

Rethinking Crime & Punishment: The Manifesto

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“The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country.

A calm and dispassionate recognition of the rights of the accused against the State, and even of convicted criminals against the State, a constant heart-searching by all charged with the duty of punishment, a desire and eagerness to rehabilitate in the world of industry all those who have paid their dues in the hard coinage of punishment, tireless efforts towards the discovery of curative and regenerating processes, and an unfaltering faith that there is a treasure, if you can only find it, in the heart of every man - these are the symbols which in the treatment of crime and criminals mark and measure the stored-up strength of a nation, and are the sign and proof of the living virtue in it.”

The Rt. Hon Winston. S. Churchill, Secretary of State for the Home Department,
Hansard column 1354, 20 July 1910

Foreword

Since 2001, the Esmée Fairbairn Foundation has sponsored one of the most substantial programmes of work on alternatives to prison ever undertaken. More than £4 million has been spent on more than sixty projects - research, inquiries, demonstration projects, events, campaigns and surveys. The first phase of work included a major inquiry into alternatives to prison and a report with more than twenty detailed recommendations for action. Since 2005 the programme has focussed on practical work aimed at putting some of these into action - in particular seeking to increase the confidence of the public and sentencers in alternatives to prison.

As the seven year programme comes to an end, the Foundation and the organisations it has funded are now looking to the government and other political parties to learn from its findings and develop appropriate policies on the use of prison and alternatives. The evidence of our work shows the harm offenders have caused their victims, tackle the problems linked with their offending and integrate offenders back into their communities. Properly resourcing such measures is absolutely essential both to ensure their availability, effectiveness and rigorous implementation.

While there have been some modest moves in this direction, the government's main priority has been to expand the number of prison places at enormous cost to the taxpayer. An alternative agenda, focussing on reinforcing community based measures has not had more than lip service paid to it. We present such an alternative agenda here which we urge policy makers and politicians of all parties to embrace.

Baroness Linklater of Butterstone

Chairman, Rethinking Crime & Punishment and Trustee, Esmee Fairbairn Foundation

Prison is the most severe sanction we can apply in England and Wales and it is important that it is reserved for the most serious cases. Judges and magistrates need to be confident, however, that community based alternatives will be properly supervised and rigorously enforced. They also need to be fully aware of the available alternatives and what they amount to in practice.

One of the important strands of work undertaken by Rethinking Crime and Punishment has been to explore ways in which sentencers can gain a greater understanding of the non-custodial sentences which are available through regular visits and discussions with the probation service and other providers of supervision. Having taken part in such visits I am convinced of their value.

A debate is currently underway about the possibility of developing a mechanism for better matching the demand for prison places with the available supply. Without prejudice to the outcome of that debate, it is clear that there should be credible non-custodial alternatives available to those who must sentence criminal offenders. Many of the recommendations in this report would undoubtedly enhance those alternatives and are worthy of serious consideration.

The Rt Hon The Lord Phillips of Worth Matravers, Lord Chief Justice of England and Wales

Introduction

This report sets out the lessons from a seven-year programme of work conducted by the Rethinking Crime and Punishment (RCP) initiative and a manifesto for action to reform the criminal justice system.

Key among these is that the government should announce a moratorium on prison building and spend the £2.3 billion earmarked for new prison places on alternative measures to deal with offenders more effectively in the community. The government's plans to spend £2.3 billion on building more than 10,000 new prison places represent a huge wasted opportunity to invest in more constructive responses to crime, a once in a lifetime opportunity to invest instead in alternatives to prison, that could bring about better outcomes for offenders, victims and the wider community. This manifesto contains detailed proposals for such an alternative programme with indicative costings for each of the key elements.

The government's current prison strategy based on Lord Carter's report "Securing the Future", relies on a narrow and partial analysis of the problem of prison overcrowding and a wholly inadequate consideration of possible solutions to it. There has been no prior consultation on the key proposals in the Carter Report, despite the huge sums of money involved and the resulting implications for the future of the criminal justice system. Furthermore, the government has failed to undertake an impact assessment of its proposals.

Meanwhile, the House of Commons Justice Committee is conducting an inquiry into "whether the enormous sums spent on criminal justice and to cope with consistently high levels of re-offending are being used most effectively." This review is still to conclude, yet the government is pressing ahead with its plans for more prisons, regardless of the Committee's work.

Whilst the government is now consulting on its controversial proposals for three Titan prisons, they have made it clear that the 2,500 bed prisons "are an important part of our comprehensive strategy to increase and upgrade the prison estate." The consultation does not enable a root and branch re-examination of the prison building programme.

In some areas of justice policy the government has shown signs of a more positive approach. They have accepted the thrust of Baroness Corston's report on women offenders acknowledging that:

"It is a simple and disturbing fact that there are today too many women in prison, that many with varied and complex needs sadly go through a revolving door of reoffending, and that many women offenders are, and continue to be victims of crime themselves." ¹

1. Government Response to the Corston Report. Foreword by David Hanson MP Page 1

Similarly, the anticipated Youth Crime Action Plan from the Department for Children, Schools and Families holds the promise of an approach focussed on maximising the chance of rehabilitation for the young. We hope the plan will reflect the learning of expert agencies who work with offending children, and address the problem of children being imprisoned in institutions where they are more likely to adopt a criminal culture and re-offend on release.

Indeed for all offenders, the government claims to be pursuing a strategy that only the most dangerous and serious should be in prison, with less serious offenders rehabilitated in the community where possible. A recent government report outlines how “community sentences work for everyone; the law abiding majority, the community and the offenders themselves.” £40 million was allocated to the National Probation Service in March 2008 to help provide more effective community sentences (although the service still faces cuts in spending over the next three years).

While these positive signs are welcome, RCP’s findings support very much greater investment in the Probation Service and other community based organisations to ensure that courts are able to choose from the widest possible range of alternative sentences. Seven years ago, the Home Office’s report on the sentencing framework recommended a review of the adequacy of the so called “intermediate estate” - including probation hostels, halfway houses, bail and resettlement accommodation.

Such a review has never been conducted, and with widespread reporting of insufficient investment in Probation Services, this needs to be undertaken as a matter of urgency.

