commencing community sentences.[12] Moreover, from a public protection point of view, while these offenders are in hospital they are not able to offend in the community.

- The study showed a marked reduction in rates of offending for these patients post-release compared to pre-release. The review stresses that this result was not accounted for by a greater post-release reincarceration rate (so that they would be unable to reoffend in the community); nor was it explained simply by virtue of ageing. In particular, theft and other property crimes were diminished. Reoffending, when it happened, was correlated with previous severe substance abuse and offending.[13]
- The health outcomes for the patients diverted from court were as good as the comparison group of those admitted (compulsorily) from the community, and while in hospital both groups received the care they needed.
- There was no significant difference in the absconding rates – though 38 per cent of those admitted through the courts did abscond, only 11 per cent failed to return. On average they returned within three days.[14]

The study shows that court diversion schemes can be a major help to people who are unwell. People from disadvantaged backgrounds who also suffer mental health problems may live highly disrupted lives and fail to collect benefit or engage with social service. Making them well reduces this disorder. In terms of crime reduction, there was no direct comparison with a group of similarly mentally ill offenders who were serving prison sentences or community sentences; however the reduction by a half in the number of reoffenders compared to the general population does suggest that it is highly beneficial. That only slightly more than a quarter of these patients were found to have reoffended in the following two years is really quite remarkable given that a quarter of them were homeless and one-fifth in temporary accommodation.[15] The treatment benefited both the individuals and society.

10.3.3 REALITY: POOR DIVERSION

Despite the beneficial outcomes that referrals have, and the willingness of sentencers to use hospital disposals as a sentence, the potential benefit is mostly not recognised because of a systemic failure to identify, refer and accommodate severely mentally ill offenders.

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12 James D et al, 2002. *Outcome of psychiatric admission through the courts*, Home Office RDS, p. 50
13 Ibid, p. 88
14 Ibid, p. 27
15 Ibid, p. 88

In the early trials of the magistrates' courts' psychiatric diversion teams (in London), the presence of a such a team contributed to a four-fold increase in the identification of psychoses (and again these are just the most serious kinds of mental illness) and subsequent hospital disposals.[16] The teams also decreased the time between identification and admission into hospital from seven weeks to one week. Despite these positive results, there is currently no obligation for magistrates' courts to employ psychiatric teams. Even in those places where these teams do exist they are often under-resourced, especially where staffed by psychiatric nurses (rather than more expensive fully qualified doctors) who do not have the legal power to place people on mental health orders.

Dr David James gives evidence the Working Group

A study in 1996 suggested that only a quarter of serious psychoses were being picked up by screening at remand prison reception. Despite a great deal of work on improving this, experts attest to the fact that the situation has not much improved since then. The enduring problems are the sheer volume of offenders who arrive every day at crowded prisons; and the fact that remand diversion schemes were never mandated, but just said to be 'good practice'.[17] Moreover, once a suspect in a remand prison has been identified as being in need of hospital treatment, the prison psychiatrists have up to four weeks to send the prisoner over for admission – normally this period is taken up with wrangling over which Primary Care Trust should be responsible.

It is at this point that the system really breaks down; the consultant psychiatrist at hospital is, in most cases, under no obligation to accept people referred from the courts.[18] Most frequently they do not accept such referrals. These rejections are in part the result of the expectation that court admissions might be more trouble, but mainly because of an acute shortage of psychiatric low-secure beds (places in a secure hospital that offender patients cannot simply walk out of). This shortage was identified more than 15 years ago as the 'missing tier' in the 'care in the community' model of general psychiatry.[19] The prerogative of a hospital consultant psychiatrist to refuse to admit a court referral is fairly unique in Europe. As a result, suspects and offenders with serious mental disorders are not picked up until they commit a serious violent offence, in which case they may at last be sent to a forensic psychiatric unit.

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16 James DV & Hamilton LW, 1991. 'The Clerkenwell scheme: assessing efficacy and cost of a psychiatric liaison service to a magistrates' court', BMJ : British Medical Journal, 303(6797), 282–285

17 James D et al, 2002. *Outcome of psychiatric admission through the courts*, Home Office RDS, p. 95

18 Ibib, p. 92

19 Joseph PL & Potter M, 1993. 'Diversion from custody. I: Psychiatric assessment at the magistrates' court, II: Effect on hospital and prison resources'. *British Journal of Psychiatry*, 162, 325-334

CASE STUDY: INADEQUATE COURT DIVERSION[20]

In 2005, 'Lee', who has been diagnosed with paranoid schizophrenia, had a relapse of his mental health condition. He had stopped taking his medication, and as his symptoms worsened he locked himself into his flat and cut off his phone. With no contact with anyone for at least a week, despite being in the care of his local community mental health team, his delusional thoughts grew. The focus of Lee's thoughts was his upstairs neighbour, an elderly man.

Lee had a full-blown psychotic episode that culminated with him breaking into his upstairs neighbour's flat at 2am and shouting at him. When his neighbour raised his arm in alarm, Lee immediately left, running back to his own flat and locking himself in.

Lee's neighbour called the police who arrested Lee and took him to the local police station where he was assessed by a Forensic Medical Examiner (FME). This was a retired GP who spoke to Lee very briefly and said he was mentally fit to be questioned and charged.

The police appointed a solicitor, and a legal executive arrived to speak to Lee. As soon as he spoke to Lee he realised there was something wrong and the FME was asked to assess Lee again.

The legal executive and Lee went to the FME's room. Lee was very agitated and kept going in and out. This was because Lee thought the FME was Harold Shipman and was going to kill him. He was extremely frightened.

The FME got it wrong again. He said that Lee was not psychotic and simply an unpleasant individual. One hour later Lee was charged with Burglary with Intent to do Grievous Bodily Harm and uttering threats to kill. At this point Lee was allowed to call his parents who contacted his care coordinateor. (At the Crown court, the charges were changed to Affray and Criminal Damage, which are much less serious offences).

Lee was sent to Wandsworth prison even though his care coordinator negotiated for him to be admitted to a local hospital ward. He remained in prison for 7 weeks until he was transferred to Springfield Hospital.

Lee is now working and successfully managing his condition over the long-term including any relapses.

10.3.4 WHY IS DIVERSION SO NECESSARY?

Prison is not the right place to treat mental illnesses: it is crowded, even overcrowded, and not suited to therapeutic interventions. Moreover, the length of a beneficial hospital stay may in fact be longer than a prison sentence: indeed there is no reason why the severity of the illness should bear relation to the severity of the crime and therefore the length of the sentence. Moreover, it is unlawful to treat mentally ill people in prison against their will; but many seriously mentally ill people do not recognise their illness. Long-term beds are needed because, frequently, successfully tackling a mental health problem requires work on many different fronts. Effective treatment, particularly if it aims to reduce reoffending, must address:

- the affective mental disorder;
- personality structure (including behavioural difficulties);
- drug and alcohol dependencies;
- the particular criminogenic circumstances of the patient;
- social needs such as housing.

20 Case study supplied by Rethink, the national mental health membership charity

> "Although drug problems are ubiquitous amongst psychiatric admissions with psychotic illness, such problems receive, at very best, token intervention during admissions for mental illness. Integrated drug services for general psychiatric admissions are virtually unknown, and services following patients into the community are almost non-existent. This is an area in which service expansion is long overdue."
>
> Dr David James[21]

Drug and alcohol dependencies are a particularly big issue for criminal justice mental health referrals. In the Home Office study of court-diversion schemes whose results were described above, it was also found that the group admitted to hospital from the courts (as opposed to those admitted from the community) were significantly more likely to have a history of substance abuse compared to community admissions (68 per cent compared to 54 per cent), and to have been abusing substances around the time of arrest/admission. They were twice as likely as the community group to have a history of crack, cocaine and heroin use. A third had a history of drinking harmfully, and a quarter of using cocaine.[22]

10.3.5 REALITY: TREATMENT OF ACUTE SYMPTOMS, NOT UNDERLYING PROBLEMS

Our system of mental health treatment, like addictions treatment, focuses on treating symptoms rather than cause. Despite the need for long-term beds, most court diversions receive only brief attention as the focus of treatment in general psychiatry is on acute symptom reduction. Commissioning targets stress numbers into treatment and the speed of throughput. Treatment which only addresses symptoms of the mental illness itself will have only partial success in that aim, and little success in reducing offending.

General psychiatry services are not admitting the severely ill unless they are behaviourally disturbed; the idea of community care is to keep people out of hospital and in their own environment. People therefore remain ill and untreated in the community, so increasing the probability of their coming into the orbit of the criminal justice system.

10.3.6 HELP ONLY FOR THE DANGEROUS

The criminal justice system is bearing much of the burden of an under-performing mental health system. Admittance to the mental health system is the reserve of the seriously behaviourally disturbed; or those who commit a serious act of violence. Those who do finally hurt somebody may be admitted

21 James D et al, 2002. *Outcome of psychiatric admission through the courts*, Home Office RDS, p. 88
22 James D et al, 2002. *Outcome of psychiatric admission through the courts*, Home Office RDS , p. 57

> "It is not cynical to say you have to hurt someone to get good help."
>
> Dr David James, in evidence to the CSJ

to forensic psychiatric units, which are the gold standard of mental health care; the level of care is excellent and stays are lengthy, lasting months or years, rather than days or weeks. In this context we note that the whole field of 'forensic psychiatry' – a branch dealing exclusively with the dangerous ill – with its 3,000 beds, did not exist 30 years ago. This is because problems used to be identified earlier and there was a much greater provision of low-secure mental health provision, allowing a safe place for the mentally unwell to recover before they could commit an offence or a serious offence.

10.4 Personality Disorders

Quite apart from those who are sectionable, there is a mass of offenders with multiple personality disorders. These offenders fall below the bar of the Mental Health Act in that their mental disorder is not sufficiently serious; yet their mental health problems may be similarly curable, and have an effect on their offending behaviour.

There is a mental health treatment requirement that can be made part of a community order. Unfortunately it is, in practice, hardly available and very infrequently used, largely because personality disorders are not frequently identified and because there are scant resources set aside for it.

