advancing opportunity:

routes in and out of criminal justice

Edited by Rob Allen

THE SMITH INSTITUTE

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Preface

Wilf Stevenson, Director of the Smith Institute

The Smith Institute is an independent think tank set up to undertake research and education in issues that flow from the changing relationship between social values and economic imperatives. In recent years its work has centred on the policy implications arising from the interactions of equality, enterprise and equity.

Numbers in prison in England and Wales grew from 40,000 to 64,600 in the 20 years to 2000, and are projected to reach perhaps 93,000 by 2010. Figures from 2005 showed that 91% of youngsters who have been through community punishment programmes reoffend. The collateral damage of imprisonment is considerable – a third of prisoners lose their home while in prison, two-thirds lose their job, over a fifth face increased financial problems and more than two-fifths lose contact with their family. This is damaging not only to individual offenders but also to society as whole, which pays the price – in a variety of ways – for not reducing reoffending. If we are serious about reintegrating people into our communities and enabling them to become productive and participative citizens, we have to find more effective ways of rehabilitating offenders.

Responding to these problems is not solely or even mainly a matter for the police or the criminal justice system. The impact of home and school environments is key to understanding criminal behaviour among children and young people – as too is the quality of housing and of community and youth services provision. Most offenders have experienced a lifetime of social problems: prisoners are 13 times as likely to have been in care as a child, compared with the general population, and 13 times as likely to be unemployed; and more than 70% of prisoners suffer from at least two mental disorders. An effective approach to criminal justice must also deal with the growing correlation between drugs and crime in the UK. Problem drug users are responsible for around 60% of all crime, 80% of domestic burglaries and 54% of robberies.

The essays in this volume look at different examples of interventions that have sought to reduce reoffending and to increase the rehabilitation of offenders. They start from the premise that we cannot expect to develop appropriate interventions to support people in exiting the criminal justice system unless we have a better understanding of the "journey" that has taken them into it, and of the interactions and (lack of) support they have experienced from a range of public services. We need to understand what is influencing people's behaviour patterns and use that learning to develop proactive solutions to help

bring them out of the criminal justice system. These essays examine the factors influencing offending, and offer up alternatives – sometimes radical and innovative alternatives – to reduce the chances of reoffending.

The Smith Institute thanks Rob Allen, director of the International Centre for Prison Studies at King's College London, for agreeing to edit this collection of essays, and gratefully acknowledges the support of PricewaterhouseCoopers LLP towards this publication and the associated seminar.

Introduction: Better dealt with in a different way?

Rob Allen, Director of the International Centre for Prison Studies

In 1997, Labour promised a new approach to law and order: tough on crime and tough on the causes of crime. Since then there has been no shortage of legislative activity and substantial investment in all of the criminal justice agencies, with spending on law and order rising by the equivalent of half a percentage point of GDP between 1999 and 2006, to reach 2.5%. The UK spends more on safety and public order[1] than all the other countries in the Organisation for Economic Co-operation & Development, but is much further down the league table in spending on health[2] and education.[3]

How effective has all this effort been? Crime has fallen, but there is still widespread public dissatisfaction about how we deal with it. Practitioners have become inured to a continual process of reform and reorganisation, although change has brought with it little in the way of innovation. The recent decision to spend £2.3 billion on new prison places, including three titan prisons, seems to represent a considerable journey from the 1997 pledge to implement an "effective sentencing system".

Lord Carter's recent review of prisons[4] suggested that the key drivers on this journey have been "changes in public attitudes and the political climate". One of our contributors quotes Burke's observation that:

When the leaders choose to make themselves bidders at an auction of popularity, their talents, in the construction of the state, will be of no service. They will become flatterers instead of legislators; the instruments, not the guides, of the people.

The 83,000 people held in prison in England and Wales represent the highest incarceration rate per 100,000 in Western Europe, far in excess of comparable large countries such as Germany, France and Italy, and higher also than Turkey. It has become fashionable to argue that if crime rates are entered into the equation, England and Wales moves down into a median European position. But comparisons of crime levels in different countries are virtually impossible to make. The fact remains that the prison population has risen more

1 Prime Minister's Strategy Unit *Policy Review: Crime, Justice & Cohesion* (Cabinet Office, 2007)
2 Organisation for Economic Co-operation & Development *Health Data 2007* (2007)
3 Organisation for Economic Co-operation & Development *Education at a Glance 2007: OECD Indicators* (2007), p230
4 Carter, P *Securing the Future: Proposals for the Efficient & Sustainable Use of Custody in England & Wales*, Lord Carter's review of prisons (2007)

sharply in the UK than almost anywhere else in Europe.[5]

This is symptomatic of the growing reach of the criminal justice system more broadly. As well as cracking down on antisocial behaviour, police officers – under pressure to meet targets to bring offenders to justice – arrest and process a growing number of young people whose misbehaviour and associated problems could be, in the words of Sir Ronnie Flanagan, Chief Inspector of Constabulary, in his recent independent review of policing,[6] "better dealt with in a different way", such as through mediation programmes in schools and neighbourhoods.

Once in the system, offenders are subject to higher levels of intervention than was historically the case, with community orders, previously used as genuine alternatives to prison, often imposed on low-risk offenders. Increasingly demanding requirements in such sentences have led to a sharp rise in the numbers sent to prison for failing to comply.

This expansionist approach has resulted in the criminal justice agencies, particularly prison and probation services, seeking to resolve deep-seated social problems in the name of reducing reoffending, although they are not equipped to do so.

The essays in this volume suggest that a new agenda is needed on crime and criminal justice. Such an agenda needs to comprise at least four elements: a more sparing use of criminal justice as a response to social ills and its replacement with other kinds of approach; more concerted efforts to prevent and tackle the social exclusion that lies behind much serious and persistent wrongdoing; greater availability of restorative approaches to deal with conflicts inherent in crime; and more imaginative options for enabling people in conflict with the law to turn their lives around.

Robert Rhodes opens the volume by raising some fundamental questions about what criminal justice is for, arguing that criminal law should be "a last resort with a strong presumption against its use. Contrary to the torrent of (often poorly drafted) criminal legislation that has been the despair of the Criminal Division of the Court of Appeal over the last decade, criminal legislators should be the most reluctant legislators of all."

But how else to deal with the myriad disputes, conflicts and harms that characterise post-modern life? One underdeveloped mechanism is restorative justice (RJ), which can involve

5 Eurostat *Statistics in Focus: Crime & Criminal Justice*, 15/2007 (European Communities, 2007), p11
6 Flanagan, R *The Review of Policing: Final Report* (Home Office, 2008), para 5.39

victims and offenders meeting face to face in the presence of a facilitator. A rigorous review of the British and international evidence on RJ, comparing it with conventional criminal justice, has concluded[7] that it substantially reduces repeat offending for some offenders (but not all), reduces crime victims' post-traumatic stress symptoms and related costs, and provides both victims and offenders more satisfaction with justice than traditional methods of criminal justice.