RCP’s own work to improve links between courts and community programmes found that judges considered:

“Capacity and resources... a major issue affecting the speed with which the {community based} programme can be implemented.”²

Magistrates too were concerned about the shortage of probation staff, and lack of availability of drug and alcohol treatment. One told us that:

“There is some sympathy and understanding for the problems Probation face because of resources” arguing that “we need to have a proper dialogue” about the consequences.³

A more recent report by the Centre for Crime and Justice Studies funded by the Esmée Fairbairn Foundation about the views of sentencers towards community sentences found noteworthy “the number of sentencers who mentioned with concern the pressure that they considered Probation to be under and the lack of resources for the service”.⁴

“The big fear I have is that Probation is going to collapse before too long... they’re creaking, creaking, creaking.”

Crown Court Judge.

2. RCP2 report on a programme of work with Crown Court Judges

3. Rethinking Crime and Punishment 2 Increasing the Confidence of Sentencers in Community Penalties A programme of work with Magistrates in the Thames Valley 2006/7

3. George Mair, Noel Cross and Stuart Taylor (2008) The Community Order and Suspended Sentence Order The views and attitudes of sentencers CCJS

The RCP Approach

RCP's work has been to generate, gather and review evidence on the success of a range of interventions aimed at reducing criminal re-offending and rehabilitating offenders. The first recommendation of the report of phase one of the work was that:

“Political leadership should be exercised to emphasise the goal of reducing the prison population while promoting the value of alternatives to prison.”

Since then our fast-growing prison population has outpaced other European countries, and a political consensus has emerged that rising prison numbers are inevitable. Phase two of our work has illustrated how community based sentences can be organised in ways which make them effective, credible with sentencers and better understood by the public. The work as a whole suggests that what is needed now is an overarching strategy to reduce our reliance on prison by dealing much more effectively with offenders in the community.

The strategy should include two key elements:

1. **Making community alternatives work better:** through proper investment in effective supervision; increasing judicial and public involvement in community sentences; and a greater emphasis on holding offenders to account for repairing the harm to their victims and communities.

2. **Using more appropriate alternatives to prison when dealing with groups for whom prison is not appropriate:** particularly women, children, and those with mental health problems.

We set out below the main features of what this alternative programme would look like and some of the costs of these measures. The Ministry of Justice has obtained £2.3 billion from the Treasury to invest in the capital required for 10,500 prison places over the next six years - just under £400 million a year. The revenue costs for the places will be approximately £250 million a year once the prisons are functioning, but these running costs we have left to one side.

We are suggesting that the building costs alone, if reallocated, could strengthen alternative measures in such a way that the proposed prison building programme would not be necessary - at least not on the current scale. There is a real danger that the planned spending on prisons will draw funds away from the probation service, which is already struggling to meet the demands placed upon it.

More positively, the proposed injection of funds into criminal justice provides a once in a generation opportunity to strengthen the infrastructure of responses to crime outside prison – a real opportunity to ‘Rethink Crime and Punishment’ which politicians of all parties need to urgently grasp.

The Context in England and Wales

The 82,800 people held in prison in June 2008 represent the highest rate per population imprisoned in Western Europe, far in excess of comparable large countries such as Germany, France, Italy, or Turkey. While many Western countries have seen sharp rises in imprisonment in the last ten years, the rise in England and Wales has been particularly sharp – from 66,000 when RCP was launched in 2001, to 77,066 when the RCP report was published in December 2004 and to 82,800 in June 2008. Projections suggest the prison population could reach almost 102,000 by 2014. (Fig 1)

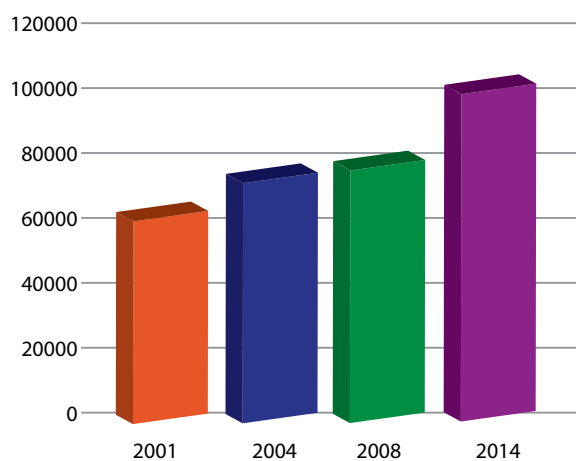


Fig 1 Prison Population in England and Wales and Projection to 2014 (high scenario)

Such rises are not inevitable however. Lord Carter's review showed that between 1995 and 2007, the prison population fell by 11 per cent in Canada and rose by only one per cent in France. The 60 per cent rise in England and Wales has been exceptional. Indeed, the Government's "low scenario" projection would see a prison population of 88,000 in 2014.

Sending people to prison for short periods in particular is widely acknowledged to be a waste of time and money. The review of the sentencing framework conducted by John Halliday in 2001 concluded that short sentences are the weakest part of the system in England and Wales. A year later the Social Exclusion Unit found that there is a considerable risk that a prison sentence can make the factors associated with re-offending worse. The Lord Chief Justice himself has said that short spells of imprisonment followed by re-offending is an expensive and ineffective way of dealing with the large number of inadequate or damaged members of society, for minor criminality is the only way of life they know: "punishment in the community, coupled with a proper programme of rehabilitation, properly resourced and managed, must be the better option."

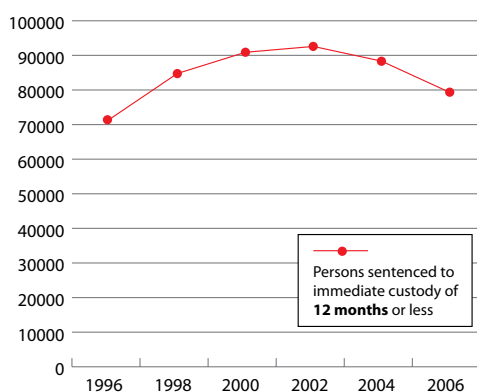
In England and Wales, the government's policies on imprisonment have relied heavily on two reports produced by Lord Carter in December 2003 and December 2007. Lord Carter's first report "Managing Offenders, Reducing Crime" concluded that the record rise in the prison population over the previous ten years was neither sustainable nor desirable. The rise was not due to more offenders or more serious offenders being sentenced by the courts than previously but because sentences had become substantially more severe, as a result of "the interaction between public perception, media, politicians and sentencers". Lord Carter estimated that this increased severity had reduced crime by just five per cent - similar to the fall in the number of young people in the general population in that period - and indeed quoted

cross-national research which could not find any relationship between the severity of sentencing and the impact on crime. He concluded that custody should be reserved for dangerous, serious and highly persistent offenders and that the only rationale for significantly increasing the number in custody was if more offenders were arrested and convicted.