Moreover, the 'symptom treatment' that can be characteristic of general psychiatry has also put pressure on proven residential treatment facilities. A case in point is the Henderson Hospital in Sutton. The Henderson was a unique therapeutic community where patients organised and ran the facility, and had been shown to be an effective alternative to prison. It was forced to close at the end of last year after new funding arrangements meant that it changed from being very oversubscribed to being barely viable. Residential centres of this kind are essential if courts are to have confidence in mandating mental health treatment.

10.5 Proposals

10.5.1 MAKE COURTS' REFERRALS MANDATORY

The flow of people with mental health conditions back and forth between remand prisons, community care and the acute wards of mental health hospitals is giving false respite to the hospitals, who often turn away court admissions because that they have no beds. The prison service is currently masking the under-resourcing of general psychiatry and mental healthcare.

A 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.

The Working Group proposes 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.

Assuming that, ultimately, all seriously mentally ill prisoners would be moved to suitable mental health treatment hospitals, this would mean that there would be 4,154 offenders moved from prison to suitable mental healthcare facilities.[23] Given that there are currently 26,406 mental health in-patient beds in England and Wales,[24] 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 reoffending rates.

10.5.2 NO RIGHT TO DISCHARGE WITHOUT A PANEL

At present, Crown courts can remove the psychiatrists' power to discharge in the case of serious offences by imposing a 'restriction order', but this is not the case with lesser offenders, regardless of their health problem. As a result, such patients are often prematurely discharged when they cause trouble. They can be discharged on the same day as admission, if the consultant so decides. This makes a mockery of justice.

The Working Group proposes removing the power of consultant psychiatrists to discharge patients from section 37 (court-imposed treatment orders) of the Mental Health Act. This should be the power of a review panel.

> "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

10.5.3 EXPANSION OF LOW-SECURE BEDS

While forensic psychiatry has blossomed, there is little provision for very ill people who need to be secured but have not committed a dangerous offence. It is also essential that the courts know that if they send an offender to hospital, he will not abscond. Moreover, such long-term, secure beds would allow for the essential targeting of root causes of mental health problems, beyond the simple and short-term alleviation of symptoms.

The Working Group proposes a large scale reinvestment in low-secure hospital beds.

This would, over time, free up space and ultimately allow for a reduction in the number of prison cells, as offenders with mental health conditions currently serving sentences in prison would be able to be more effectively and humanely housed in secure hospital wards.

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23 This is based on the sentenced prison population at 30 June 2007, combined with the male and female prevalence rates described in section 10.2 above. Ministry of Justice, 2008. *Offender Management Caseload Statistics 2007*, MoJ, Tables 7.1M and 7.1F

24 Hansard, House of Commons Written Answers, 8 June 2009 [Column 741W]

10.5.4 COMPULSORY COMMUNITY TREATMENT SENTENCES

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

The Working Group proposes allowing courts to sentence offenders to compulsory treatment in the community, regardless of whether they have previously received a hospital order.

This 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.

10.5.5 MENTAL HEALTH COURTS

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

In focusing on mental health as a driving factor in the behaviour of offenders, the Brighton court is able to identify an appropriate sentence to ensure that they are handled appropriately and has so far placed 21 offenders under community orders with special supervision from mental health professionals.[25]

In tackling this issue, the court principally aims to reduce reoffending, but in doing so identifies problems that were previously undiagnosed and offers timely access to mental health services.

The Working Group endorses the 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. We propose that, as with the drugs courts, the sentence should be open to review based on the offender's progress.

10.5.6 DIVERSION SCHEMES

The Working Group proposes that psychiatric diversion schemes, with access to doctors as well as nurses, be mandated to magistrates' courts in all areas, and have a permanent presence in the larger areas.

25 See MoJ press release, 2009. 'Jack Straw launches first mental health courts'. Available at: http://www.justice.gov.uk/news/newsrelease020709a.htm [Accessed 5 September 2009]

ELEVEN
The Politicisation of Crime

As crime has become an increasingly prominent political issue, so the criminal justice system has become ever more politicised. Where previous chapters have looked at particular aspects of the criminal justice system, this chapter and the next look more broadly at the overall governmental response to concern about crime.

The politicisation of criminal justice has taken the form of centralisation of criminal justice agencies, prolific law-making, and attempts to limit the independent powers and discretion of the judiciary. It has also resulted in a debasing of criminal justice terminology. While sentencers have been superficially obliged to explain their sentences, changes to sentence structure and practice have produced even less clarity than before about what sentences actually mean. The effect of all this has been to antagonise and discomfort the judiciary, and, in making sentencing harder for the public to understand, to undermine the criminal justice system. Such misleading language makes it very difficult to formulate rational policy about the goals of our criminal justice system and how those goals should be achieved.

11.1 Crime as an 'Issue'

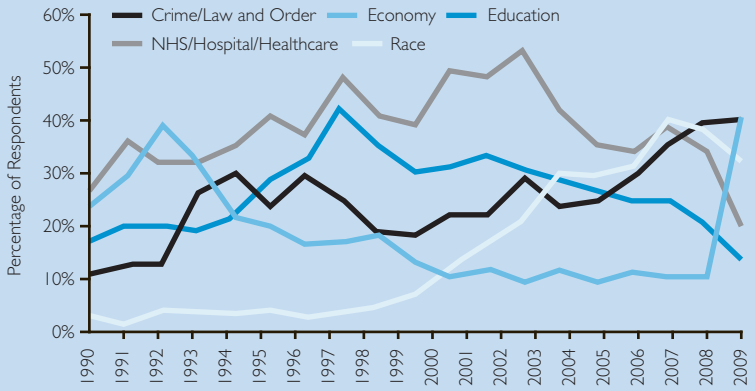
We have become used to thinking of crime as an issue of national importance. This was not always the case. Individual crimes – lurid, astonishing, frightening – have always had the power to fascinate and terrify, but crime in general was something unremarkable, dealt with robustly in the ordinary course of events. This is no longer the case.

Since 1974, MORI has been asking a representative sample of the British population: 'What would you say is the most important issue facing Britain today?' Just over one in ten people thought that crime was 'the most important issue facing Britain today' in 1990 – significantly less than the proportion who chose education, healthcare, the economy, or race relations. Figure 11.1 shows that crime reached a first peak in 1994, when about a quarter thought it to be the most important issue. However, this was still less than the number concerned about the NHS and (not shown on the graph) unemployment.[1]

1 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]. Graph shows the average of monthly polls.

From 1998 onwards, there has been an almost uninterrupted increase in the proportion of people who consider crime to be the most important issue facing Britain today. In 2007, more people chose crime as their chief concern than anything else. In 2008 the figure rose to just over 40 per cent – an all time high (at least since the MORI poll began). More people are worried about crime today than any other problem except the economy, which only overtook crime in July 2008 at the advent of the worst recession for several generations.

Figure 11.1: What is the most important issue facing Britain today?



The salience of crime as a national issue has increased since the advent of the Labour government. During this period, crime has also become increasingly politicised – the subject of speeches, articles, legislation, and attempts by the government to master the problem.

11.1 CONCERN AND POLITICS

The increasing politicisation of crime has partially been driven by the perception that crime ought to be a national political issue.

There is about five times as much recorded crime today as there was in 1960 (Figure 11.2).[2] The average citizen (who, in Britain, is aged 39) has lived through a four-fold increase in overall crime during the course of his or her lifetime.[3]

If voters are worried about crime because there is so much of it, then it is attractive to government to be seen to be taking direct action. In the case of the current government, that action has been wholesale centralisation of previously locally rooted criminal justice agencies, a substantial increase in spending, and a torrent of legislation, as we describe below and in Chapter 12.

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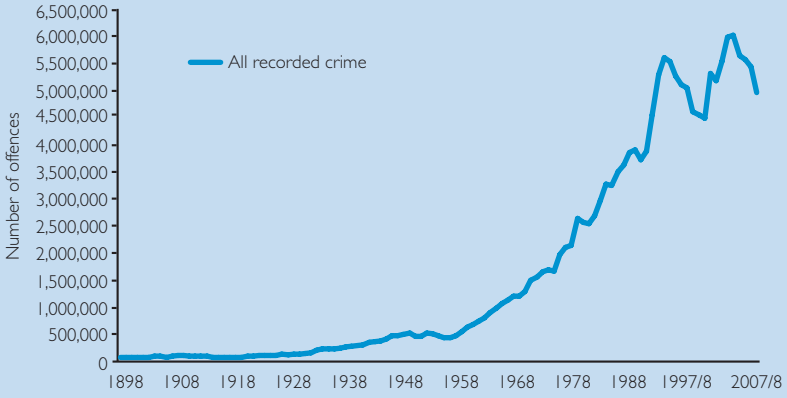
2 Home Office, 2008. *A Summary of Recorded Crime Data 1898 to 2001/02*, Home Office; Home Office, 2008. *A Summary of recorded crime data from 2002/03 to 2007/08*, Home Office. Available at: http://www.homeoffice.gov.uk/rds/recordedcrime1.html [Accessed 26 March 2009]

3 For a fuller discussion of crime statistics (looking particularly at changes in recording and the difference between recorded and reported crime) see the Centre for Social Justice report *A Force to be Reckoned With.*

Figure 11.2: Recorded crime vs. comparable BCS crime



It is arguable, however, that the Labour Party's focus on crime had as much to do with political manoeuvring as an attempt to respond to heightened levels of concern. The Labour Party in opposition was frequently contending with the charge that it would be 'soft on crime', and was responding to a perceived hardening of the then Conservative government's stance after Michael Howard became Home Secretary in 1993. In response to these pressures, the Labour Party put great effort into presenting itself as robust on crime.

Whether the purpose was to reduce public concern about rising crime by making it a central priority of government, or whether the government just wanted to present itself as tough on crime to match Conservative rhetoric, the result has been, as we have seen, historically high levels of *concern* about crime.