When introduced as a complementary part of the justice system RJ can therefore hold offenders to account more effectively, while at the same time engaging victims and members of local communities in the process and humanising it for the benefit of all. Harriet Bailey argues that RJ should be playing a crucial role in the achievement of the government's strategic policy aims for the criminal justice system.

Despite its proven value, RJ is available only in parts of the youth justice system and its potential has not been exploited for strengthening local communities and developing neighbourhood policing. It is almost entirely absent from adult criminal justice, where it could be very effective in reducing the need for prison while also tackling reoffending. Excellent experimental initiatives such as RJ conferencing for robbery and burglary in London fail to get mainstreamed because no single agency has responsibility for delivering RJ, or for training staff and monitoring impact.

A similar picture emerges in respect of efforts to improve the prospects of young children suffering adverse experiences. George Hosking is unashamedly bullish about the possibilities of identifying and intervening early with very young children at risk. Clearly, such interventions need to be alive to the dangers of labelling, but there is no doubt scope for expanding preventive services. The evaluation of the Youth Justice Board's youth inclusion and support panels (YISP) programme found that:

Prior to the referral [to YISP] many parents had been asking for help for some time with a variety of often complex and interrelated problems relating to the child's education, family relationships, anti social behaviour ... desperate for someone to do something which could help them as well as the child.[8]

Rather than targeting propensity to commit crime, better services should perhaps be

7 Sherman, L, Strang, H et al *Restorative Justice: The Evidence* (Smith Institute/Esmée Fairbairn Foundation, 2006)
8 Walker, J, Thompson, C, Laing, K, Raybould, S, Coombes, M, Procter, S and Wren, C *Youth Inclusion & Support Panels: Preventing Crime & Antisocial Behaviour?* (Newcastle Centre for Family Studies, 2007)

provided on the basis of vulnerability and existing involvement with agencies. Candidates for voluntary intervention could include the 570,000 children who are referred to social services for child maltreatment each year, the 125,000 children whose parents are in prison, the 60,000 children in care and 40,000 born to teenage parents, as well as children under the age of criminal responsibility who are involved in delinquency.

Skilled, accessible help and support to these groups should be provided under the aegis of properly funded children's services, which integrate the prevention of crime alongside the essential outcomes for children pursued by the Every Child Matters agenda. A wide range of preventive programmes need to be developed, including much wider use of functional family therapy, as is the case in Sweden. Such an approach would have the advantage of seeking to prevent offending, harm and vulnerability among young people rather than simply focusing on crime.

For those young people that do get into trouble, the chapters by Penelope Gibbs and Sukhvinder Kaur Stubbs argue for some fundamental changes. For Gibbs, the youth justice system is not fit for purpose. It has drifted from the coherent foundations laid by the Crime & Disorder Act 1998 to become mired in process and punishment, with only limited vision of what else would work better. Sharply reducing the use of custody and reinvesting resources into more constructive community provision holds the key here.

For Stubbs, there is a need to develop "a holistic and integrated approach to the transition to adulthood, in order to promote recognition of the distinct needs of young adults within the criminal justice system". It is undoubtedly true that, unlike other policy, the transition from youth to adult is very stark in criminal justice. The more flexible approach developed in Germany, where young people up to 21 can be treated as juveniles if they are particularly immature or vulnerable, is worthy of exploration here.

Stubbs also points to the potential value of peer mentoring and the valuable role that can be played by people who have been through the system themselves. So-called service user involvement is underdeveloped in criminal justice compared with the fields of mental health and drug treatment. Clive Martin sees it as a key area of development. The Clinks service user task force, in its June report,[9] is proposing a much more systematic role for ex-offenders in the development of policy, commissioning of services, and recruitment and training of criminal justice staff.

9 *Unlocking Potential* (Clinks, June 2008)

Such imaginative approaches emerge from Dan McCurry's experiences representing young defendants in inner London, where the attractions of gang membership can blight the prospects of young people. He argues that strong measures are needed to break what in effect amount to family bonds. He suggests that relocating young people away from their home areas and even providing periods of education overseas may have a role to play.

While this might provide some with an uncomfortable reminder of "Safari Boy" – a young offender in the 1990s who made a controversial series of foreign visits as part of his programme of community supervision – McCurry urges us to think outside the box. Enver Solomon points out that we are not even exploiting the options inside the box. His research on community sentences has shown that while 12 requirements are theoretically available for community orders, half have not been used or have been used very rarely.

Solomon's research found little innovation, with the new community order appearing to mirror the old community sentences and no evidence to suggest that the new orders are being used to divert offenders from custody. There is a disappointing lack of innovation in the practical application of the new sentencing arrangements for the young adult age range, with specified requirements to participate in training used less frequently than might be expected, given the prominence of problems with education, training and employment. A similar picture was found in respect of women, with many of the possible elements that could be included in a community order not used.

Mental health requirements are one of those categories of requirement not fully used. For Julian Corner, a more radical approach is needed for this group, who represent a high proportion of prisoners – 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 1%. Corner argues that institutions of various types soak up those in society whom community services cannot or will not work with. They act as sumps draining off the 'hard to place'. To address this he proposes more vigorous action by local community based services to drive down the numbers of people being sent to prison from their areas, leaving prisons to focus on 'the people they were designed for'.

Such a segmentation approach is further developed in a thought provoking piece by Ed Straw of PricewaterhouseCoopers who seeks to apply business principles to criminal justice. The five key principles are: first, to understand your customers; second, to develop a tailored and targeted product range; third, to involve customers in product design; fourth,

to stick to your core business and outsource the rest; and, fifth, to collaborate effectively.

While some might flinch at the notion of offenders as customers, there is here a welcome recognition that people in conflict with the law must be seen as active participants in their own rehabilitation. Some may not want to change – at least for the time being. But inspiring those who want to change with help that is timely, relevant and reliable comes high on the list of what offenders say they want. As Clive Martin puts it, until we put more resources into understanding how we motivate offenders and encourage them to buy into their rehabilitation, we are bound to fail.

Some welcome evidence about the effectiveness of these kinds of approaches is provided by Professor Martin Stephenson. Using the arts has always been an important way of engaging with some of the most alienated young people. Stephenson's evaluation of the impact of this work should help to counter the unwarranted scepticism that sometimes surrounds such initiatives.

What lessons can be drawn from the various contributions in this volume? Some undoubtedly relate to the way services for offenders are organised. The National Offender Management Service (NOMS) is a highly centralised model, divorced from the local communities where crime takes place. Were a further review of correctional services to be undertaken now, it would be as likely to recommend locating prison and probation services within the ambit of local area agreements as within a cash-strapped Whitehall department with regional offices. Making local agencies – particularly councils – responsible for the supervision and resettlement of offenders could unlock a much wider range of rehabilitation resources than is achievable through NOMS. This is the approach being taken in Scotland. In respect of young people, local responsibility could be taken further. If local authorities were to foot more of the bill for locking up teenagers they would arguably place much greater emphasis on earlier prevention work.