During the four year period until he produced his second report, “Securing the Future” more offenders were not arrested and convicted. The numbers sentenced in all courts each year actually fell by more than a 100,000. In Lord Carter’s own terms there are thus major question marks over the desirability of aiming to accommodate an ever increasing prison population.

Can we Reduce the Prison Population?

After very sharp rises, there is some evidence that improvements to community sentences may have started to impact on the use of prison, in particular the numbers receiving short prison sentences. (Fig 2)



The number of prisoners sentenced to immediate custody for twelve months or less rose from 62,000 in 1996 to more than 83,000 in 2002 before falling back to 70,000 in 2006 – still 13 per cent higher than ten years earlier. The recent falls suggest some switch to new community sentences and suspended sentence orders from short terms of imprisonment following the implementation of the Criminal Justice Act 2003. But this has not happened on the scale that was hoped for by the government. Indeed the numbers sentenced to between six months and 12 months actually increased by three per cent between 2005 and 2006 and more recent data suggests that the use of short prison sentences may be on the rise again.

The offences committed by these offenders suggest that there should be considerable scope for a more sustained switch to community penalties. In 2006, of the 49,000 offenders received into prison for six months or less, 12,400 were convicted of offences of theft and handling stolen goods and 8,000 of motoring offences. In addition 13,000 were convicted of what are categorised as other offences i.e. not sexual or violent offences, robbery, burglary, fraud and forgery or drugs. It is not possible from available data to know the previous offending history of these offenders: theft and handling, motoring and other offence categories can in themselves cover a range of seriousness. But it seems likely that some at least of the offending could better be addressed by relevant and robust alternative sentences which do not require any custodial period. Making such robust alternatives available must

be a priority if further falls in the use of short custodial sentences are to be achieved.

Indeed there is widespread variation between courts in the extent to which they make use of prison sentences. The Ministry of Justice found that across the 42 criminal justice areas in England and Wales in 2006, custody rates in magistrates courts ranged from six per cent to 16 per cent (with an average of 11 per cent) and from 45 per cent to 68 per cent in Crown Courts (with an average of 56 per cent).⁵ Such variation was not well explained by differences in the kinds of cases being sentence. One factor that was identified which could influence sentencing practice was “the relationship between sentencers and other agencies of the criminal justice system particularly the police and Probation Service.” Another study of variation found that “sentencers understandings about the availability of programmes for offenders in their areas may affect propensity to use community sentences. There was a perception among sentencers in some areas that not all options were available for community orders, either because there were long waiting lists or a lack of some programmes.”⁶

Credible and available alternative programmes are crucial too in order to make a more far reaching impact on the use of prison beyond those currently sentenced to short prison terms. Prisoners serving 12 months or less currently represent just over ten per cent of the overall prison population – about 12.6 per cent of the sentenced population. To reduce the overall

prison population, alternative measures will need to impact on other groups: the 13,000 who are on remand and those serving longer sentences.

This can be achieved in five main ways.

- There is a need to improve the level and intensity of bail support and supervision for those awaiting trial. These can provide options for defendants to be given bail with conditions such as hostels or curfews rather than remanded in custody
- Enhanced community supervision would also offer courts possible alternatives for offenders facing more than 12 months in prison.
- Developing a more effective response to those offenders that do not comply with their community sentence or supervision following release from prison should also produce dividends. There has been a marked increase in the numbers of offenders in prison as a result of breach or recall - from 330 in January 1995 to 6,500 in August 2007. A logical response to this is to ensure that these sentences are of high quality and can be supervised effectively in order to reduce the numbers who fail to comply with their community sentences or with post release supervision and who serve short prison sentences following a breach of the conditions of their order.
- More effective community provision is needed too in order to increase the range

5. Mason et al (2007) Local Variations in Sentencing in England and Wales Ministry of Justice

6. Research Development and Statistics Directorate (RDS), National Offender Management Service (NOMS), in conjunction with the Sentencing Guidelines Council (SGC) The 11 Areas Report (2006 Unpublished).

and quality of supervision options for those released on parole thereby contributing to a higher rate of parole release among those serving longer and indeterminate sentences. The rate has fallen from 52 per cent in 2004/5 to 36 percent in 2006/7.

- More indirectly, strengthening community supervision should impact on re-offending rates, thereby reducing the number of candidates for imprisonment.

In fact there is a widespread consensus in favour of dealing with some offenders in the community wherever possible which can be found across political parties, amongst judges and magistrates, among the general public and - perhaps most significantly - amongst those who have been victims of crimes.

The government has already accepted the arguments that the majority of non-violent offenders can be treated in the community without any risk to the public, and that there are often better options than imprisonment for dealing with such offenders. Indeed the Lord Chancellor told Parliament in December 2007 that **“the whole House is agreed that wherever appropriate, offenders should be punished in the community”**.

RCP is in agreement with these statements and this manifesto shows how the expenditure proposed for expanding the use of prison could be used to make the Lord Chancellor’s statement a reality.

The Role of Public Attitudes

The main reason that the government and its advisers shy away from a more radical approach to the use of prison relates to perceptions of public confidence. Lord Carter thought in his first report in 2004 that tougher sentencing had brought sentences “closer in line with public opinion” and was concerned that the public continued to believe that sentencing is too lenient. Four years later, with prisoner numbers at an all time high, Louise Casey’s review of crime and communities found the public still think sentencing is too lenient.⁷

Experience here and in the USA shows that asked a simple question, a majority will always tell pollsters that sentencing is too soft, whatever the objective sentencing levels are. This is largely because the public systematically underestimate the actual severity of sentencing. When respondents are properly informed about sentencing levels, and given detailed information about cases, a different picture emerges. Work undertaken for Rethinking Crime and Punishment has shown that when given a series of options, the public do not rank prison highly as a way of dealing with crime. Most think that offenders come out of prison worse than they go in, only two per cent would choose to spend a notional £10 million on prison places. Over half think residential drug treatment and tougher community punishments are the way forward. The evidence suggests that public punitiveness is largely a myth and public confidence need not stand in the way of a bolder strategy of replacing imprisonment with more constructive alternatives. Such a strategy is set out overleaf.