People do not think that the government has taken crime in hand. A survey conducted by Ipsos MORI in 2006 showed that only 25 per cent of respondents in the UK expressed confidence in the government 'cracking down on crime and violence'. This was significantly less than in Germany (48 per cent), France, Italy (both 46 per cent), the USA (44 per cent) or Spain (38 per cent); and not simply a reflection of generally higher dissatisfaction with government.[5] Between 1997, when the current government came to power, and 2007, confidence in its ability to crack down on crime fell from 63 per cent to 27 per cent.[6] Another poll shows that only 22 per cent of adults are satisfied with 'the way the government is dealing with crime', compared to 60 per cent who were positively dissatisfied.[7]

> "Without the federal systems or alternative bulwarks of local power other countries have, crime has been nationalised and politicised with the Home Secretary and sometimes even the Prime Minister taking responsibility for every assault."
>
> Elizabeth Truss, *The Lawful Society*[4]

4 Truss E et al, 2008. *The Lawful Society*, Reform
5 Duffy B & Wake R, 2008. *Closing the Gaps: Crime and Public Perceptions*, Ipsos MORI, p. 21
6 Duffy B & Wake R, 2008. *Closing the Gaps: Crime and Public Perceptions*, Ipsos MORI, p. 22
7 Ibid, p. 33

The Working Group suggests that the reason for the heightened concern and decreasing confidence in the government's response to crime is precisely because the government has made such a big political issue of it. The more in control it has claimed to be, the more people have looked to the government to deal effectively with crime, ramping up its significance as an important national issue. The more the government has taken direct responsibility for the criminal justice agencies, the more it has been and will continue to be held accountable for anything that goes wrong anywhere in the country. Instead of looking to local criminal justice institutions to solve the problems of local crime, we now look to national government.

But it is simply not possible for the minister in charge to respond effectively to every incident himself or herself. The creation of a locally accountable criminal justice system, as we argue for in Chapter 12, will remove blame in the first instance from central government and reduce the prominence of crime as a *national* issue. If control over crime really is to be devolved to more effective and responsive local control, then it is imperative that the public holds local figures directly accountable, and not national figures.

The rest of this chapter explores the effect of politicisation on the law, the judiciary and the structure of sentences. Interference here has led to greater complication for the courts and has made it even harder for the public to understand what is going on.

11.2 More Laws, Less Discretion

The government's attempts to get to grips with crime have involved a great deal of law-making and changes to the relationship between government and judiciary and the judiciary's role, particularly regarding the use of its discretion.

11.2.1 CONSTANT TINKERING WITH THE LAW

The increasing prominence of criminal justice as an issue of national political concern has been reflected by the government's legislative hyperactivity regarding crime and the criminal justice system. Between 1997 and 2009 there has been an avalanche of criminal justice legislation. Some of the most prominent of these are listed in Figure 11.3. This compares with an average of one formal Criminal Justice Act per decade for most of the 20th century.[8]

Some of these Acts introduce new crimes. A parliamentary question by the crossbench peer Baroness Stern revealed that there were approximately 3,600 new offences created since 1997, of which at least 1,036 were imprisonable offences.[9] The rate has been increasing – for example, in 1997 there were 52 new imprisonable offences; by 2003, 181 per year, peaking at 174 new offences in 2005.[10]

8 Lord Justice Rose, 23 November 1998, 'Stop this torrent of legislation', *The Independent*
9 Hansard, House of Lords Debate, 9 December 2008 [Column 317]
10 *The Telegraph*, 4 January 2009, 'Why is Labour so keen to imprison us?'

Figure 11.3: Criminal justice legislation 1997-2009

Below is a selection of Acts of Parliament with significant implications for the criminal justice system.

1997-98
- Crime and Disorder
- Criminal Justice (Terrorism and Conspiracy)
- Firearms No 2 (Amendment)

1998-99
- Sexual Offences (Amendment)
- Youth Justice and Criminal Evidence

1999-2000
- Criminal Justice and Court Services
- Criminal Justice (Mode of Trial)
- Criminal Justice (Mode of Trial) (No 2)
- Powers of Criminal Courts (Sentencing)
- Sexual Offences (Amendment)
- Terrorism

2000-01
- Criminal Justice and Police
- Private Security Industry
- Vehicles (Crime)

2001-02
- Anti-Terrorism, Crime and Security
- Football (Disorder) (Amendment)
- Police Reform
- Proceeds of Crime

2002-03
- Antisocial Behaviour
- Crime (International Co-operation)
- Criminal Justice
- Sexual Offences

2003-04
- Domestic Violence Crime and Victims

2004-05
- Drugs
- Identity Cards
- Management of Offenders and Sentencing
- Prevention of Terrorism
- Serious Organised Crime and Police

2005-06
- Fraud
- Identity Cards
- Police and Justice
- Racial and Religious Hatred
- Terrorism
- Violent Crime Reduction

2007-08
- Criminal Justice and Immigration

2008-09
- Coroners and Justice Bill

The judiciary has found it extremely difficult to assimilate all these new laws which affect both the trial procedure and sentencing. Some of the laws, such as certain ones relating to terrorism, are widely regarded as necessary. Others are puzzling and would seem on creation to have earned a place in the venerable list of legal curiosities: for example, disturbing a pack of eggs when instructed not to by an authorised officer.[11]

> "I'm so glad I don't sentence now. It is so unsettled. And underneath it all is a lack of resources."
>
> Sir Robin Auld, former Lord Justice, in evidence to the CSJ

The government has not just created many new laws, but also new criminal justice structures and organisations. The pace of legislation is such that much of it has been passed but never brought into force. Many key sections of the Criminal Justice Act 2003, such as Custody Plus, have still not been enacted despite publicity fanfares. Other initiatives were launched without consideration being given as to whether they are even practical: the most notorious example being the Indeterminate Sentence for Public Protection. This sentence allows offenders to be imprisoned for an indeterminate period, their release being dependent on their ability to demonstrate to the Parole Board that they no

11 *The Telegraph*, 20 January 2009. 'Government's legislative hyperactivity must be stopped'

longer present a danger to the community. One of the key ways this is measured is by the prisoner's participation in various educational classes and rehabilitative programmes. But in many cases, these programmes are not available to the prisoners in question, denying them the opportunity to show they have reformed, and consequently denying them the opportunity to be released in good time. The Court of Appeal has recently ruled the Justice Secretary to have 'failed deplorably' in his public law duty.[12] The government was forced to create new legislation in the Criminal Justice and Immigration Act 2007 to redress the egregious flaws. In his summary of the recent judgement, Lord Hope commented:

> *The maxim, marry in haste, repent at leisure, can be equally well applied to criminal justice legislation, the consequences of ill-considered action in this field being certainly no less disastrous. It is much to be hoped that lessons will have been learned.*[13]

11.2.2 CONTROLLING THE JUDICIARY: GUIDELINES AND RULES

The separation of government from the judiciary and the legislature is an essential feature of a parliamentary democracy, checking the abuse of power by any one branch. Chapter 12 shows how the government has taken charge of the criminal justice agencies and the administration of justice. It has also sought progressively to limit the independence and discretion of the judiciary.

> "The work of all who sit in the criminal jurisdiction... has been rendered infinitely more arduous ... by a ceaseless torrent of legislation, adding complexity to substantive law and to the sentencing exercise."
>
> Lord Phillips of Worth Matravers (as Lord Chief Justice of England and Wales)[14]

The Criminal Justice Act 2003 created the Sentencing Guidelines Council, whose remit was to promulgate guidelines on the appropriate sentence for particular crimes. The SGC is chaired by the Lord Chief Justice and its members are drawn from different ranks of the judiciary, together with four non-judicial members, with experience of policing, criminal prosecution, criminal defence and the interests of victims.

We do not suggest that the SGC is itself controlled by government. Nonetheless, the creation of a centralised agency for purposes that used to be achieved through the promulgation of rulings by the Court of Appeal brings the judiciary closer to government control.

Its creation, and the issuance of ever more stringent guidelines to the judiciary about how they must sentence particular crimes, is part of a trend of reducing discretion at a local level.

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12 House of Lords (6 May 2009), *Secretary of State for Justice v James*, HL, s. 3

13 House of Lords (6 May 2009), *Secretary of State for Justice v James*, HL, s. 65

14 Her Majesty's Court Service, 2009. *The Court of Appeal Criminal Division: Review of the Legal Year 2007/2008*, HMCS, p. i

The current legal status of sentencing guidelines is that the sentencing court is mandated to 'have regard to' them. It is entitled to depart from them in a particular case if it states its reasons for doing so. We found considerable support among sentencers, both judges and magistrates, for guidelines so long as they are just that: *guidelines*, rather than a prescriptive 'sentencing grid' of the kind used in some US jurisdictions. Sentencers found such guidelines helpful in reducing inconsistencies of approach between different courts, whether different judges or benches in the same building or between courts in different geographical areas.

However, the sentencing guidelines are becoming more detailed and prescriptive. The first guideline, published in December 2004, gave broad indications about the appropriate sentence under the new sentencing regime introduced by the Criminal Justice Act 2003. For example, 'theft' is given the following treatment:

> For offences only just crossing the community sentence threshold (such as persistent petty offending, some public order offences, some thefts from shops, or interference with a motor vehicle, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate)... Suitable requirements might include:
>
> - 40 to 80 hours of unpaid work or
> - a curfew requirement within the lowest range (e.g. up to 12 hours per day for a few weeks) or an exclusion requirement (where the circumstances of the case mean that this would be an appropriate disposal without electronic monitoring) lasting a few months or
> - a prohibited activity requirement or
> - an attendance centre requirement (where available).[15]

This was characteristic of the 2004 Guideline – it gave an indication of the appropriate sentence while leaving broad discretion to judges and magistrates. The document was 34 pages in total.