A more local approach would also enable the people most affected by crime to set priority tasks for offenders to undertake as part of unpaid work sentences. This could help instil community confidence so that sentencers felt more able to impose such orders. Community penalties organised remotely at the regional level could struggle to have such an impact.

Alongside a more sparing role for criminal justice and a much more local organisational structure for services, the essays suggest the need for substantial investment in infra-

structure other than prison – for example, in residential treatment provision for people whose offending is driven by mental ill health and addiction. England has about 2,300 residential rehabilitation beds for drug addicts – about 40 per 1 million of the population. This compares with 90 in the Netherlands and 150 in Canada – both countries with a lower imprisonment rate than in the UK.

If Finland, with a tenth of our population, locked up children at the English rate, one might expect a juvenile prison population of 300. In fact there are just five boys under 18 in prison. Finland on the other hand appears to make much more use of specialist psychiatric placements for adolescents. What this data suggests is that we are seriously underpowered in respect of intensive residential placements for difficult people. Prison fills the gap.

The government's decision to expand the prison estate represents a huge missed opportunity to strengthen alternative provision. Rethinking Crime and Punishment (RCP) the strategic grant making project set up to raise the level of public debate about the use of prison and alternatives has published costed proposals for spending £2.3 billon in different ways; first to make 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: and second to fund more appropriate alternatives to prison when dealing with groups for whom prison is not appropriate women, children, and those with mental health problems.The main reason that the government and its advisers shy away from a more radical approach to the use of prison of course relates to perceptions of public confidence. Lord Carter thought in his first report[10] that tougher sentencing had brought it "closer in line with public opinion" and was concerned that the public continued to believe that sentencing was too lenient.

What he and the government ignore is the fact that if 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 severity of sentencing. When respondents are properly informed about sentencing levels, and given detailed information about cases, a different picture emerges.

Work undertaken for RCP, has shown that when given options the public do not rank

10 Carter, P *Managing Offenders, Reducing Crime* (2003)

prison highly as a way of dealing with crime. Most think that offenders come out of prison worse than they go in; only 2% would choose to spend a notional £10 million on prison places; and over half think residential drug treatment and tougher community punishments are the way forward. This suggests that public punitiveness is largely a myth and that public confidence need not stand in the way of a bolder strategy of replacing imprisonment with more constructive alternatives.

Chapter 1

What is the criminal law for?

Robert Rhodes QC and Charles Foster, Outer Temple Chambers

What is the criminal law for?

Some questions seem too embarrassingly basic to ask, and so they tend to be neither asked nor answered. As a result, significant intellectual and financial resources are spent erecting elaborate structures on top of shaky or absent foundations. The unhappy result is predictable.

This paper suggests:

(a) that the question "What is the criminal law for?" is an urgent and important one; and
(b) that failure to ask or answer it has led to some constitutionally worrying, unprincipled or unworkable legislation.

We outline some unacceptable answers, and suggest the criteria relevant in considering the question properly.

A cautionary tale: punishment for causing death by careless or inconsiderate driving

By section 2B of the Road Traffic Act 1988 (inserted by section 20 of the Road Safety Act 2006), a person who "causes the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place" is guilty of an offence which, after trial on indictment, is punishable with up to five years' imprisonment.

The parliamentary debates on clause 20 of the Road Safety Bill make salutary and depressing reading. They are full of genuinely heart-rending tales of the deaths of constituents, together with expressions of the outrage felt by the families at the acquittal of defendants charged with causing death by dangerous driving.

The review that led to it was no different. In February 2005 the Home Office published its C*onsultation on Review of Road Traffic Offences Involving Bad Driving*.[1] The review noted:

In cases where bad driving causes death, the decision whether the driving was "careless" or "dangerous" assumes enormous importance. If the dangerous driving cannot be proved, and the conviction is for careless driving, the likely penalty will be a relatively

1 http://www.homeoffice.gov.uk/documents/cons-bad-driving-2005/cons-bad-driving-report?view=Binary

small fine. The "gap" between the likely penalties for offenders could hardly be wider. In proceedings for careless driving where a death has been caused, bereaved relatives feel that the fact of the death is given no attention or consideration, leading to a strong sense of injustice.[2]

That was the rationale that finally prevailed. It deserves a close look. It effectively says:

(a) that culpability (in the sense of degree of fault) is, at best, only a marginally relevant factor in determining what the criminal law should say; and
(b) culpability is overwhelmingly overruled by the relations' sense of injustice. A life has been lost, ergo a price wholly disproportionate to the defendant's culpability should be paid. As shown above, this offence was only thought to be needed because prosecutions for the offence of real culpability were failing. The thinking seems to have been: "We can't prove serious fault, but we've got a corpse and we've got causation. That's enough for the criminal law."

This is the brutal, and often misunderstood, "eye for an eye" jurisprudence of Exodus 21[3]. It has the advantage of simplicity, but any society that adopts it literally will be badly maimed both physically and jurisprudentially. For centuries, civilised societies have realised that a more nuanced response to human failings is desirable. The most basic requirement of such a response is an inquiry into the degree of fault.

We think that the creation of this offence is a classic and depressing example of what happens when the legislature fails to ask the question "What is the law for?" or asks the question and, perhaps influenced by crusades of the tabloid press, gives an unacceptable answer.

How to approach the question: some legal and constitutional fundamentals

We start from the (political) assumption (which itself rests on a number of other assumptions) that one should make laws only if it is necessary to do so. The best society is the one that needs the fewest laws. Laws diminish freedom, and freedom is a good thing. But unchecked freedom is impossible in any society. Participation in a society requires submission (voluntarily or involuntarily) to that society's freedom-regulating rules. The nature of that submission has been variously described. In essence, there is a social

2 Paragraph 2.1.ii

3 Verses 23-24. It is "misunderstood" because the intention behind it is generally accepted to have been that "an eye for an eye" is a maximum and not a minimum, thus avoiding generations of blood feuds.

contract in which individual freedom is traded for the benefits (perceived or real) of being a member of the community.

Criminal law deals with those breaches of that social contract which are deemed to be offences against the community at large. Those breaches may be (and generally will be) offences against individual members of the community too, but, by and large, the criminal law is not concerned with rectifying an injustice to a victim *qua* victim.[4] The victim is not a party to criminal litigation: it is his outraged status as a member of the community that interests the criminal law.

The antiquated language of the criminal law made it clear: offences were criminal because they were "contrary to the Queen's peace". The Queen, as the head of the violated community, is the litigant facing the defendant across a criminal court. If X murders Y, it is the Queen who embarks on criminal litigation. It is not litigation on behalf of Y, or Y's family. It is litigation on behalf of the entire wronged community. Y's family has other remedies. They can sue X for damages in the civil courts, for instance. There may be a role for restorative justice approaches. But these are different matters. Blur the boundaries between criminal law and civil law, and justice itself fades out of focus.