7. Cabinet Office (2008) Engaging Communities in Fighting Crime

Making Community Alternatives Work Better

Strengthening community alternatives can impact on prison numbers in several ways. As far as reducing the numbers who receive prison sentences are concerned, the most direct way is by enabling courts to impose credible and effective community orders as alternatives to prison sentences.

The community order, introduced by the Criminal Justice Act 2003, allows sentencers to attach requirements to the order to match the seriousness of the offence, the risks posed by and the individual needs of the individual. Twelve requirements are available to be used with the community order including unpaid work, a curfew backed by a tag, drug rehabilitation, programmes to tackle the offender's behaviour and supervision.

The benefits of community sentences have recently been summarised by the National Audit Office (NAO) which said that "In addition to punishment, community orders offer benefits to the community and offenders. Community orders enable offenders to stay with their families and in their jobs while they serve their sentence and avoid additional pressure on the prison system".

The NAO found that these orders can reduce reconvictions proportionally more than a custodial sentence.

RCP's work suggests that for community based sentences to fulfil their potential as alternatives to prison, improvements are needed in three main areas:

- **Strengthening Community Supervision**
Investment in the probation service and voluntary sector is needed so that all the tried and tested options are available to courts without delays and new solutions can be found for offenders who do not respond to what is currently available and who end up serving sentences for failing to comply with supervision. This would include the extension of Restorative Justice based on the available evidence of where these approaches are effective.
- **Improved Liaison with sentencers**
Much better links with judges and magistrates about what community options actually entail and more opportunities for sentencers to review individual cases are needed to improve take up of alternatives to prison.
- **Stronger links with the public**
Stronger links with local communities with opportunities for the public to have a say will boost awareness and confidence, addressing concerns that the public has become cut off from criminal justice.

Strengthening Community Supervision

There is a need to ensure that resources are available so that courts can impose the requirements they wish to. The NAO found that "Some community order requirements, for example alcohol treatment... are not available or rarely used in some of the 42 Probation Areas" (this is despite strong links between alcohol and

The “tracker schemes” such as those in the Thames Valley ensure that prolific and other priority offenders have intensive contact with a specialist worker with a limited caseload who offers practical help to complement the supervision of the Offender Manager.

offending). They also found “long waiting lists for some order requirements, in particular group programmes on domestic violence”.⁸

Esmée Fairbairn Foundation funded research undertaken by the Centre for Crime and Justice Studies (CCJS) has shown that while 12 requirements are theoretically available for community orders, half have not been used or have been used very rarely. For both young adults and women offenders many of the possible elements that could be included in a community order are simply not used.⁹

More recent research has suggested that in large part the failure reflects the lack of necessary investment.¹⁰ The probation budget has grown by 21 per cent in real terms since 2001 but has declined in recent years, by nine per cent in 2005-06 and two per cent in 2006-07. During this period there was a significant investment in the setting up of a new National Offender Management Service (NOMS) with funding concentrated on a centralised bureaucracy at the expense of investment in frontline delivery. The government plans further year on year budget reductions for probation of three per cent per year for the next three years. While a welcome one off injection of £40 million has been announced recently for implementing community orders in place of short prison sentences, the research judged this would not compensate for the impact of long term and continuing budget reductions. It will certainly not be sufficient to fund the implementation of the new more intensive community punishments proposed in the recent review by Louise Casey.

There is no doubt that opportunities exist to strengthen responses to offenders in the community and RCP partners have numerous examples of how relatively small amounts of money can enhance community supervision with significant benefits for individuals and communities.

For example, an evaluation of projects for the most persistent offenders found that many of the PPOs (Prolific and other Priority Offenders) as defined by the PPO schemes introduced by the Home Office in 2004 had very specific needs in terms of accommodation, drug misuse and education, training and employability compared to other offenders. As such, it is beneficial that a multi-agency approach is taken, and it is crucial that the appropriate services are involved (for example housing and drug treatment). PPO schemes have been successful because they have given priority to delivering high quality interventions to a small number of prolific offenders. Because they have been managed by Police and Probation in conjunction with Crime and Disorder Reduction Partnerships (CDRPs) they have successfully engaged local services working alongside Offender Management. The “tracker schemes” such as those in the Thames Valley ensure that PPOs have intensive contact with a specialist worker with a limited caseload who offers practical help to complement the supervision of the Offender Manager. Given adequate resources these intensive interventions could be offered more widely to strengthen community sentences and provide an effective alternative to prison. In particular this model could be used with offenders who fail to comply

8. The National Probation Service: the supervision of community orders in England and Wales NAO 2008

9. George Mair, Noel Cross, Stuart Taylor The use and impact of the Community Order and the Suspended Sentence Order CCJS (2007)

10. Oldfield and Grimshaw (April 2008) Probation Staffing Resources and Workloads

with normal supervision. At present those who miss appointments are returned to court, continued supervision is not suggested and a prison sentence is imposed. A more pro-active approach to a breach would trigger a review of the case by the sentencer with the option to increase the level and intensity of supervision. In addition the intermediate estate of hostels, half way houses and supported and supervised accommodation for offenders should be reinforced.

Community Supervision could also be strengthened by introducing more opportunities for Restorative Justice (RJ) which seeks to repair harm and resolve conflict. RJ as part of a community sentence brings offenders together with their victims, encourages offenders to face up to the consequences of their actions and gives victims an opportunity to explain how the crime has affected them. RCP supported a range of successful RJ initiatives between 2002 and 2004 and Home Office pilots also showed positive outcomes and high levels of satisfaction amongst participants. RCP partners unanimously express their disappointment at the lack of progress in extending RJ both inside and outside the criminal justice system as proposed in the Government's Strategy (2004). In practice the use of RJ is patchy and ad hoc – and there is little evidence of the shift of philosophy outlined in the Government's Restorative Justice Strategy (2004).

Home Office funding for research into three major RJ pilots ended after three years and there has been no funding to support the continuation of those schemes or to introduce new initiatives. Important results from the Home Office funded

random controlled trial have shown that RJ can reduce re-offending, in particular the frequency of re-offending. This builds on earlier work showing that RJ when properly targeted and implemented can demonstrate large reductions in offending.

Recommendation 1

Community Supervision should be strengthened through a six year programme of work and investment to enhance the capacity of the Probation and voluntary sector.