By contrast, the 2008 Guideline has expanded to 209 pages, plus new supplementary material.[16] It distinguishes between different types of similar offences. It also goes into detail about what should count as aggravating or mitigating circumstances – for example, committing theft from a shop 'in the presence of a child' increases the level of harm of the act.[17]

In the context of a system where magistrates are entitled to depart from the guidelines (even if they must give reasons), such unnecessary and prescriptive

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15 Sentencing Guidelines Council, 2004. *New Sentences: Criminal Justice Act 2003: Guideline*, Sentencing Guidelines Secretariat, p. 9

16 Sentencing Guidelines Council, 2008. *Magistrates' Court Sentencing Guidelines: Definitive Guideline*, SGC. Available at: http://www.sentencing-guidelines.gov.uk/guidelines/council/final.html [Accessed 31 March 2009]

17 Sentencing Guidelines Council, 2008. *Theft and Burglary in a building other than a dwelling*, Sentencing Guidelines Secretariat, p. 16

detail may at least be disregarded – though magistrates have told us of some courts where HMCS senior court administrators have insinuated that the guidelines are effectively compulsory. However, the government has now proposed, in the Coroners and Justice Bill currently before Parliament, that magistrates 'must follow' the guidelines, formally making them prescriptive rules.[18] The Council of Circuit Judges has responded to the Bill with a marked lack of enthusiasm:

> "Mandatory guidelines... are not sought by the judiciary or any other criminal justice group. They are unnecessary, costly and unwelcome."
>
> The Council of Circuit Judges[19]

The discretion of the sentencing judge is... severely limited by the introduction of what are mandatory guidelines which the court must follow or apply in reaching the sentencing decision... We do not consider these sentencing proposals to have any benefit. The proposals are not sought by the judiciary or any other criminal justice group. They are unnecessary, costly and unwelcome.[20]

11.2.3 GOVERNMENT ATTEMPTS TO DIRECT THE JUDICIARY

In addition to the formal route of restricting judicial discretion through the use of increasingly prescriptive (and soon to be mandatory) sentencing guidelines, the government stands accused of trying to pressure the judiciary, over whom it has no direct authority, by public criticism of particular judges when an unpopular sentence is reported in the press. It has historically been highly unusual for government ministers to comment openly on sentences. After the horrendous kidnapping of a five year-old girl by Craig Sweeney, John Reid, then Home Secretary, demanded that the Attorney General appeal the sentence on the grounds of public dissatisfaction (rather than on a point of law, as he is entitled to do). (Section 11.4.4 below shows that the five-year sentence handed down was what the sentencing guidelines and legislation, enacted by the government, demanded in the circumstances.) A former senior high court judge called the rancour 'open warfare'.[21]

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

More recently, on 22 February 2008 the Lord Chancellor, Jack Straw, took the unprecedented and wholly unconstitutional step of trying to direct magistrates' sentencing decisions through a letter to the courts, and an interview in *The Guardian*. He urged them to use community sentences even when they thought that the offence had to be dealt with by a custodial sentence. The inappropriateness of this intervention was highlighted

18 HC Bill (2008-09) *Coroners and Justice Bill* (s. 108)
19 *The Times*, 26 March 2009. 'Judges accuse Jack Straw of trying to limit their discretionary powers'
20 *The Times*, 26 March 2009. 'Judges accuse Jack Straw of trying to limit their discretionary powers'
21 BBC News, 19 June 2006. 'Vocal judiciary nothing new', www.news.bbc.co.uk

by the immediate and severe response of the Lord Chief Justice who wrote to the Magistrates' Association:

> *I have spoken to the Lord Chancellor and can confirm that it was not his intention to suggest that custodial sentences should not be imposed if the circumstances of the offence are so serious that a fine or community disposal cannot be justified. As the Lord Chancellor and I have always made clear,* it is not for him or me to give directions *as to how Judges and Magistrates should exercise their sentencing discretion.*
>
> Phillips CJ[22] [Emphasis added]

11.3 Effects of Interference

Individually, new laws and criminal justice arrangements may be well-intended and theoretically sound, but judges consulted by the Working Group reported that the cumulative effect was disruption and confusion. Judicial figures have suggested that many of the changes have done little but create work for lawyers and make the business of judging and sentencing more complicated than it needs to be. The increasingly open attempts to direct the judiciary and reduce its discretion put even greater pressure on judges and magistrates, and divert their attention from doing justice. It erodes judicial responsibility for judicial decisions. It also makes it harder for judges and their criminal justice colleagues to respond to the nuances of cases before them, achieving outcomes that are in the interests of justice and local communities. This theme is pursued in Chapter 12 where we look at the effect of centralisation and bureaucratisation on the other criminal justice agencies.

The creation of a plethora of new crimes has, at root, reinforced the sense that the government has sought to tackle the results of social breakdown with criminal justice-based interventions, rather than attempting to repair the underlying damage to society.

11.4 Spin Sentencing

The ratcheting up of rhetoric described above has been matched by a devaluation of criminal justice terminology. New sentencing structures have undermined the court's discretion in balancing risk, rehabilitation and just deserts in sentencing, and it has become increasingly unclear for victims and the public as to what the sentence passed by the judge actually means.

11.4.1 EXECUTIVE RELEASE SCHEMES

In response to prison overcrowding, the government has introduced two early release schemes for prisoners. Home Detention Curfew – popularly known as

22 Quoted on 'The Magistrate's Blog', 22 February 2008. Available at: http://thelawwestofealingbroadway.blogspot.com/2008_02_01_archive.html [Accessed 27 March 2009]

'tagging,' though in principle it need not involve an electronic tag – was introduced in 1999, allowing prison authorities to release prisoners on licence up to four and half months before the halfway point of sentences of between three months and four years. In 2007, 11,428 prisoners were released on this scheme,[23] and it has recently been announced that, as permitted by the Criminal Justice Act 2003, it is to be extended to prisoners serving sentences of any length, provided they are deemed by the prison Governor to present little risk to public safety. (Some categories of offenders, such as sexual offenders, are excluded from the scheme.)

More recently, the 'end of custody licence' scheme, introduced at the end of June 2007, allows for prisoners to be released 18 days early – that is 18 days before the conclusion of the minimum prison sentence imposed by the court. It was introduced as a purely pragmatic measure to reduce the prison population, and applies to all prisoners imprisoned for certain offences, regardless of the danger they pose. The Governor of the prison has no discretion over who is released. It has recently been announced that there are no plans for this 'temporary' (according to Lord Falconer)[24] arrangement to be stopped.[25] Between June 2007 and June 2009, 62,534 prisoners were released early under these arrangements – a rate of nearly 90 prisoners a day.[26]

> "The practical result is that the courts are being required to shovel people into prison by the front door and then they are released by the back door."
>
> Former Lord Chief Justice Lord Woolf, House of Lords Debate[27]

The point is not that the system should be harsher, or less harsh: it is that fiddling in such a wholesale manner with the sentence imposed by the court is misleading and undermines people's respect for and understanding of the criminal justice system. It also raises the question: if the minimum term of imprisonment specified by the sentencing court was indeed the right way of dealing with the offence and the offender, why should it be reduced by executive action?

The undeniable fact that prisoners are being released *en masse* out of the back door, without regard to the judge or magistrate's sentence, contrasts heavily with the government's tough rhetoric on crime and punishment. The Working Group does not say that the current tough rhetoric should necessarily be backed up, but that the whole spectacle serves only to bring the system into disrepute. That damage is compounded by the unavoidable conclusion that these *ad hoc* measures were the result of a failure to plan properly.

11.4.2 RELEASE SCHEMES UNDERMINE THE COURTS

The subterfuge in this is not that early release schemes exist, but that they are carried out behind the back of the public and the courts. The government does not want the sentencer to say:

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23 Hansard, House of Commons Written Answers, 4 November 2008. [Column 324W]

24 *The Guardian*, 29 June 2007. 'First early release' prisoners freed today'

25 BBC News, 8 March 2009. 'Prisoners paid £5m compensation for early release'. Available at: http://www.telegraph.co.uk/news/newstopics/politics/lawandorder/4958249/Prisoners-paid-5m-compensation-for-early-release.html [Accessed 27 March 2009]

26 Ministry of Justice , 2009. 'End of custody licence releases and recalls statistics'. Available at: http://www.justice.gov.uk/publications/endofcustodylicence.htm [Accessed 17 March, 2008]

27 Lords Hansard, 20 January 2009. Column [1553]

> *'According to what you deserve, based on the seriousness of your crime and the risk I think you pose to the community, I should sentence you to six months for this offence; but given the state of overcrowding in the prisons, the government has decreed that low-risk offenders must be released early. Therefore I sentence you to six weeks less than I think you deserve.'*

This is exactly what is happening, though. Early release schemes are defended on the basis that an offender is 'low-risk' to the community either because of the nature of the offence (ECL) or because a risk-assessment has been done (HDC). There is nothing objectionable in a sentencer making a balanced assessment between deserts and risk, as long as the calculation and results of this balancing are made public. Indeed he or she is expected to do this as part of 'having regard to' the purposes of sentencing. But if the government is not willing to have it done publicly, it should not happen at all. Doing it on the quiet, by giving the 'discretion' to prison Governors who are often under pressure to release a bed space, is pernicious.

11.4.3 SENTENCE LENGTH AND LENGTH OF IMPRISONMENT

The lack of transparency over 'risk-related' release contributes to another severe fog in the criminal justice system. The question is, just how long is a sentence?

To those uninitiated into the mysteries of the criminal justice system, four years would mean four years, perhaps with a bit off for good behaviour. The truth is far different.

In addition to the Home Detention Curfew and end of custody licence, all prisoners serving sentences of less than four years are automatically and unconditionally released from prison at the halfway point, to serve the rest of their sentence 'on licence', which means that if they reoffend or break the terms of the licence in theory they may return to prison for the remainder of the sentence. The licence conditions may contain only nominal 'supervision', which may be nothing more than a requirement to make contact with the probation service every month. For sentences of less than a year, there is no probation supervision or contact requirement at all after the mandatory halfway release, and the licence condition makes very little practical difference at all to the sentence passed in the event that the offender is reconvicted during the period.

We also have to consider time served on remand in prison which is normally deducted from the period of time to be spent in prison after sentence. Since the introduction of the Criminal Justice and Immigration Act 2008, nine hours or more per day on a tag in the community (even if overnight) is treated as equivalent to half a day in prison for the purposes of calculating time served.[28] The law also requires that offenders who plead guilty at the earliest possible stage be given a third off their sentence (reducing to a tenth off if they plead guilty late).

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28 Predictably, this has resulted in sentencers imposing many more eight-hour tagging orders.

What, in fact, does a sentence mean? Twenty-seven per cent of prison sentences last between three and six months – a six month sentence is in this sense typical.[29] A magistrate described what happens when he invokes a six-month custodial sentence.

CASE STUDY: HOW LONG IS A SIX MONTH SENTENCE?

'Maximum sentence available to magistrates: 6 months. Let's call that 180 days. Defendant pleads guilty (most do) so one-third reduction. That's 120 days. That is automatically reduced by half, leaving 60 days.

Current early release is 18 days, leaving 42 days to serve.