Criminal law does not merely describe the situations where there has been a punishable breach of the social contract: it also decides what that punishment should be. It is crucial to understand that those functions are analytically distinct. Failure to appreciate this lies at the root of many a bad legislative error. The sentencing procedure classically and correctly takes into account many criteria that are dangerously irrelevant in deciding whether or not particular conduct should be deemed criminal in the first place.

The rationale of a typical criminal sentence will include one or more of the following elements:

(a) Individual deterrence: frightening the individual offender out of future criminal conduct.
(b) General deterrence: frightening the community at large out of future criminal conduct.
(c) Protection of the public: if the offender is locked up, tagged etc. Individual deterrence and rehabilitation plainly promote public protection too.

4 There are some minor exceptions. A criminal court can order a violent offender to pay compensation to a victim for personal injuries, for instance. A thief can be ordered to pay back money he has stolen. But compensation and restitution remain primarily the business of the civil law.

(d) Rehabilitation of the offender: an improbable aspiration in Britain's prisons, but the focus of many community sentences.
(e) Reparation: the paying back or making of amends to the victim or community.
(f) Punishment: this is the judicial infliction of some penalty.

Punishment is a particularly interesting element, because by definition (with some minor exceptions[5]) it is always present. That is not surprising. Most modern jurists would accept that an expressly punitive element is legitimate – that it is not morally unacceptable for a civilised society to inflict punishment judicially for reasons other than general and individual deterrence, rehabilitation etc. Moreover, there is broad agreement about the criteria that can properly be considered. The *degree* of fault is obviously a central criterion. But it is not the only one: the amount of harm caused to the victim is relevant too, even though it may not be proportionate to the degree of fault. So are expressions of remorse, attempts at restitution and rehabilitation and previous criminal record. But the real point is that these criteria are properly relevant at the point of sentencing *and not until the point of sentencing*.

Forget this, and allow those criteria to determine whether the criminal law has been broken in the first place, and you have no real criminal *law* at all. Consider the example of a death caused by driving. It is entirely proper that the sentencing judge should hear from the widow about the effect that the death has had on her and her family. It is entirely proper that he should hear that the defendant has, since the offence, been arrogantly unrepentant. But if these or similar factors determine whether the defendant is guilty of the offence, the tears of the widow write the law. It would be a greater offence carelessly to run down and kill a man who was loved by his wife than one whose wife was glad to see the back of him. That is retributive justice of a sort, but it is not law as we have come to know it.

We return to the example given above of the Road Safety Act 2006: there, substantive law is generated entirely by criteria that are primarily the business of the sentencer. People not driven by atavistic feelings of revenge might feel despair at the prospect of parliament providing for a defendant, who might have led a previously blameless life, to be sent to prison as a result of a moment's inattention, or the delay in the victim's receiving medical attention causing the latter's death.

5 Notably the absolute discharge, and arguably the conditional discharge.

The crucial dichotomy between law and sentence must not, however, rule us absolutely. It is legitimate for substantive criminal law to express the feelings of outrage that individuals feel when a wrongful act is committed. The state, after all, is a collection of individuals with feelings to be hurt, families to be decimated, bodies to be violated and property to be stolen. It is crucial to appreciate the real distinction between state and individual; it is also crucial to remember that the interests of the two entities, while not identical, will overlap. Sadly, parliamentary draftsmen often either fail to recognise the distinction between the two or, while appreciating the distinction, fail to balance the demands of the two.

But how is the balance struck? We suggest that it is struck by asking and answering correctly these two basic questions: What is the criminal law not for? And what is it for?

What is the criminal law not for?

(a) *It is not to win votes or appease the tabloid press.*

There are two reasons for this. The first is constitutional; the second is pragmatic.

First, the constitutional. There is nothing undemocratic about refusing to do the thing that is being bayed for. We cannot improve on the words of Edmund Burke:

When the leaders choose to make themselves bidders at an auction of popularity, their talents, in the construction of the state, will be of no service. They will become flatterers instead of legislators; the instruments, not the guides, of the people.[6]

And:

Your representative owes you, not his industry only, but his judgment; and he betrays instead of serving you if he sacrifices it to your opinion.[7]

Second, the pragmatic. Public opinion, whether expressed in headlines (which tend, anyway, to mould public opinion rather than reflect it) or opinion polls, does not use only (and does not use all) the criteria that lawmakers should use. It lacks the information, the

6 Burke, E "Reflections on the Revolution in France" in *The Works of the Right Honourable Edmund Burke* vol 1 (Henry G Bohn, 1864), pp446-448

7 Burke, E "Speech to the Electors of Bristol", 3 November 1774, in *The Works of the Right Honourable Edmund Burke* vol 2 (Henry G Bohn, 1864), pp515-16

calm and the general perspective that a responsible legislator needs. It is governed by the sudden heat of moral outrage, and often by little else. Hence the incontestable observation that knee-jerk legislation is bad legislation.

Most of our criticisms of recent criminal legislation fall under this head. The Road Safety Act 2006 is one example. Some elements of sentencing legislation over the past 15 years or so are depressing exemplars too.

(b) *It is not only to enshrine the values of a society.*

Of course a crucial part of the role of law is to enshrine and broadcast those values. But since the sanctions of the criminal law are stern, the criminal law is, except in obvious cases, a dangerously crude vehicle for making important statements about what a society should be. Only when a statement is so plainly uncontroversial will the un-nuanced voice of the criminal law be an appropriate way of describing it. It is plainly right that if X murders Y, X should be locked up for a very long time. A society that does not do that is a society that has gone wrong. But as one gets further from the barn-door wrongs, the good of proclaiming societal values gets increasingly finely balanced against the evil of depriving a citizen of his liberty or his reputation (both of which it is the primary duty of the criminal law to protect).

There is another point, related to point (a) above. That is, that while there has been agreement for centuries about core values (including, for example, the value that is articulated in the law of murder), there is much less agreement about the values relevant to determining the criminality of other areas of human conduct. Not only is there less agreement about what the relevant values should be: the tools we have for determining which values are in play in a particular moral determination are crude ones.

What is the criminal law for?

(a) *It is more for the protection of the individual* qua *individual than it is for the individual as a component of the state.*

This is exemplified by and a corollary of two fundamental principles: the burden of proof and the standard of proof. They are usually described as principles of law: in fact they are principles of ethics. So repugnant to those ethics is the idea of wrongly convicting an innocent man that if the only system that will avoid it is one which lets many guilty people go free, then, unhesitatingly, that is the system which must be used.