This would provide courts and the Parole Board with effective options in the community for a greater proportion of defendants facing trial, offenders facing prison sentences and prisoners eligible for early release. These costings are based on the Police Basic Command Unit (BCU) which is coterminous with Multi Agency Public Protection Arrangements (MAPPA), CDRPs and PPO schemes. Although there are some variations in size this gives an estimate of the costs of scaling up the approaches that have been supported and developed by RCP and its partners. There are approximately 300 BCUs in England and Wales.

Indicative Budget

- **6,000 offenders who currently spend short periods on remand or under sentence in prison each year to receive the most intensive offender management and interventions (£30 million per year over six years = £180 million)**

- **Trackers introduced to help secure compliance with Community Supervision (2 per Basic Command Unit @ £50,000 = £30 million per year, over six years = £180 million)**
- **2 Restorative Justice workers per BCU (2 per basic command unit = £30 million per year, over six years = £180 million)**
- **Strengthening the intermediate estate through £5 million per Government region (10 regions) = £50 million per year = £300 million over six years**

Sub Total = £140 million per year = £840 million over six years

Improved liaison with sentencers

RCP's work has highlighted the importance of encouraging structured liaison between judges and magistrates on the one hand and the organisations (primarily the probation service) responsible for supervising offenders in the community on the other.

Since 2005, RCP has organised a series of activities designed to pilot ways of enhancing communication. The Thames Valley Partnership piloted ways of involving judges and magistrates in a series of visits and debates about community sentences. It was clear that sentencers were largely unaware of the significant changes in recent years in the implementation of community sentences - in particular the rigorous nature of accredited group work programmes, new methods of assessment and stringent application

of enforcement. The pilot demonstrated the importance of restoring lines of communication between the Probation Service and sentencers. The experience also demonstrated the positive impact of reviews of progress with the original sentencers as value to both the offender and sentencer. According to Judge Julian Hall the visits and discussions succeeded in its objective of "increasing the judges' awareness of the Probation Service's work and thereby raising its confidence in the value of non-custodial sentences."

Models for engagement have also been developed through work with magistrates in the Thames Valley and both judges and magistrates in Cheshire. A pilot programme for district judges is currently underway in London and building on the experience in Thames Valley the Prison Reform Trust is developing a similar initiative with Youth Court Magistrates.

"There really is no better way to find out what someone is doing than to see them at work and to talk to them and ask questions. No amount of reading of reports can convey the same amount of information so efficiently." Judge Julian Hall

While a protocol exists to encourage better liaison between courts and the Probation Service, recent research has confirmed there is a need for improvement. The Esmée Fairbairn funded study by the CCJS found that sentencers were often unaware of what options are available.

The research also found little use being made of the powers courts have to review the progress of

The ability to review cases is welcomed by many sentencers in cases where offenders are subject to drug rehabilitation requirements. The lack of take up of the review option in other types of case is in large part a matter of resources.

offenders subject to suspended sentence orders or community sentences. Such reviews can both help to make orders effective and provide courts with a continuing supervisory role - which can encourage them to impose alternatives to prison in more serious cases. The ability to review cases is welcomed by many sentencers in cases where offenders are subject to drug rehabilitation requirements. The lack of take up of the review option in other types of case is in large part a matter of resources.

There is currently a debate about the need for a more structured system of sentencing guidelines resulting in greater consistency and more predictable decisions. Consultation has been undertaken on proposals for a Sentencing Commission.

RCP's experience suggests that if guidelines are strengthened, courts should not be prevented from imposing community based sentences which offer the prospect of solving the underlying problems which contribute to offending behaviour. There is a risk that a more prescriptive approach will make it hard for courts to impose orders comprising drug, alcohol or mental health treatment, restorative measures or specialist programmes for violent offenders – particularly in cases when an offender has accumulated a substantial record of previous offences. RCP believes that any guidelines should allow and indeed encourage courts to impose community based sentences where there is a sufficiently intensive package of measures available in the community which have a realistic prospect of success.

Recommendation 2

Liaison between sentencers and the providers of community supervision should be improved through structured programmes of visits and dialogue to increase awareness and build confidence.

Judges and magistrates should be required to spend at least three days a year visiting community sentence programmes and attending discussions or seminars with Probation staff. The capacity of courts to review the progress of cases should be extended beyond those subject to drug rehabilitation requirements.

Indicative Budget

- For sentencer visits and dialogue, £50,000 per Criminal Justice Area (42 areas) plus additional £50,000 for London, West Midlands and Manchester (=£2.25 million per year = £13.5 million over six years.)
- Enabling courts to review an additional 20,000 offenders (@ £3,000 per offender = £60 million per year £360 million over six years.)

Subtotal = £62.25 million per year or £373.5 million over six years.

Stronger links with the public

While public support for prison is much weaker than is commonly supposed, public confidence in alternatives is not as high as it

The Making Good initiative, involving town and parish councils, tenant and resident groups, and neighbourhood action groups demonstrates how the organisation of Unpaid Work and selection of placements can and does encourage greater community confidence.

could be. Awareness of community sentences has remained constant at 63 per cent since 2004, but the percentage of people saying they know a great deal or a fair amount about community sentencing has decreased from 33 per cent in 2005 to 29 per cent in 2007. More people now believe that community sentences provide a tough punishment for adult offenders and are an effective means of punishing someone - but more also believe that community sentences are easier than prison.

RCP's work has focussed on increasing community confidence through greater involvement. The Thames Valley Partnership initiated a project to test ways of engaging local community groups in decisions about Unpaid Work. The Making Good initiative, involving town and parish councils, tenant and resident groups, and neighbourhood action groups demonstrates how the organisation of Unpaid Work and selection of placements can and does encourage greater community confidence. Early results from pilot projects in Slough, Bicester, High Wycombe and Milton Keynes are encouraging, with a final report on the project due later in 2008.

The work fits into broader government led initiatives to give the public a say in public services, including community sentences. All probation areas are now required to have a strategy and mechanisms whereby voluntary and charitable organisations and members of the public can propose projects which will benefit the local community. But the new presumption of reparation as part of community

sentences is likely to lead to increased demand for short orders which will tend to favour traditional work placements and less direct community engagement.