That's six weeks.

Prisons don't release at weekends or on bank holidays, so those with sentences expiring then are released the previous Friday, possibly knocking 2 more days off the sentence. If, as suggested in the press, early release is extended to 30 days, then the most that magistrates can hand down will be effectively 28 to 30 days - roughly four weeks. Hardly Judge Jeffreys is it?'

The Magistrate's Blog[30]

Six months routinely means six weeks – and this is the most (barring two consecutive sentences) that magistrates are allowed to impose. As Figure 1.1 shows, more than half of all prison sentences are passed by magistrates' courts.

11.4.4 UNDERMINING THE COURT, MISLEADING THE PUBLIC, HAMPERING DEBATE

Sentencing is undoubtedly complicated and there are good reasons for creating incentives to plead guilty at the earliest opportunity, rewarding compliance with sentences, and taking time served into consideration. But as we argued above, the grounds for the various early release schemes are less principled. The sentence passed by the judge should reflect the reality of that sentence. The vast majority of prison sentences are short term sentences – 60 per cent are less than six months in total (three months in prison)[31] – whose stated length bears a misleading relationship to the length of time of any strictures.

This, and the undermining of the courts' sentencing decisions, suggests that the oft-heard complaints about judges being 'too soft' are misguided. Judges are bound to sentence according to the law, and statute and guidelines determine what this actually means. Yet frequently the government chooses to attack the judiciary instead of being honest about the system and the

29 Ministry of Justice, 2009. *Offender Management Caseload Statistics 2008*, MoJ, Table 6.13

30 The Magistrate's Blog, 23 February 2008. Available at: http://thelawwestofealingbroadway.blogspot.com/2008_02_01_archive.html [Accessed 27 March 2009]

31 Ministry of Justice, 2008. *Sentencing Statistics 2007 (England and Wales)*, MoJ, Table S5.8

constraints which it imposes on sentencers. The public criticism by then Home Secretary John Reid of the judge in the Sweeney case for making Sweeney eligible for release after five years is a prime example. As Dominic Lawson put it, 'the mathematics of the government's own sentencing guidelines are clear'.[32]

CASE STUDY: CRAIG SWEENEY AND THE EFFECT OF SENTENCING LEGISLATION ON TIME SERVED

'Although Judge Williams declared that the crime merited an 18-year stretch, under the 2003 Criminal Justice Act Sweeney would be entitled to parole after serving half his sentence. That makes nine years. Take away a further three years - the same Act insists judges reduce sentences by a third if a defendant pleads guilty - and a further year off for time spent on remand, and you arrive at the 'five-year' sentence that has convulsed the body politic.

It was profoundly cynical of John Reid, the Home Secretary of the month, to blame Judge Williams for following the mandatory guidelines set by this Government. But that at least was openly opportunist. Not so the disgusting deviousness of New Labour's backroom boys who simultaneously sent to The Sun a list of all the judges who have been 'soft on criminals'. No criminal has ever been as shameless as this Government in providing a false alibi.'

Dominic Lawson[33]

This report does not suggest that custodial sentences of 'four years', which nowadays mean something completely different, should necessarily be lengthened to last four years. Rather the Working Group says that if a sentence is in effect two years in prison with a requirement for supervision for two years thereafter, let this be the sentence openly and clearly pronounced in court when it is passed.

It is not simply that victims and the wider public will not know how long a particular offender is due to serve – it is that a debased terminology invites understandable cynicism about our judicial institutions, from offenders, from the media and from the wider public. Even more importantly, it is impossible for society to have a meaningful debate about justice and what we expect from sentencing if the wider public does not know the real meaning of the key terms.

11.5 Proposals

In seeking to take control of crime and criminal justice, the government has created a plethora of laws and new criminal justice structures which have disrupted the judiciary and the other criminal justice agencies.

32 *The Independent*, 16 June 2006. 'Both parties say they are the toughest on crime. So where are the extra prisons?'

33 Ibid

This Working Group believes that reconnecting the criminal justice system directly with local areas will reduce this constant fiddling, and restore the damage done by some of the structural changes of the last ten years. If people felt that responsibility for detecting crime and dealing with offenders lay with local politicians and locally visible and accountable administrators, they would direct their grievances and concerns at these figures. The next chapter will argue that a local criminal justice figurehead, in charge of a locally organised criminal justice system, would offer a better chance of responding effectively to these grievances. The point to note here is that local accountability means that the Home Secretary and Justice Minister will be less prone to knee-jerk political responses to crime in the form of new laws, organisations or initiatives which affect the whole country, even though the problem may have been specifically local. This is because they will not be held responsible, in the first instance, for responding to every burglary in every county.

The Ministry of Justice should have the power to intervene where there is clear evidence of persistent failure, and of course the government would still have the prerogative to draft new legislation to deal with crime and disorder; but it is hoped that these interventions would be less frequent and more fully considered.

The benefits of a more transparent sentencing structure go beyond restoring confidence in sentencing. Transparency is the first step towards enabling an open public debate about our expectations of the criminal justice system; a debate which is impossible if the terminology, to the layman, is completely out of kilter with reality. By clarifying terms, we hope to promote a vigorous debate about what we expect our criminal justice system to do.

11.5.1 EARLY RELEASE UP FRONT

The Working Group does not rule out that early release schemes may be necessary, and that particular categories of offenders who might be less dangerous or more amenable to probation might be targets for such schemes. The damage is not in the schemes themselves but in the 'back door' manner in which they are introduced, which undermines both the courts' will and public confidence in the system.

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 (currently determined by static risk factors for predicting the likelihood of future offending, such as age and previous offending history) can be taken into account at the point of sentencing, especially during short sentences.

The Working Group proposes that all current and future early release schemes 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 to change the length of the order either way, that should be made absolutely plain at the point of sentence.

11.5.2 HONESTY IN SENTENCING

While the professionals in court will understand the true meaning of a sentence passed, members of the public, including victims, often do not, and are therefore surprised by the unexpectedly early release of an offender. Moreover it is impossible to have a clear public debate about our criminal justice system if parts of it are so opaque.

The Working Group proposes that 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. If eligibility for early release on Home Detention Curfew depends on factors which may change subsequent to sentencing, the judge should state clearly the effect on the length of imprisonment if current circumstances change.

The Working Group sees no reason why all sentences should not be pronounced, for example, in the following format: 'You will have a total sentence of X months of which you will spend the first Y months in prison, you will then spend a further period of Z months either in prison or under Home Detention Curfew if you are eligible for it, and afterwards you will be obliged to remain in contact with the probation service for the remaining period.' The level of post-release supervision should also be made clear.

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

TWELVE
Making Justice Local

The reality that crime is related to lifestyle and the place where people live makes a prima facie case that an effective response will have to be coordinated at a local level. The vast majority of offences dealt with by police and by the magistrates' courts are offences which affect the quality of communal life in an area. Responsible communities have a mandate to police themselves and to ensure justice is done. Moreover, as we have already argued, the legitimacy of the criminal justice system requires it to be as strongly connected to the communities it serves as possible; and practically, the more engaged it is the more effective it will be.

This organisational localism used to be matched by an acceptance of the autonomy and professionalism of magistrates and probation officers.

As we argued previously, there has been a long-running trend towards centralisation of the criminal justice system under control at national, rather than local, level. This trend has taken huge steps forward in the last ten years, particularly in the probation service and the magistrates' courts.

This chapter looks at the effect of centralisation on the criminal justice system, and the place of community and voluntary groups at the courthouse.

12.1 What is 'Centralisation'?

By 'centralisation' we refer to the concentration and consolidation of power over the criminal justice institutions at the centre, under the control of bodies accountable only to central government (if accountable to anyone at all). That power used to be more widely dispersed in different areas and across different institutions.

The lower tiers of the criminal justice system in England and Wales were historically administered by locally controlled agencies with strong connections to the people they immediately served and secured. Magistrates' courts were controlled by Magistrates' Courts Committees which were aligned mostly with local authority county boundaries. This was subsequently changed as a result of the Narey reforms in the mid-1990s to correspond to police force areas. The Probation Service was, until 2001, organised into 54 local probation areas, linked to local authorities which contributed 20 per cent of the probation service revenue costs. Each probation area was accountable to a Probation Committee made up of local magistrates.

These local organisations had a large degree of autonomy: they owned capital assets, including courthouses and probation offices, hired their own staff including all Justices' Clerks and Justices' Chief Executives (who managed the courts), set pay and, in the case of the Justices' Clerks, conducted their own training. Though laws were uniform across the country, there was greater discretion as to how to deal with particular crimes and disorders. Magistrates had much greater discretion, for example, about the disposals they could use.

The government is keen on the word 'community'. However, these facets of mature localised democracy have been deeply compromised. Magistrates' Courts Committees were abolished and the administration of the courts became the responsibility of Her Majesty's Court Service (HMCS) in 2005, first under the Department for Constitutional Affairs and now under the Ministry of Justice. HMCS administers the court estate and employs and directs all non-judicial personnel, such as Justices' Clerks. The reorganisation put the magistrates' courts in line with Crown courts and county (civil) courts, which were already centrally administered.

The government has centralised control over the criminal justice system

Related to the centralisation of the management of magistrates' courts has been the increasing prescriptiveness of sentencing guidelines for magistrates, discussed in Chapter 11. The Criminal Justice Act 2003 created a Sentencing Guidelines Committee which promulgates guidelines aimed at limiting or structuring the discretion of magistrates.

The probation service centralisation started earlier but is still incomplete. The Criminal Justice and Court Services Act 2000 sought to 'create an organisation which could be more effectively managed and directed from the centre'[1] – through the creation of the National Probation Service, effect in April 2001. There was a simultaneous amalgamation of the probation service to each area with police force areas. The Chief Officers were directly appointed by the Home Secretary, as were the new Probation Boards. As in the case of magistrates' courts, all capital assets were transferred to central ownership. Just three years later, however, the National Offender Management Service (NOMS) was created. Initially a management protocol for bringing together decisions about probation and prisons, it gained a definite structure in the Criminal Justice Act 2003. Theoretically, NOMS sits atop both the prison and probation services. Under the original NOMS plans, Probation Boards would be turned into Probation Trusts, which would then compete with non-statutory private and voluntary sector providers of structured probation services. NOMS locally would be responsible for managing and overseeing the sentence.