Although it has been said that some recent legislation[8] offends against this principle, we do not think that there is much real dissent from the principles themselves. In relation to the Criminal Justice Act 2003, for instance, there is concern about whether the procedure for adducing previous convictions will lead to wrongful convictions because of the risk, despite judicial warnings, of juries convicting defendants on their record rather than the evidence in the case. We share those concerns. But we do not think that the authors and promoters of the act thought that they were altering the *principle* that it is better that many criminals escape than that one innocent man be convicted. The effect of the legislation may in fact be that defendants will be wrongly convicted, but that is a different matter. The fault is in the mechanism by which the legislature seeks to make the principles live.

Such faults are of course very important. It does not matter to a wrongly convicted man whether he has been convicted because a principle has been wrongly diluted or because a mechanism is defective. Accordingly, a good law requires effective importation of these central principles into daily courtroom practice.

(b) *It is to achieve what no other measures can achieve.*

Criminal law, in other words, should be a last resort. There should be a strong presumption against its use. Contrary to the torrent of (often poorly drafted) criminal legislation that has been the despair of the Criminal Division of the Court of Appeal over the last decade, criminal legislators should be the most reluctant legislators of all.

(c) *It is to deal with fault, or default so gross that it can be regarded as transmuted ethically into criminal culpability.*

We see this as a corollary of many foundational principles, including the reluctance to punish, discussed above.

(d) *It is to achieve the purposes listed above as criteria for sentencing.*

Although we have pointed out that it is crucial not to confuse the roles of the substantive criminal law and the sentencer, the distinction between substantive law and sentencing,

8 Notably the terrorism legislation and the Criminal Justice Act 2003, and proposed amendments to anti-rape legislation, but see also the presumptions against defendants in certain circumstances in drug legislation dating back over 30 years.

while metaphysically robust, must not obscure the legitimate overlap between the criteria employed in deciding whether a law should exist in the first place, and those employed in deciding what to do with someone who transgresses against that law. Put another way, there is a philosophically justifiable circularity at work: Why should there be a substantive law of murder? Because people who murder should be punished. Why should they be punished? Because they have offended against the law of murder. And so on.

For dealing with many less serious matters, the criminal law is a blunt and inappropriate tool. We need to step back to identify where it is truly necessary, and urgently develop alternative policies and approaches where it is not.

Chapter 2

Restorative justice – a new paradigm for justice

Harriet Bailey, Chief Executive of the Restorative Justice Consortium

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The government's strategy is to encourage the use of adult restorative justice, to ensure quality of delivery and to continue to develop the evidence base to show what works for adults. We have invested £5 million in pilots and their evaluation, produced best practice guidance for practitioners and introduced legislation to provide further opportunities for the delivery of restorative justice. Restorative justice is embedded in the youth justice system.
Baroness Scotland of Asthal, then Minister of State at the Home Office[1]

The evidence on RJ is far more extensive, and positive, than it has been for many other policies that have been rolled out nationally. RJ is ready to be put to far broader use, perhaps under a "Restorative Justice Board" that would prime the pump and overcome procedural obstacles limiting victim access to RJ.
Professor Lawrence Sherman, now Wolfson Professor of Criminology at the University of Cambridge[2]

Despite the government strategy on restorative justice (RJ)[3] and despite the large evidence base documenting the benefits provided by restorative justice for all involved – victims of crime, offenders and the surrounding community – still less than 1% of victims of adult offenders in this country have access to an RJ service. There is no Restorative Justice Board and there is no requirement that RJ be provided – the government's strategy, published with much acclaim in 2003, appears to have stalled.

This chapter outlines the opportunities for the criminal justice system provided by the use of restorative justice and the practical steps needed for these to be enjoyed.

What is restorative justice?

Restorative justice is a process that brings victims of crime into communication, either directly (face to face) or indirectly (through a mediator), with the person who has offended against them. This process is facilitated by a trained practitioner who can ensure the safety and support of all participants. Victims and offenders are often accompanied by a family member or supporter, someone who has been affected by the offence but is also able to provide support following the meeting. Members of the wider community affected by the crime may also take part.

1 Hansard, 19 March 2007, column 1001
2 Sherman, L and Strang, H *Restorative Justice – The Evidence* (Smith Institute, 2007)
3 Home Office *Restorative Justice: The Government's Strategy* (2003)

RJ is always a voluntary process for both the victim and the offender – no one is forced to take part. The British Crime Survey suggests that around half of victims would like to communicate with their offender, however, and that RJ brings huge benefits, including answers to questions and emotional closure, for those victims who do choose to take part. Restorative justice gives victims of crime the chance to tell offenders the real impact of their crime and, in some cases, what the offender could do to put the situation right and prevent such things happening in the future.

In research published by the Ministry of Justice in June 2007, in RJ pilots across the country 85% of victims were satisfied with their experience of restorative processes (compared with 33% of victims feeling the criminal justice system met their needs[4]) and 78% of victims participating in RJ said they would recommend RJ to others.[5] Victims participating in RJ are far more likely to receive an apology from the offender through participation in RJ than at court.[6] But although an apology is of critical importance for many victims of crime, the proven benefits of RJ go much wider.

RJ works – research by Professor Lawrence Sherman and Dr Heather Strang has shown that victims have reduced post-traumatic stress (PTSD) after meeting their offender, a reduced wish for revenge and greater satisfaction with the criminal justice system than peers unable to access RJ.[7] Offenders have been shown to have greater understanding of the impact of their crime following a conference, and many say that meeting the victim will reduce their likelihood of reoffending. RJ has also been demonstrated to reduce frequency and severity of offending in those that do go on to reoffend.[8] RJ does not work in a vacuum and is no magic wand. What it does provide for many offenders is an understanding, for the first time, of the real impact of their crimes and the opportunity to change.

4 British Crime Survey, 2004
5 Shapland, J et al *Restorative Justice: The Views of Victims & Offenders – The Third Report from the Evaluation of Three Schemes*, Ministry of Justice research series 3/07 (Ministry of Justice, 2007), p4
6 Home Office, op cit, p30
7 Sherman and Strang, op cit
8 Ibid

Case study: a transformation through RJ

At the age of 43, just released from jail and back on drugs, Peter was arrested once again. Pleading guilty, he was offered the opportunity to meet victims of two of his recent burglaries at a restorative justice conference, to which he agreed. The meeting took place two months after the offence, while Peter was on remand awaiting trial.

Face to face, Peter recounted what had happened on the day of the offence and that he had sold Ronald's laptop for just £25. An emotional Ronald – a doctor – told him that the laptop held all his research notes for a book he was preparing. Now the notes were lost forever and he felt his life had been ruined.

Peter's second victim, on the other hand, was angry at Peter's attempts to justify his actions and went on to explain the profound effect the experience of finding Peter in his house had had on him. Will was still, two months on, fearful of what he would find in the house when he returned and felt his ability to protect his home and family had been taken away.