RCP's work suggests that Probation Services and Youth Offending Teams need to be equipped to make necessary links with the public. There may be merit in this being undertaken jointly with Neighbourhood Policing Teams, as recommended in Louise Casey's review. The proposed creation of a Sentencing Commission also provides an opportunity to engage with the public debate about sentencing. The Commission should produce regular research and information, developing public education campaigns and, jointly with the Judicial Studies Board, ensuring that sentencers are fully aware of the content of community and prison programmes. This would complement the recommendation made in Louise Casey's recent report that the local community should receive information about community sentences .

Recommendation 3

Systematic programmes should be established to engage and involve the public in criminal justice.

Probation Services and Youth Offending Teams should develop capacity to engage with local communities and give priority to reflecting their views in their work. Community Development workers should be attached to each Unpaid Work area to work directly with residents groups, neighbourhood policing teams and

voluntary organisations to develop reparation that directly benefits local communities and builds bridges between community sentences and local people. The proposed Sentencing Commission should assume a public education and information role. Any guidelines it produces should not restrict courts discretion to impose sentences offering the prospect of successful rehabilitation or reparation in the community.

Indicative Budget

- **Public and community engagement. One post (@ £50,000 per BCU = £15 million or £90 million over six years.)**
- **£300,000 per year to fund a Sentencing Commission Public Education Unit (= £1.8 million over six years.)**

Subtotal = £15.3 million per year or £91.8 million over six years.

Developing alternative approaches for dealing with the most vulnerable groups in prison: women, children, and those with mental health problems

The second key plank of the RCP strategy is to address the problems of three of the most vulnerable groups who form a substantial part of the prison population - women, children and people with mental health problems. There is widespread agreement that in these cases prison is often inappropriate, does nothing to tackle the problems they face and often makes things worse.

Women

In March 2008 there were 4,568 women in custody, just 5.5 per cent of the total prison population but almost double the number in 1996 (2,273). 7,844 women were sentenced to immediate custody in 2006 compared to 4,403 in 1996.

RCP is not alone in suggesting that women's needs are not properly met in the prison system and that a network of local support and rehabilitation centres, and enhanced supervision in the community would be more appropriate. Commissioned by the Home Office, Baroness Corston has produced a radical report on women in the criminal justice system. The government has responded positively but with limited allocations of funding to implement the initiatives.

The government's "Together Women" projects in the North West and Yorkshire and Humber regions have been piloting a co-ordinated multiagency approach funded by the Ministry of Justice and using women's centres and specialist key workers to address the multiple and complex needs of women and avoid the use of custody. A drop in model is strengthened by key workers following the Reducing Reoffending pathways e.g. focussing on skills/training/employment/accommodation but also dealing with domestic violence and family support. Specified activity orders are used for women on community sentences. £9.15 million was allocated to set up the pilots. Early results show considerable success with an eight per cent reoffending rate

compared with 55 per cent national re-offending rate for women.

Recommendation 4

A coordinated multi agency approach to reducing the imprisonment of women should be introduced across the country – with community based centres in major cities and more flexible services in rural areas.

Indicative Budget

£4.5 million per region = £45 million per year or £270 million over six years (minus £9 million already committed)

Subtotal = £261 million over six years

Children

In March 2008, there were 2,660 children under 18 locked up in prisons, secure training centres and secure children's homes. Work undertaken in phase one of RCP drew attention to the shortcomings of prison department custody in particular.¹¹ The Prison Reform Trust reports that more children are imprisoned for breach of supervision requirements than for burglary.

In 2007 there were 1,007 incidents of self-harm in Young Offender Institutions (YOIs) and 78 imprisoned children received hospital treatment for the damage done by restraint, assault or self-harm in less than a year.

By March 2008, 47 children in prison were

serving indeterminate sentences. A quarter of children in prison under school age have literacy and numeracy levels of an average seven year old. Forty per cent of children in custody have previously been homeless.

Reconviction rates are particularly high for this age group – 73 per cent of those incarcerated are re-convicted within a year of leaving custody.¹² Two thirds of the Youth Justice Board budget is spent on six per cent of children in the criminal justice system.¹³

In June 2006, the Conservative chairman of the Public Accounts Committee urged the government to “think long and hard about practical alternatives to imprisonment for... children.”

RCP's work suggests that decisions about children in trouble should be made in a forum that prioritises problem solving over punishment and makes appropriate use of measures that make amends to victims; and that community-based and residential alternatives to prison need to be developed to meet the needs of often highly damaged young people, which also seek genuinely to involve ordinary members of the community in contributing practical solutions.

Responsibility for youth crime and prevention, and the former “Respect” agenda now rests with the Department for Children, Schools and Families which is due to publish a Youth Crime Action Plan in June 2008. This is a welcome recognition that prevention is not the exclusive

11.

12. MoJ Re-offending of juveniles: new measures of re-offending 2000-5).

13. YJB Annual Report 2006-7 p46

The family is a potential source of help for teenagers in trouble with the law and those at risk of offending, as well as a possible source of difficulty. Mechanisms need to be found to involve the whole family in addressing offending behaviour.

responsibility of the youth justice system and will reinforce the responsibilities of other agencies working with children of all ages. New targeted Youth Support teams are proposed in the implementation of Every Child Matters/ Youth Matters.

As far as custody is concerned, there are a number of initiatives that can be taken to reduce its use at the remand and sentencing stage, although the impact of one such initiative - the Intensive Supervision and Surveillance Programme - has been mixed. The Offender Management Act 2007 introduces a measure to allow the Detention and Training Order, the most common custodial sentence, to be served in any accommodation specified by the government. This provides an opportunity to implement one of RCP's key recommendations about expanding residential options outside prison-such as intensive fostering, special schools and mental health treatment facilities.

The family is a potential source of help for teenagers in trouble with the law and those at risk of offending, as well as a possible source of difficulty. Mechanisms need to be found to involve the whole family in addressing offending behaviour. Family Group Conferencing (FGC), for example, is used in the child welfare system in the UK to engage the whole family to address child safeguarding issues. It can also be used to address children's troubled or troublesome behaviour in the justice system. Families engaged through FGCs can be supported by interventions such as Family Intervention Projects, parenting programmes, home-based

support from YOT officers and a Sure Start-like scheme for teenagers, for example.

Recommendation 5

Concerted efforts should be made to reduce the number of young people under 18 sent to prison. The Youth Crime Action Plan should include a programme for reducing the number of children in custody by half over five years.