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1 Raynor P, 2007. 'Community penalties: probation, 'what works', and offender management' In Maguire M, Morgan R & Reiner R, eds. *The Oxford Handbook of Criminology,* Oxford University Press, pp. 1061-1099, p. 1078

12.2 What was the Rationale for Centralisation?

Centralisation was in part a result of the Labour government's desire to take crime in hand, and to be seen to do so (see Chapter 11). There were more practical reasons as well. Lord Justice Auld's survey of courts and tribunals argued for the creation of centres of justice to deal with both civil and criminal justice matters, and also the closure of small magistrates' courthouses which were sometimes under-used and expensive. Centralisation of ownership over the property was thus accompanied by a closure and consolidation of existing courthouses. The government also claimed that the creation of HMCS would simplify access to justice, and also make it more uniform across the country. Among other things, it was argued that central control would make the sharing of information more efficient.

THE PURPOSE OF CREATING HER MAJESTY'S COURT SERVICE

'A single national agency is more flexible in the way services are provided. For instance, in some rural areas it is possible to maintain local courts through sharing buildings where it is currently too expensive to maintain separate buildings for different types of courts.

It removes unnecessary duplication and ensures greater uniformity of approach across all courts.

The relationship between people and the courts will be improved because it is easier for people to get what they need from one organisation only. It will also be less complicated with just one standard of service so that no matter where you are in the country, when you need to deal with the courts you know what to expect.'

Former Secretary of State for Constitutional Affairs, Lord Falconer[2]

There had also been long-standing concerns about the efficiency of the local Magistrates' Court Committees, and the effective administration of justice (for example the number of trials stopped or delayed for technical reasons).

The centralisation of the probation service was driven by similar concerns, but there was also a broader rationale. There was a feeling that the probation areas could not be held robustly to account for carrying out sentences ordered by the courts. This had been a real problem a few decades earlier when probation services really were a law unto themselves. Although the full integration of community orders into sentencing structures in the Criminal Justice Act 1991 had partially brought them in line, the very formalisation of community sentencing seemed to call for stricter oversight of probation; a National Probation Service would see Probation Boards held firmly to account for their actions (although by government rather than the courts).

2 HMCS Communications, 4 June 2007, *Her Majesty's Court Service begins today (press release)*. Available at: http://www.hmcourts-service.gov.uk/cms/2319.htm [Accessed January 20, 2009]

There was a resurgence of evidence of 'what works' in terms of best practice for tackling reoffending through probation (see section 6.3) in the nineties, and it was felt that these well-researched approaches were not being utilised fully and consistently by Probation Boards. Centralisation would allow for better dissemination of research and best practice.[3]

The centralisation of property was partially done with efficiency in mind; the development of NOMS gave such property a new possible use – as a base for competing providers of probation services. For this reason offices were put in central locations in towns and made versatile and general in purpose.

The advent of NOMS heralded a significant change to these plans. It was founded on two principles: 'contestability' and 'seamless end-to-end offender management'. Each offender would be assigned an offender manager whose job it was to track the offender's progress through the criminal justice system, and procure the services deemed necessary from competing statutory and private organisations. Best practice would not so much be disseminated from the centre, as achieved through competition.

12.3 What's Wrong with Centralisation?

These ideas seem propelled by a consideration for what would make a system cheaper to run, rather than what would be good for justice and communities.

The crime that affects people's quality of life takes place at and around where they live, work and socialise – and this is true of victims and offenders. Moreover, much crime is the result of local problems and opportunities. Responding to this kind of crime with effective policing and sentencing requires a good knowledge of the local area, of the challenges that need to be overcome, and of the resources and opportunities that are available to do this. Central coordination is simply not capable of effectively acknowledging and responding to these local conditions.

> "Centralisation has caused huge loss of morale. There's no team spirit, which there was in the old days. We worked together as a team with a senior. Now we're completely outnumbered [by bureaucrats]...
> We don't do many home visits now. I knew all the local GPs, I knew about the particular crime problems... I'm not in contact with local health services now at all. I used to know the courts there, the judges. We used to have liaison meetings... Magistrates wanted to know, 'We sentenced Joe Bloggs – what happened to him?' Now it's, 'What's the statute, what's the law?'"
>
> Probation officer, South East England, in evidence to the CSJ

3 Raynor P, 2007. 'Community penalties: probation, 'What Works', and offender management'. In Maguire M, Morgan R & Reiner R, eds, *The Oxford Handbook of Criminology*, OUP, 1061-1099

Moreover the 'savings' created by 'rationalisation' of courthouses and probation officers in reality just transfer the costs to employees, victims, offenders and witnesses who have to travel further to court centres; and spending on central offices has increased dramatically.

The following sections expand on these points.

12.3.1 WRONG RATIONALE

While the intention of greater 'uniformity of approach' may be desirable for the higher criminal courts and civil courts, magistrates' courts are different.

Lord Falconer emphasised, as we have seen above, that the new arrangements would promote a uniformity of approach to the administration of justice:

> *It will also be less complicated with just one standard of service so that no matter where you are in the country, when you need to deal with the courts you know what to expect.*

Uniform administration may have systemic benefits and promote managerial efficiency, but to justify it in terms of the court user's experience betrays a key misunderstanding of the role of magistrates' courts. They are to deal with *local* crime. As such it is on the whole unlikely that people will appear as offenders and victims at courts in completely different parts of the country. There is therefore no reason that magistrates' courts should be uniform in the way Crown courts are.

The push for uniformity across the nation for its own sake also ignores the desirability of allowing for the possibility of differing treatment of offences or of offenders according to the priorities and circumstances of local communities. Arbitrary or random differences in punishments imposed for the same offence by courts in different areas are unfair. However, national sentencing guidelines have a legitimate part to play in achieving consistency, provided that they are seen as guidelines only (see Chapter 11).

But particular offences may affect particular communities in such a way that a different approach locally is justified; and such a reasoned variation from national sentencing structures should not be blocked by an overly centralised system.

12.3.2 IMPACT ON THE MAGISTRACY

Many magistrates' courts have a mixture of professional District Judges and volunteer magistrates.

While the lay magistrates are not paid, they do take their role very seriously both in the courtroom and in preparation for it. Increasingly, a number of issues have undermined the morale of this valuable group within the judiciary. By way of example:

- While wasted time in the court system is a factor which affects and frustrates the whole judiciary, the effects of poor court management and organisation seem particularly to impact on the magistrates. Having offered and given up their time, they are left with the sense, increasingly, that because no payment is made for their time, it is not valued.

- With the introduction of sentencing guidelines, magistrates' powers to make decisions are being curtailed. Although this may be beneficial in terms of consistency, it again has an impact on the motivation of the magistrates by challenging their competence.

Volunteer management is a well-developed skill in the voluntary sector, but the HMCS seems to have ignored many of the hard-learnt principles. The key requirement is to understand that volunteers have a 'psychological contract', an expectation that they will be given interesting and fulfilling work and that they will be treated properly. The expectations will vary depending on the circumstances, but if an organisation ignores these psychological factors, it ends up with disgruntled volunteers and difficulties in recruiting.

Poor work and time management reinforces the feeling that their time and effort are being undervalued. Where the courts continue, in some cases, to give the judges china cups and the magistrates polystyrene, the morale and performance of such a valuable judicial cohort cannot but be affected.

12.3.3 EROSION OF LOCAL CONNECTION

As magistrates' courts close down and are consolidated, it is inevitable that there will be a reduced sense of local ownership.

Closure of some courthouses was legitimate, and in some cases it has been held up by obdurate MCCs. On the other hand, the fact that a courthouse is expensive to run is not in itself necessarily a reason for closing it, especially if that then means that a large geographical area is left without a justice centre. In somewhere like London, the closure of an inner London borough's magistrates' court may only necessitate offenders and victims travelling a few minutes extra on train or bus. But in outer London, many other cities and rural areas, such closure can result in long journeys to completely different areas, causing failures to arrive promptly and consequently delays at court. It also means that the sitting magistrates are less likely to be familiar with crime problems and solutions from the area where the crime is committed or where the victims and accused live.

> "The closure of many local courts and even more centralisation in the larger courts have already eroded the principle of local justice, and we would hope that any further erosion of this principle would be strongly resisted. We worry that the proposal of the establishment of local Criminal Justice Boards will lead to yet further centralisation, with a desire for moves to co-locate all three courts, with the prime motivation being the prospect of costs savings."
>
> Magistrate, in response to Auld Review [4]

4 *The Criminal Courts Review Report: Comments received from magistrates-6.* Available at: http://www.dca.gov.uk/criminal/auldcom/mag/mag6.htm [Accessed 24 February 24, 2009]

12.3.4 LESS EFFECTIVE

The 'flight' of the probation service from deprived areas has been just as damaging for the prospect of rehabilitation as the courts' absence has been for promoting justice.

The availability of different types of community sentence in practice varies widely from local area to local area. Some local areas may establish special programmes for dealing with particular kinds of offenders (for example drugs treatment programmes or mental health or domestic violence programmes) and the existence and effectiveness of these local initiatives will inevitably affect the way in which local courts are able to deal with particular offenders.

> "Sixty-five per cent of the public agreed that magistrates cannot do their job properly if they don't have a good knowledge of the local areas which their court covers. (Twelve per cent said they didn't know.)"
>
> YouGov poll commissioned by the Centre for Social Justice, January 2009

The less relevant local knowledge possessed by magistrates, clerks, and the probation service, the less likely they are to know what useful options might be available as disposals for offenders. This encourages a bureaucracy of 'service providers' rather than generating disposals which are truly part of the local area's life. For example, one probation officer told us how he used to be able to tap into very local job markets to find apprenticeships with local employers for probationers. They also had a better knowledge of local charities and community groups who might be able to engage with offenders. Now, everything happens (if it happens at all) at a higher level, and the grass-roots contacts are simply not made.

12.3.5 WRONG ACCOUNTABILITY

The Working Group accepts that the probation service and courts committees were not sufficiently accountable, but does not agree that the right way to make them accountable was to put them under central control. Probation officers need to be accountable to the court, and the court, ultimately, to the public.