Peter says, "I had never thought about all the Ronalds and Wills I had harmed in my life. All I had thought about was the money and the risks I had taken to get drugs. I had never thought about those I stole from as people, human beings like me. I was devastated at what a rotten person I had become. I was deeply ashamed." Peter goes on to say that meeting these two victims was the hardest thing he had ever done – "worse than a day in the Old Bailey – at least you know where you are there and what to do".

Peter gave an undertaking to Will and Ronald that he would change his life, getting off alcohol and drugs once and for all, taking some courses to educate himself and turning his back on crime. He promised to write to them (through the facilitator, Kim) every six months to report on progress – a promise that he kept.

Peter was sentenced to four years' imprisonment (a sentence that was not influenced by Peter's participation in RJ) and accepted into the drug rehabilitation wing, before being sent to an open prison. He has now been back in the community for six years, has got married and has not committed any crimes, taken drugs or drunk alcohol in that period. He is determined to earn an honest living and accepts that his employment prospects are limited because of his previous convictions.

Ronald and Will have now put their experiences behind them and Ronald has started a new life. They recognise that, as victims, they were selected at random and accept as genuine the apologies they received from Peter. They are satisfied that he will never harm anyone else again.[9]

A cost-benefit analysis of this case by an economist showed that, had Peter gone on offending in line with his previous criminal history, the cost to the criminal justice system – in terms of police, court and custody – would have been in the region of £1.69 million. This compares with the £800 cost of running this restorative justice conference.[10] Additionally, this cost-benefit analysis did not attempt to quantify in monetary terms the cost of the crime for victims, in terms of practical costs, impact on ability to work, mental and physical healthcare costs, and much more.

Wide provision of RJ to victims of crime would produce very significant cost savings to the criminal justice system, and by benefiting victims (as research on PTSD has shown) deliver savings for healthcare, as well as many more less tangible benefits. The Ministry of Justice report into the cost-effectiveness of three trial projects in England and Wales is due to be published in June 2008 and will provide more detailed information on this important issue.[11]

Two of the key principles of restorative justice – that it is the people involved in a particular situation who need to deal with its impact, and that everyone can take responsibility for their past and future actions, are employed in many further settings within and outside the criminal justice setting. For example, restorative approaches in schools are used to promote positive relationships and to deal with conflict and bullying, as well as to promote a positive working environment where communication is well managed. In prisons, through the work of the Supporting Offenders through Restoration Inside programme and the Prison Fellowship among others, groups of prisoners are encouraged to explore the "ripple effect" of crime on victims, offenders, their families and the community at large.

9 Peter Woolf has gone on to work with offenders and promote the use of RJ; his book *The Damage Done* was published by Bantam Press in May 2008. A short film of Peter and Will speaking about their experience of RJ, *The Woolf Within*, can be viewed on YouTube (see link at www.restorativejustice.org.uk).
10 Winchester Restorative Justice Group cost-benefit research, available on the Restorative Justice Consortium website: www.restorativejustice.org.uk
11 The fourth of four reports from Professor Joanna Shapland (due to be published June 2008) concentrates on the reoffending rates and cost-effectiveness of the three schemes that formed the Home Office trials.

Here we will consider primarily, however, restorative justice in terms of direct communication between victims and offenders, as was the subject of the government research cited by Baroness Scotland and where we see the most direct benefits for victims of crime, as well as for offenders and the wider community.

What is already happening?

As Baroness Scotland states, restorative justice is embedded in the youth justice system. All victims of young offenders coming for the first time before the court are provided with the opportunity to engage in a restorative process through attendance at a referral order panel facilitated by community volunteers; or, in some cases, more formal RJ conferences are provided.[12]

However, in the adult criminal justice system, there is no systematic provision of restorative justice. Given the scarcity of RJ provision across the country, less than 1% of victims of adult offenders have access to RJ. In the few areas of the country where RJ does exist in the adult criminal justice system, these services are generally provided through the police or probation services, often through victim liaison professionals or trained specialists within the organisation. There have been a few examples of local mediation services or victim support agencies providing RJ in cases involving adult offenders, but this has been as a result of local initiatives accompanied by short-term charitable funding.

Case study: Thames Valley adult RJ service

Thames Valley adult RJ service is a multi-agency RJ service covering the Thames Valley area. The service is unique in the country, not only as a multi-agency service but also in its provision of RJ in cases with adult offenders. Staffed by facilitators coming from the police, probation, prison and local mediation services, all trained to the same standard, the service has been hugely successful, gaining referrals from many courts across the area. The service provides RJ as part of conditional cautioning, as part of community sentences and in HMP Bullingdon.

The main use of the RJ service to date has been through the courts making participation in restorative justice a requirement of the new generic community sentence. Where both

12 There are quite pronounced regional differences in provision of RJ within the youth justice system that will not be covered in more detail here. For more information on RJ in the youth justice system, contact the Restorative Justice Consortium or the Youth Justice Board.

victim and offender agree to participate, the RJ service runs a full RJ conference or, if the victim prefers it, offers a form of indirect communication via the facilitator. In HMP Bullingdon there is now a waiting list of offenders wishing to engage in restorative justice on their own initiative.

The service is funded through the financial contributions and in-kind support provided by local partners including the probation service and the police. As a multi-agency partnership, all the partners recognise the role the RJ service plays for victims and offenders at all stages of the criminal justice system, and the potential savings RJ has to offer to every agency. Overseen by the Thames Valley local criminal justice board, regular reports to the heads of all the local criminal justice agencies help to keep RJ on the agenda and provide joined-up oversight for this unique joined-up service.

Victims of crime may wish to enter into restorative justice processes (conferencing or indirect mediation) at any stage following an offence, depending on their situation, the severity of the crime and the attitude of the offender in relation to their taking responsibility for the offence. Some conferences take place before trial and sentencing; others will take place during the sentence at any stage and just before release if there are concerns about what will happen when the offender returns to the community.

At the moment, those few victims of crime who do live in an area where RJ is offered must also hope that their offender's sentence or tariff does not exclude them from the provision of RJ. In London, for example, RJ is only available in cases where the offender has been sentenced to over 12 months, regardless of the willingness of the victim or offender to engage in the process. These types of limitations on the availability of RJ need to be addressed in order that the benefits for victims, offenders and the community at large can be realised for everyone willing to take part.

Experience from abroad – New Zealand

Experience from other countries, New Zealand in particular, shows that wholesale introduction of RJ into a traditional, punitive and silencing criminal justice culture is both possible and can achieve dramatic successes. In 1989, in response to the disastrous impact of the criminal justice system on young people of Maori backgrounds in particular, the Children, Young Persons & Their Families Act gave New Zealand's families and communities the power to decide how best to respond to offending behaviour from children and young people. All cases are now dealt with through police diversion schemes or family group

conferencing (FGCs, a common form of RJ where family and community members meet with the young person) – with about 5,000 FGCs taking place each year.[13]

The successful use of RJ in the youth system in New Zealand – only 5% of young offenders return to court for fresh offences, residential custody has dropped by more than half (now just 2% of young offenders) and court appearances from 64 to 16 per 1,000 young people – has led to a set of major developments in 2006, expanding the use of RJ nationally and to adult offenders. This includes staged introduction of RJ for most types of offence, at the point of a prisoner's reintegration into the community, and a national performance framework. These changes will be introduced between 2007 and 2010 and involve the police, court-referral services and projects based in prisons.