Indicative Budget

- **1,000 more young people subject to intensive supervision each year @ £9,000 per case = £9 million per year = £54 million over six years**
- **500 young people to be placed in intensive foster placements @ £100,000 = £50 million a year = £300 million over six years**
- **Each YOT to have Family Group Conference coordinator plus budget @ £100,000 = £15 million per year or £90 million over six years**

Subtotal Children = £74 million per year or £444 million over six years

People with mental health problems

According to the Revolving Doors Agency (RDA), nearly half of the prison population have at least three co-occurring mental health problems with more than 60,000 people entering prison with this profile each year. The equivalent proportion in the community is less than one per cent.

Twelve pilots have been funded across England testing out ways to improve outcomes for adults with chaotic lives and multiple needs through changing local service provision.

Since the RCP report was published in 2004 there has been some recognition of the needs of offenders with mental health problems and of the impact on the criminal justice system. The Department of Health and Ministry of Justice have formed a Health and Offender Partnerships Unit that is currently consulting on a strategy to improve the interface between health and social care and the criminal justice system, to ensure end to end support along the offender pathway. The Sainsbury Centre for Mental Health is also focusing on this issue.

The Adults Facing Chronic Exclusion Programme is a three year, £6 million fund set up this year by the Social Exclusion Unit designed to test new approaches to tackling chronic social exclusion amongst the most marginalised people in society. Twelve pilots have been funded across England testing out ways to improve outcomes for adults with chaotic lives and multiple needs through changing local service provision. Lord Keith Bradley is leading a review into the diversion of people with severe mental health problems out of the criminal justice system and the government has promised to consider the potential role of specialist 'hybrid' prisons for the most serious offenders with significant mental health needs who have not already been transferred to secure hospitals. There is a strong case for the government to wait for the outcome of Lord Bradley's review before committing resources on more prison places.

The 'revolving door' group refers to people who are caught in a cycle of crisis, crime and mental illness, whereby they are repeatedly

in contact with the police and often detained in prison. This group has multiple problems for which they need the input of a wide range of agencies, including housing, drugs, mental health and benefits. Routinely, they fall through the gaps of existing mental health service provision, as their mental health problems are not considered sufficiently 'severe' to warrant care from statutory services; but they are frequently excluded from mainstream services in the community, such as GPs and Housing Associations, on account of the perceived complexity of their needs and their often challenging behaviour. It is this group who frequently end up serving short prison sentences and for whom improved support in the community would be more appropriate and cost effective.

The Revolving Doors Agency has developed Link Worker Schemes testing effective ways of working with people who are caught in a cycle of crisis, crime and mental illness. The schemes offer clients practical and emotional support, helping them to access appropriate services and to address the underlying causes of their offending behaviour. Recorded offending amongst clients fell by 22 per cent following engagement with the schemes. In addition, an independent Home Office evaluation found that clients were arrested for less serious offences after engaging with the schemes.

Recommendation 6

A national programme should be established to address the needs of the 'revolving door'

population of petty persistent offenders with mental health problems.

This should be developed along the lines of the Revolving Doors Agency Link Worker model which aims to reach people with common mental health problems and multiple needs in the criminal justice system. By 2010, the Revolving Doors Agency hopes to establish at least one support project for the 'revolving door' group in every English region and Wales, working with a wide range of service commissioners and delivery partners.

Indicative Budget

Three Link Workers in each BCU (@ £50,000 each = £45 million per year = £270 million over six years)

Subtotal = £45 million per year = £270 million over six years

Conclusion

The work of Rethinking Crime and Punishment has shed light both on the kinds of approaches which are successful in tackling crime and on ways to reduce our reliance on imprisonment. Some of RCP's lessons relate to the kind of measures that should be available to deal with offenders. Others relate to how these measures are applied, implemented and communicated.

Late last year, Lord Chancellor Jack Straw proposed a national conversation about the use of prison. This is in a sense what RCP has been holding over the last seven years. The recommendations in this report are those which have emerged from that conversation.

There are other actions needed to reduce the overreliance on custody – for example in respect of drug related offenders – but this report concentrates on those measures drawn specifically from RCP's own expertise and that of the organisations it has funded. What we have demonstrated is that spending the £2.3 billion identified for prison building should be used instead to strengthen community sentences, rebuild confidence in the supervision of offenders in our communities and remove from prison many vulnerable people who can be catered for much more satisfactorily in other ways – many of whom would not have received a prison sentence had they appeared in courts for similar offences ten years ago.

Summary of Budget

Millions over six years

1. Strengthening Supervision

6,000 offenders who currently spend short periods on remand or under sentence in prison each year to receive the most intensive offender management	£180
Trackers introduced to help secure compliance with community supervision	£180
Restorative Justice options should be made available in cases involving adults	£180
Strengthening the intermediate estate	£300
Subtotal	£840

2. Improved Sentencer Liaison

£50,000 per Criminal Justice Area to arrange judges/magistrates visits plus additional £50,000 for London, West Midlands and Manchester	£13.5
Enabling courts to review an additional 20,000 offenders	£360
Subtotal	£373.5

3. Stronger Links with Public

Community Development workers attached to each Unpaid Work area to work directly with residents groups, neighbourhood policing teams and voluntary organisations	£90
£300,000 per year to fund a Sentencing Commission public education unit	£1.8
Subtotal	£91.8

4. Women

Women's initiatives in each region	£261
Subtotal	£261

5. Children and Young People

1,000 more young people subject to intensive supervision each year	£54
500 young people to be placed in intensive foster placements	£300
Family Conferences @100,000 per YOT	£90
Subtotal	£444

6. People with Mental Health Problems

Three mental health Link Workers in each BCU	£270
Subtotal	£270
Total	£2.28 billion

Annex A: Rethinking Crime and Punishment

Rethinking Crime & Punishment (RCP) is a strategic initiative set up by the Esmée Fairbairn Foundation in response to widespread concern about the UK's growing reliance on imprisonment. The first phase ran from 2001-2004, comprising a £3 million grant making initiative which supported 57 projects. The specific aims of this phase were to increase public knowledge about prison and alternatives to prison, encourage public involvement in criminal justice and inject fresh thinking into the debate about crime. The report of this work was launched in December 2004 and contained 22 recommendations covering public, professional and political attitudes to prison and alternatives, community involvement in the operation of alternatives, the promotion of restorative justice and how the criminal justice system should better respond to the needs of women, children, and offenders with mental health and addiction problems. The report is at www.rethinking.org.uk.