A centralised criminal justice system, where a range of targets are set centrally, can encourage officers to pursue certain goals by linking these goals to provision of funding; but it cannot make them accountable and responsible to those whom they are supposed to be assisting. Indeed they are not accountable to local people – they are accountable to their managers who are ultimately accountable to the minister in charge.

12.3.6 COORDINATION

It was hoped that centralisation would allow for greater coordination between the goals of the different criminal justice agencies. Unfortunately, centralisation has meant that strong autonomous organisations which had to come to agreements at a local level in order to function properly, now connect distantly at the centre. Local coordination is attempted, for example, through Criminal Justice Boards, which bring together police, probation, courts administration chiefs, and Crime and Disorder Reduction Partnerships

(CDRPs). The Criminal Justice Board meetings are essentially attempts at coordinating the attainment of commonly held, centrally defined, targets. The CDRPs at least have the benefit of choosing some of their own targets, out of a range of about 150 that have been centrally approved. There is not however a great deal of cash attached to CDRP targets, and the various agencies are still not accountable directly to the people whom they are supposed to protect and assist.

The professional and local knowledge which practitioners – primarily magistrates and probation officers – used to share with each other in informal and constructive meetings has been replaced by meetings where the main purpose is to negotiate the achievement of centrally-set targets.

> "There is a silo mentality that runs through the criminal justice system, with people [from different agencies] defending their budgets. We need to consolidate the budgets for these things."
>
> Sir Robin Auld, former Lord Justice, in evidence to the CSJ

In the context of coordination, we note that one of the major goals of NOMS and part of the drive to establish a coherent 'system' was the idea of end-to-end offender management. In the event, NOMS has given up on the goal of end-to-end offender management except for the most serious offenders; the National Probation Service lives on; and 'contestability', which really focused on prison commissioning, seems unlikely to make much headway in the near future.

> "NOMS simply never got a grip on anything."
>
> Ministry of Justice views on NOMS, Whitehall Source, on the NOMS fiasco[5]

12.3.7 BUREAUCRACY

The centralisation has seen a growth in management structures.

In addition to outright waste, centralisation has been accompanied by a greater expenditure on management grades, rather than frontline probation officers. Where the frontline staff numbers have increased, it has been through the hiring of Probation Support Officers, the equivalent of PCSOs for the police force. These support officers do not have the full qualifications of probation officers: they are able to fulfil the management and referral roles of the probation service, but are not trained to support and motivate offenders.

The creation of Her Majesty's Court Service has led to a developing rift between magistrates and the court administrators in many regions. The clerks and court organisers have effectively become civil servants responsible to Whitehall rather than to a local body or to their own magistrates. They often lack an understanding of how to work with a volunteer magistracy. The magistrates, on their part, feel less in control of their work and their

> "I am loathe to act as an unpaid servant where I have no influence or control on policy; especially where I feel it is inept or inappropriate."
>
> Magistrate in response to Auld Review[6]

5 *The Guardian*, 6 Feb 2008. 'Another makeover for offender management'. Available at: http://www.guardian.co.uk/society/2008/feb/06/prisonsandprobation

6 http://www.dca.gov.uk/criminal/auldcom/mag/mag6.htm

working arrangements, and increasingly suspicious of a class of civil servants who they feel are not working in the best interests of the local area itself.

The centralisation process was wasteful and has resulted in an expansion of management grades in both the probation service and the management of magistrates' courts, and the diminishment of expertise.

12.3.8 PROFLIGATE SPENDING

These damaging changes to the criminal justice system have come at a significant cost to the taxpayer.

In 2007/08, £1.21 billion was spent on Her Majesty's Courts Service, an increase of 22 per cent in real terms from 2002/03. The Ministry of Justice is now under instructions to reduce its annual operating budget by £1 billion by 2010/11.[7] This will necessitate cutting 3,100 jobs from the courts service.[8] The National Probation Service will see its annual budget reduce from £914 million this year to £794 million by 2011/12 – a 13 per cent cut without considering inflation. The National Association of Probation Officers predicts that it will lose 3,400 predominantly frontline staff from the probation service – approximately 17 per cent of the national workforce.[9]

In this context it is worth reminding ourselves of the waste.

Spending on headquarters and associated offices has increased dramatically since 2002, as shown in Figure 12.1 below.[10] The majority of this increase was associated with the establishment of offices for the National Offender Management Service (NOMS), the government agency in charge of prison and probation. The cost of establishing the largely defunct NOMS headquarters and regional offices is put at £2.6 billion.[11] Similarly, when the Ministry of Justice was created in 2006 (by combining the existing Department for Constitutional Affairs with the probation and prisons section of the Home Office), it was seen fit to spend £130 million on refurbishing the office block – which had formerly housed the Home Office.[12]

> "God knows where all the money has gone."
> "It has been four wasted years."
> "It was a damaged brand."
>
> Ministry of Justice views on NOMS[15]

The cost of the computer system which was intended to be the backbone of NOMS was originally estimated at £234 million. Instead, a scaled-back version, essentially an upgrade of existing prison computing systems will be installed three years late at an estimated cost of £513 million.[13] A single offender database was integral to the original purposes of NOMS, but the system will not support this and the aim has effectively been abandoned.[14]

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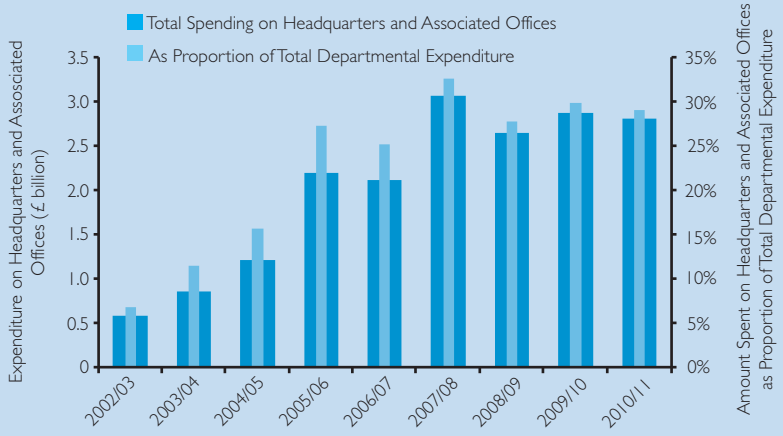
7 *The Times*, 15 October 2008. 'Jack Straw's cutbacks will be mirrored across the rest of government'
8 *The Telegraph*, 13 Dec 2008. '£130 million refurbishment bill for Jack Straw's new offices'
9 *Napo News*, January 2009. 'Probation meltdown and crime crisis', 205, p. 2
10 Ministry of Justice 2008. *Departmental Annual Report 2007-08*, MoJ, p. 131, 132 and 139
11 *The Times*, 28 September 2007. 'Offender scheme axed early as Justice Ministry tries to save reputation'
12 *The Telegraph*, 13 Dec 2008. '£130 million refurbishment bill for Jack Straw's new offices'
13 The National Audit Office, 2009. *The National Offender Management Information System (Executive Summary)*, NAO
14 Ibid, p. 7
15 Ibid: also *The Guardian*, 6 February 2008. 'Another makeover for offender management'

Figure 12.1: Total expenditure on headquarters and associated offices for the Ministry of Justice and precursors



"The Ministry of Justice has reportedly spent a hundred and thirty million smackers on tarting up its new offices. Meanwhile down at the sharp end, it was so cold in my court the other day that I allowed advocates to address the court wearing their outdoor clothing... Unofficially, I have been told that orders have come down to turn down heating across the estate."

The Magistrates Blog[16]

12.4 The Role of the Voluntary and Community Sector

We have argued for the importance of local ownership and delivery of criminal justice. The work of the Voluntary and Community Sector (VCS) in helping to rehabilitate offenders epitomises this.

The first strength of the VCS is its focus on whole individuals, and not just on bureaucratically convenient problems. In particular, the Centre for Social Justice has been impressed by local charities working with offenders to rebuild their lives by dealing with root causes of offending. Typically, successful voluntary sector groups work to address a range of needs and problems, and frequently invest time with clients' families and friends.

Secondly, VCS groups are able to provide a continuation of support across artificial boundaries such as the conclusion of a sentence; and their rootedness in local life means that they are in place to help offenders and ex-offenders deal

16 The Magistrate's Blog, 14 December 2008. 'Roughing It'. Available at: http://thelawwestofealingbroadway.blogspot.com/search?q=roughing+it [Accessed 27 March 2009]

The voluntary sector can help offenders find ways out of crime

with life off sentence. Though many VCS groups target young offenders and those identified through their engagement with the criminal justice system (principally prison leavers), others provide more general help, which offenders find useful, and increasingly, groups which were created to cater for offenders are working with non-offenders as well.

Thirdly, as is common to many small voluntary sector groups, charities working with offenders are often extremely innovative and able to seize opportunities much more readily than statutory organisations.

The box below gives examples of some excellent VCS groups working with offenders.

CASE STUDIES: VOLUNTARY AND COMMUNITY SECTOR ENGAGEMENT WITH OFFENDERS, EX-OFFENDERS AND THEIR FAMILIES

VCS groups are active across the country in helping offenders and their families get back on their feet. Though we categorise examples here, it is important to note that each of these charities provides a range of support tailored to the particular needs of the client; the support type identified is generally the service provided when clients first access the charity.

Accommodation and Employment

The *St Giles Trust* is a large charity which helps 15,000 people a year in very difficult circumstances. Much of its work focuses on housing, education and employment, often with prisoners and former prisoners. Its prison work is characterised by working 'through the gate': becoming involved with offenders before they leave prison and helping them plan for their time in the community; and also by training offenders to become advisors or mentors to other offenders, who then themselves become mentors in turn. One project they run is the Prison Peer Advice Service, which trains prison leavers in 20 prisons to NVQ level 3 in Advice and Guidance, and they then advise current inmates on accommodation and employment. The Straight to Work project trains offenders who are having trouble finding work as job and accommodation advisors who meet released offenders at the gate, ensuring that they are not lost at this crucial juncture.