What does the evidence show us?

In addition to the benefits for both victims and offenders demonstrated by research and outlined above, experience from those delivering RJ shows us how and when RJ can work best.

Making RJ work for victims of crime

When victims of crime are ready to consider the option of RJ is very subjective, and we know that who the victim is and how the offer is made affect take-up rates. Best practice guidance[14] covers recommendations for contacting participants sensitively and appropriately; the projects with the best victim contact have shown very high levels of take-up (up to 70% in cases involving adult offenders and serious offences).[15] The findings of more recent research, such as the Ministry of Justice report into victim satisfaction rates,[16] can be added to existing best practice guidance to enable high take-up of RJ where services are provided.

Making RJ work for offenders

The successful completion of agreements made through restorative justice processes requires support for offenders post-RJ, whether from the RJ facilitator, a personal mentor or probation officer or in the form of education or health and addiction-based courses for rehabilitation. The current situation in UK prisons means much of this work is not possible

13 Liebmann, M *Restorative Justice: How It Works* (JKP, 2007), p266
14 Training & Accreditation Policy Group *Best Practice Guidance for Restorative Practitioners & the Case Supervisors & Line Managers* (Home Office, 2004)
15 Sherman and Strang, op cit, p38
16 Shapland et al, op cit

or is interrupted, as a result of the movement of prisoners from one establishment to another and the general pressure on resources.

Supporting RJ facilitators

A national performance framework and accreditation of practitioners, trainers and training as well as supervisors of facilitators is required in order to ensure a positive experience for those involved in RJ. Evidence suggests that, while criminal justice professionals have the necessary knowledge to support the development of actions to follow on from the conference, those not otherwise directly involved in a case are best placed to facilitate RJ. Issues such as perceived authority and power of facilitators should be kept in mind and it has been recommended that criminal justice professionals trained as facilitators practise on secondment to an RJ service in order to maintain the correct level of impartiality, both perceived and real.[17] This can be supported by holding conferences in a neutral space, prison or local community centre.

Making RJ services work

For RJ to work, the initial set-up of services needs to be followed by secure funding. This also requires strong multi-agency working in terms of information exchange, provision of facilitators and organisational issues around conferences, and staff awareness of RJ. This multi-agency approach has the additional effect of creating (as in the Thames Valley and in other countries using RJ) a culture within the criminal justice system and wider society that understands and is supportive of RJ as part of the solution to crime and conflict. The room necessary for RJ, in terms of time and space, also needs to be provided so that victims of crime can access services at their own pace and all participants can be provided with the necessary preparation time with facilitators.

A blueprint for restorative justice in England and Wales

At the Restorative Justice Consortium, we believe that every person harmed by crime or conflict should have the opportunity to engage in a restorative process. This means a blueprint that allows for the offer of RJ to be made to all victims of crime, from the day the offence is committed to the moment the offender leaves prison and in some cases beyond this time. In order for this to be the case, a local RJ service is needed in every region of England and Wales.

17 Dignan, J et al "Staging Restorative Justice Encounters against a Criminal Justice Backdrop: A Dramaturgical Analysis" in *Criminology & Criminal Justice* vol 7, no 1 (Sage, 2007), pp5-32

All victims of crime should have equal access to restorative justice. At present, only victims of young offenders can benefit from RJ. Extending the legal provision for RJ to victims of adult offenders means no discrimination on the basis of the age of the offender. Again, based on the principle of victim choice, we argue that as RJ is built into the adult criminal justice system, we should ensure that RJ is available in the widest possible range of cases, from minor offences to cases of more serious crimes. Counter to the prevailing assumption that RJ may only be suitable for more minor crimes, research evidence shows that RJ can have greater impact in more serious cases and that victims (or, in appropriate cases, victims' families) can gain enormous benefit from access to RJ.[18]

In order to enjoy the benefits to victims (reduced post-traumatic stress, apologies, access to information about the events), to offenders (reduced reoffending, understanding of the impact of crime, opportunity to provide a commitment to change) and to communities (reduced crime and fear of crime, involvement in the rehabilitation of offenders) and the cost savings that this would deliver for the criminal justice system, RJ must be set up and implemented across the board. We have a number of recommendations on how this should happen – the most important are outlined below.

What needs to happen now?

To mainstream RJ so that the benefits for victims and offenders outlined above can become the normal experience of our adult criminal justice system, the following will be required:

Political will

The few services that do at present exist do so without the express support of government and are therefore vulnerable to local changes in funding, understanding of and willingness to provide RJ, and good relations with local partners. Government commitment to the principle of RJ will mitigate some of these factors, providing "permission" to use resources for RJ provision. RJ projects will still be vulnerable, though, until dedicated funding for RJ is found or the requirement that existing funds are used to provide RJ is articulated.

Setting up local or regional RJ services

These can be co-funded by the local criminal justice board, probation or police service, antisocial behaviour unit and local council and/or youth offending team and run by

18 Sherman and Strang, op cit, p69

professional practitioners (specially recruited or on secondment from partner agencies) with the support of local volunteers trained in RJ. This would also allow for local support to youth offending teams' provision of RJ and also other agencies engaging in different forms of restorative practice.

Legislation

Legislation is needed to make RJ a specific element of every community sentence or every prison sentence where the victim wants to take part. Legislation should provide for every victim who wants access to an RJ process to have this, where the offender agrees and has been sentenced either to a community or custodial penalty. As with the current role of victim support, unless a victim of crime expressly asks the police not to pass on their details, these would be given to the local RJ service who would then contact the victim of every sentenced offender to see whether they wanted contact with the offender or not.

Alternatively, if a more gradual approach was needed, government could legislate to make RJ available in particular types of cases – for example, violent offences and property offences[19] – and RJ would be made a requirement of the offender's sentence, as it is used in the Thames Valley area (see case study above).

The government needs to make clear what relationship, if any, should exist between the offender's participation in RJ and any other element of their sentence. For example, time offered and provided for RJ and its outcomes (such as voluntary work for a charity of the victim's choice) could count as time spent as part of the offender's community sentence requirement, or participation in RJ could be considered by the Parole Board as evidence for fewer days in prison, alongside other evidence of remorse, reparation and changed behaviour.

Clear guidelines on the relationship, or possible range of relationships, between participation in RJ and the offender's sentence would need to be outlined clearly in guidance to criminal justice professionals. Likewise, legislation or guidance is required on the formality of agreements resulting from RJ, with whom they should be shared, their impact (or not) on sentencing, responsibilities for support and follow-up with the participants and future communication with the victim regarding the offender's progress.