Chief among the findings from the 57 original RCP projects, (which included the major independent inquiry into alternatives to prison chaired by Scottish judge Lord Coulsfield) was the need to raise awareness of and involvement in the delivery of community sentences such as unpaid work and community reparation. While RCP found considerable scepticism about the value of prison as a response to crime, both sentencers and the general public remain largely unconvinced by community alternatives. Giving ordinary people a greater role in determining the content of such penalties, and ensuring judges and magistrates know what these penalties

actually entail, is one way of raising confidence in their use as alternatives to short prison sentences. The aim of a second phase of work from 2005-8 has been to identify how this might be achieved.

Phase two has comprised three elements: The first strand, Making Good, has been a programme of work in the Thames Valley region designed to test ways of involving the public in community sentences. The second has piloted ways for judges and magistrates to find out about what community sentences actually entail and to engage in dialogue with the probation service and other providers about the issues which inform and determine the nature of community sentences. The third strand involves an annual award programme run by the Howard League for Penal Reform to recognise good practice in community supervision of offenders. A handbook will be published later in 2008.

Annex B: Case Studies

Remedi

Crime can have long term implications for all those involved, particularly on an emotional level where this can lead to a loss of trust, increased insecurity and withdrawal from wider society. In order to be able to move on from crimes committed, it is important for ex-offenders to be given an arena to express their regret and reassure those around that they have learnt from their behaviour. This communication is also important for victims of crime.

Remedi (Restorative Justice & Mediation Initiatives) is an independent voluntary sector organisation that provides a range of Restorative Justice initiatives to victims and offenders in South Yorkshire. The scheme receives funding from a range of groups including the Esmée Fairbairn Foundation.

In order to confront and challenge offending behaviour, Remedi works to ensure that victims have a right to be able to convey the effects of the crime to their offender and to seek redress and answers to any questions they might have. It therefore provides victims with the opportunity to seek apologies from their offenders. It also gives them a chance to have their questions answered; to tell the offender how the crime has affected them; receive an apology; and ask the offender to make amends in some way.

The Victim Offender Mediation Service offers mediation only if the offender accepts

responsibility for the crime. Only then will mediators seek consent from the victim(s) to proceed with contact between the two parties. This also gives the perpetrator the opportunity to apologise for their crime and offer reparation. The communities where crimes happen can be left feeling vulnerable, fearful and helpless. The range of intervention delivered by Remedi can allow the community to see a direct and constructive response to crime and an opportunity for reparation.

Research has shown reduction in re-offending rates where offenders have gone through this process and the potential benefit for the victim is to express their feelings and to have any questions or fears addressed.

Revolving Doors

There is nearly a fifty per cent likelihood of someone in prison having three or more mental health conditions compared to a one per cent likelihood in the general public. Locking these people up without appropriate support or releasing them without proper rehabilitation can lead to further re-offending. The needs of the mentally ill are very complex, and so responding to them to prevent further offending requires a large number of external agencies from Housing Associations to local health services.

The Revolving Doors Agency - a charity funded by a number of partners including the Esmée Fairbairn Foundation and Rethinking Crime and Punishment - found that this group of

offenders is often the most likely to be excluded from services. They are either put into a 'too hard' category or fall between different services, with each service believing that another should be responsible. For example, Revolving Doors found that half of those arrested with mental health problems were in receipt of no statutory benefits, despite being unemployed.

To tackle this problem, Revolving Doors established the 'Link Worker Scheme', which involves police stations or prisons in identifying at risk individuals and alerting the Link Worker. The Link Worker serves as an advocate and co-ordinator for the individual, liaising across the various public agencies to ensure a full, integrated package of support, which could include help with debt management, housing, drug rehabilitation, legal advice and family relationships. When this service was evaluated it was found to reduce offending by 22 per cent. Having shown that this approach works, Revolving Doors now supports other organisations to use it.

LCCS

The Local Crime Community Sentence (LCCS) project was established in 2002 with the aim of raising public awareness about the effectiveness of community-based sentences as alternatives to short prison terms sentences.

Originally set up by the Magistrates Association and Probation Boards Association with a grant from RCP, LCCS involves magistrates and Probation staff presenting live, interactive,

offender case-studies to local community groups, to explain the process of sentencing and the impact of community sentences. Using seven specially written case studies, LCCS gives audiences the chance to play a sentencing role-forming an initial view about the seriousness of the crime then obtaining more information about the offender, the victim and the available sentencing options.

Audiences include victims groups, Neighbourhood Watch, women's groups, pensioners, students, business organisations, district and parish councils, and religious minority ethnic and disabled groups. A number of areas have also linked up with local police training and have regular slots delivering presentations to police probationers. Independent evaluation has confirmed that giving the public more information about cases is likely to increase support for community sentences.

LCCS has recently been endorsed by the Ministry of Justice with grant funding to extend the programme to all Probation areas.

Making Good

In 2005, with a grant from RCP, Thames Valley Partnership initiated a project to test ways of engaging local community groups in decisions about the kind of Unpaid Work placements which offenders should undertake in their areas. The Making Good initiative, involving town and parish councils, tenant and resident groups, and Neighbourhood Action Groups demonstrates

how the organisation of Unpaid Work and selection of work might encourage greater community confidence.

In Slough, community involvement is being approached through the Federation of Tenants Organisations which works in conjunction with the community development arm of the Borough Council (The Fed) using its regular open meetings to generate ideas for work placements and the possibility is being explored for training local residents to act as volunteer supervisors in low risk cases.

In Bicester work partnerships have been developed with the Town Council and work is underway to increase cooperation between unpaid work projects for adult offenders and reparation opportunities for young offenders.

In High Wycombe and Milton Keynes Neighbourhood Action Groups (NAGs) which normally inform neighbourhood policing priorities are extending their role in order to identify the most appropriate unpaid work placements for sentenced offenders.

Making Good is identifying learning from all four sites with a final report and toolkit to assist other areas apply the lessons due for publication later in 2008.

Rethinking Crime & Punishment: The Manifesto



rethinking
CRIME & PUNISHMENT

Implementing the findings

Esmée Fairbairn Foundation
11 Park Place, London SW1A 1LP

Telephone: 020 7297 4700
Email: info@esmeefairbairn.org.uk

www.rethinking.org.uk

www.esmeefairbairn.org.uk

Registered charity number: 200051