Blue Sky operates in West London, Thames Valley and the West Country. It is one of the largest employers of ex-offenders in the country. Its purpose is to give ex-offenders an opportunity to prove that they are trustworthy in work, and so overcome the stigma attached to a criminal record. They do this by creating short-term jobs which give clients a chance to prove themselves and earn positive references. Clients work in general maintenance, in recycling plants and in gardening and landscaping. Each client is supported by a mentor who is also an ex-offender. More than half of all 'graduates' find sustained employment and only 13 per cent reoffend (compared to 39 per cent of all offenders released from prison.)[17] The charity has a growing number of employment partners.

17 Ministry of Justice, 2009. *Re-offending of Adults: results from the 2007 cohort*, MoJ, Appendix A, Table A5

Addictions

RAPt pioneered a recovery model for drug and alcohol treatment in English prisons. It offers the 12-Step Programme in nine prisons and has a presence in 11 others. It has recently started offering services to non-offenders in the community as well. Crucially, only six of the steps can be completed in prison – offenders are encouraged to continue in the community, and there is a team of 52 volunteers who meet offenders at the prison gates and encourage them to continue with the remaining treatment. Forty-one per cent continue with treatment in the community and less than one third of them are reconvicted within two years.

RAPt has developed a framework which seeks to tackle all the surrounding and reinforcing problems associated with addiction, including accommodation, skills and employment, health, family life, finance, budgeting and attitudes and behaviour.

Family

Research shows that good relationships between prisoners and their partners, and prison visits, correlate with a reduced likelihood of reoffending.[18]

Time for Families runs several programmes to do with sustaining family life for prisoners and ameliorating the damage done to relationships. It builds on the Building Stronger Families course and arranges structured visiting sessions for partners of prisoners. The six sessions cover communication, parenting, and practical financial advice. Feedback has been very positive from offenders and their partners about most aspects of the course. One partner said: 'Visits got much better because we had more to talk about and we knew how to say things to each other.'[19] The Home Together Programme is a one-off module that helps offenders who are near the end of their incarceration prepare for family life outside. The organisation also runs the Building Bridges course for young offenders and their families.

Safeground operates in 20 prisons across the country, and provides a parenting and family relationships programme for fathers in prison. Family Man addresses issues about family relationships, and Fathers Inside teaches fathers how to stay involved positively in their children's lives from inside prison.

Mentoring

Youth Support Services (based in Droitwich, Worcestershire) provides volunteer mentors to probation services in the West Midlands region to help to ensure offenders comply with their supervision.

The *New Hope Mentoring Programme* was set up by a police sergeant who was concerned about a failure of crime prevention strategies to reach repeat offenders. With the help of local churches and mosques, the organisation recruited and trained mentors to work with persistent and prolific ex-offenders to help them turn their lives around.

The *SOS Gangs Project* is part of the St Giles Trust. It was established in 2006 by Junior Smart, who had recently left prison after six years. He was concerned by the growing gang problem of which he had been part. The mentors meet young offenders shortly before release to start addressing their attitudes to gang life, and are at the gates when they are released. They are available 24/7. The programme also sends ex-offenders into schools to speak about the consequences of gang crime. Of the 50 clients on the SOS project, only about ten per cent have reoffended.

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18 May C, Sharma N & Stewart D, 2008. *Factors linked to reoffending: a one-year follow-up of prisoners who took part in the Resettlement Surveys 2001,2003 and 2004*, Ministry of Justice

19 Pellew S, 2008. *Evaluation of Building Stronger Families course.* Available at: http://www.timeforfamilies.org.uk/downloads/EvaluationFeb2009.pdf [Accessed 29 May 2009]

Women Offenders

The *Together Women Programme* pilots running in Yorkshire and Humberside and Greater Manchester, and funded by the Ministry of Justice, are delivered by voluntary sector organisations that are women-centred.

Asha Women's Centre in Worcester provides a range of community-based services for vulnerable women including women offenders, and is often cited as a model for best practice in engaging with women offenders.

Mental Health

MIND is involved in both community-based and custodial services for offenders, providing advocacy services and links with mainstream provision.

The *Revolving Doors Agency* developed the innovative Link Worker schemes for addressing the needs of offenders with mental health problems who were appearing in magistrates' courts.

The criminal justice VCS has featured strongly in NOMS policy initiatives, although investment in the sector by prison and probation has been, in reality, disappointing. The principles of the 'Compact', a standard for government commissioning of the VCS which stipulates responsibilities for both parties (such as transparency and multi-year funding), have not been applied with any consistency. In order for the criminal justice system to take advantage fully of the effective potential of the VCS, there needs to be a step change in the quality of engagement.

Developing the potential of VCS groups in the criminal justice system requires a strong relationship between the VCS and the probation service, as well as courts and police. To this end, the Help Desk proposal described in section 11.4 above should heighten the visibility of VCS groups at court, whether to be accessed by offenders, victims, or their families. Moreover, the proposals for a brokering and motivating probation service (as described in Chapter 9) will undoubtedly boost engagement with the voluntary sector, as will the development of probation drop-in centres in deprived areas (see section 9.7.2). Courts, police and probation must become familiar with the voluntary sector groups operating in their locale and engage with them more proactively.

12.5 Proposals

The criminal justice system has become more and more centralised in recent years. Increasingly prescriptive sentencing guidelines have been issued at national level (see Chapter 11), and we have seen the absorption of the magistrates' courts into HMCS, the takeover of the probation service by central government, and its incorporation into NOMS. Centralisation has also taken place within local areas, with a trend towards fewer and larger court centres

and probation service offices, making the criminal justice system more remote from the communities which it is meant to be serving. At the same time as there has been a trend towards centralisation at national level, there has been a profound lack of coordination between the different agencies of the criminal justice system within local areas. This seems to be one of the main causes of the failure, in many parts of the country, to provide coordinated services to deal with drug-addicted offenders and offenders with mental health problems.

A robust localised justice system recognises that crime is not an abstraction, but consists of events happening to people as they go about their daily lives. The areas which suffer most as a result of the absence of a robust local justice system are the areas with most crime and disorder, by and large our poorer communities.

We have argued that it is essential that the criminal justice system remain locally accessible and locally integrated, first because it is essential for its legitimacy that citizens feel that it is accessible to them and does what they want it to do, and secondly, although the criminal justice system must first and foremost enforce the law, there may be differing local views about priorities. There should be some way of local people exerting pressure so that their views are known and taken into account. Similarly, while the criminal justice system is not a social service and cannot act as a substitute for one, a more local organisation of the magistrates' courts and sentencing will 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 anywhere in the country.

The Working Group recognises that an important failing in the old local model was that there was not effective oversight of 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.

12.5.1 EFFECTIVE LOCAL CRIMINAL JUSTICE BOARD

The Working Group proposes that increased control over the agencies involved in the criminal justice system 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 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 the Board considered they would be most effective and useful for involving communities effected by the criminal justice system – for example, small, local offices in high-crime neighbourhoods.

In parallel with 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 citizens.

12.5.2 DECENTRALISATION OF BUDGETS TO LOCAL LEVEL

We believe that budgetary problems bedevil the operation of the present system of criminal justice. For example, the cost of effective programmes of treatment for drug addiction comes out of health or local authority budgets and these services can receive low priority when competing with other calls on their resources. This means that 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'.

The Working Group proposes, as part of the decentralisation recommended above, that the costs of the agencies involved in carrying out all kinds of sentences be brought within a single local budget.

Doing so 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.

12.5.3 POSITION OF VICTIMS

There has been a welcome improvement in recent years in the treatment accorded to victims of crime, and for the first time they have rights which are formally recognised. One important right is to submit a victim personal statement to the court. The function of this statement is to bring home to the court, to all those involved and not least to the offender himself, the consequences of the crime for the victim. It also gives the victim the opportunity to ask for compensation if desired. However these statements are not meant to affect the sentence which is passed by the court, and this often leads to a misunderstanding as to their purpose. Where facts about the impact of the crime on the victim are relevant to sentence, they should normally be included in the prosecution's statement of facts, on the basis of which the offender is sentenced.

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

12.5.4 OFFENDER MANAGEMENT BY COURT CONTROL

The court is ultimately best-placed to oversee the end-to-end offender management within a particular sentence. The relatively recent trend to make probation services accountable to the centre has almost destroyed what was best in them – though undoubtedly they needed to be accountable to someone. It was not necessary for this to be the government. Under our model, those carrying out the sentence – probation, fines and prison – are accountable to those who impose the sentence, who are accountable (through the strengthened Local Criminal Justice Boards) to the local public. The LCJBs will act as the overall arbitrator of disputes.

12.5.5 RESPECT THE MAGISTRACY

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.

12.6 Conclusion

This report has argued for ways to make our criminal justice system more transparent to the public, more connected to communities, more effective in rehabilitating offenders. The criminal justice system, particularly at the level of magistrates' courts, must not be distant from those who are likely to call on it. Justice is best pursued, in the first instance, by communities themselves; it cannot simply be imposed on them.

The report calls for clearer sentencing structures, and trust in and nurturing of the professionalism and civic-mindedness of courts and the probation service. This is needed as the antidote to the relentless politicisation of the system and the accumulation of power at the centre. Greater local accountability will promote better community sentences. Engagement by the courts in the aftermath of the sentence will make it impossible to ignore the reality of what is happening. The report also calls for the reversal of the bureaucratisation of the probation service; and a reconnection both with the communities it serves and with its roots in the work of charitable and far-sighted individuals who believe in people's ability to turn their lives around.

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Glossary

ATR	Alcohol Treatment Requirement
BCS	British Crime Survey
CDRP	Crime and Disorder Reduction Partnerships
CJSSS	Criminal Justice Simple, Speedy, Summary
CO	Community Order
CPS	The Crown Prosecution Service
CSJ	Centre for Social Justice
DRR	Drug Rehabilitation Requirement
DTTO	Drug Treatment and Testing Order
HMCS	Her Majesty's Court Service
IPPs	Indeterminate sentencing for Public Protection
MoJ	Ministry of Justice
NA	Narcotics Anonymous
NAPO	National Association of Probation Officers
NOMS	National Offender Management Service
NPS	National Probation Service
OASys	Offender Assessment System
PCSO	Police Community Support Officer
POPS	Partners of Prisoners
PPO	Prolific and other Priority Offender
SGC	Sentencing Guidelines Council
SSO	Suspended Sentence Order
VAP	Violence Against the Person
VCS	Voluntary and Community Sector

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