19 The evidence showing the benefits of RJ is strongest in these types of cases.

Ring-fenced funding

Funding is needed for an RJ service in every area. These local services should be set up on the Thames Valley model as a multi-agency service, answerable to the local criminal justice board at local level and working to national targets and standards.

A Restorative Justice Board

A small but focused central administration will be required to set and monitor targets and standards of provision across the country and ensure high standards of practice by disseminating information and guidance, thus protecting the interests of the community and victims of crime. This could be set up as a non-departmental public body and would also be responsible for general education and awareness-raising about RJ among criminal justice professionals and the public.

Professional awareness

Lawyers, judges and magistrates need to be made aware of the benefits of restorative justice. RJ is not to be presented as competition to the traditional system of criminal justice but as a parallel service, offered to ensure that the criminal justice system can work better – providing for the needs of victims of crime as well as services that reduce reoffending and encourage the rehabilitation of offenders. There is much room for work with victim support services and other stakeholders in the field of criminal justice.

Training for RJ practitioners

RJ practitioners, trainers and supervisors will be required. New practitioners can be provided either by agencies contributing practitioners on secondment to the local multi-agency services or by enlisting new recruits, all trained to a national and supervised standard.

Sustained support and funding of services

There is at present some room for RJ provision within legislation on conditional cautioning, for example. This can only be acted upon in areas where funding is made available to provide RJ, currently funds that are taken from other sources. Funding for RJ needs to be sustained in order to ensure that RJ can be provided after initial set-up and training. Local RJ services with sustained funding would mean investment in initial set-up followed by long-term funding for service provision, thus avoiding the loss of many skilled practitioners though short-term projects.

Conclusion

In 2006 some 1,420,600 offenders were sentenced in England and Wales.[20] Working in approximate terms and on the basis of just one victim per offence in all these cases, in 2006, the widespread use of RJ would have allowed some 785,592 victims of crime to use the process.[21] This would have left 667,753 victims satisfied with the outcome of the case,[22] as compared with the 468,798 satisfied victims there were. In addition, some 549,914 victims would have achieved some or complete closure on their case[23] – and these figures do not include the impact of RJ on the family members of victims of crime, their community or their health.

These figures do not, either, make mention of the opportunities for reduced reoffending promised by international research into RJ. The concluding report into the largest research into RJ in England and Wales is pending, and includes up-to-date figures concerning reoffending after RJ and the cost-benefits of employing the process. These were due to be available in June 2008.

It takes courage and vision to turn around a system, particularly one as large and complex as the criminal justice system – but that is what has been done in the youth justice system over the last 10 years, through clear vision and a will for change. That same confidence and clarity will be necessary in turning around the adult system – confidence and willingness to put victims of crime, the impact of crime on community and the reduction of reoffending at the centre of the criminal justice system. Restorative justice provides a process that can achieve all these aims; the evidence is there. Victims of crime and also offenders await an expression of political will and then action.

The Restorative Justice Consortium is a charitable organisation supporting RJ practitioners and advocating for RJ in England and Wales. It can be contacted at: Restorative Justice Consortium, Albert Buildings, 49 Queen Victoria Street, London EC4N 4SA; phone 020 7653 1992; website www.restorativejustice.org.uk.

20 Ministry of Justice *Sentencing Statistics 2006, England & Wales* (December 2007), p12. At: http://www.justice.gov.uk/publications/sentencingannual.htm

21 Shapland, J et al *Restorative Justice in Practice: Findings from Second Phase of the Evaluation of Three Schemes*, Home Office research findings 274 (Home Office, 2006), p3. This is taken from the average number of victims who agreed to participate (55.3%); this take-up rate was much higher in some circumstances, for instance 77% at the adult magistrate court trial, 75% in youth final warnings and 89% in youth referral panel settings.

22 Shapland et al, op cit (2007), p4

23 Figures based on the reported closure rates for the Justice Research Consortium trials included in Shapland et al, op cit (2007), p39.

Chapter 3

Intervening early with children at risk

George Hosking, Founder and Chief Executive Officer of the WAVE Trust

Intervening early with children at risk

Propensity and triggers

WAVE Trust, conducted nine years of in-depth investigation into the root causes of violence and global best practices in addressing these roots, summarised in our 2005 report *Violence & What to Do about It*.[1] We found two components to violence: a personal factor residing inside the individual, which we call the propensity to violence, and external social factors, which trigger violence in people who have the propensity. Both *propensity* and *trigger* are needed for a violent act. Although adult trauma (arising for instance from natural disasters or combat) does lead to increases in violent behaviour, propensity to violence is very largely established in the earliest months and years of life.

The distinctions "propensity" and "triggers" may have some relevance in looking not just at violent offending, but at crime more generally.

How people become offenders: adverse childhood experiences

The reasons people embark on a life of crime are multiple, but in searching for the most important causes the first set of reasons to look at are powerful links between certain adverse early life experiences and crime.

Neglect

Children who are initially reported for neglect are the most likely to be imprisoned.[2] Weatherburn, Lind and Ku[3] found neglect a highly significant factor in juvenile crime and the most powerful predictor of juvenile delinquency. A recent study suggested that neglect in the first two years of life is a more important precursor of childhood aggression than later neglect or physical abuse at any age.[4]

Physical abuse

The Nottingham research study on corporal punishment[5] found the two most frequent indicators of a criminal record before age 20 were, at age 11, having been hit once a week

1 Hosking, GDC and Walsh, IR *The WAVE Report 2005: Violence & What to Do about It* (WAVE Trust, 2005)
2 Jonson-Reid, M and Barth, R "From Maltreatment to Juvenile Incarceration: The Role of Child Welfare Services" in *Child Abuse & Neglect* no 24 (2000), pp505–20
3 Weatherburn, D, Lind, B and Ku, S *Social & Economic Stress, Child Neglect & Juvenile Delinquency* (NSW Bureau of Crime Statistics & Research, 1997)
4 Kotch, JB, Lewis, T, Hussey, JM, English, D, Thompson, R, Litrownik, AJ, Runyan, DK, Bangdiwala, SI, Margolis, B and Dubowitz, H "Importance of Early Neglect for Childhood Aggression" in *Pediatrics* no 121 (2008), pp725-731
5 Newson, J and Newson, E *Patterns of Infant Care in an Urban Community* (Penguin, 1972)

or more and having a mother strongly committed to corporal punishment.

Widom[6] found that physical abuse as a child led significantly to later violent criminal behaviour, when other demographic variables were constant.

Sexual abuse

Being sexually abused increases the probability of aggressive and antisocial behaviour in boys[7] and of their becoming perpetrators of sexual abuse.[8] Between 56% and 57% of paedophiles reported adverse sexual experiences.[9] The victim-to-offender pattern is not limited to sexual offences: 50% of female adolescent fire-setters have a history of childhood sexual abuse.[10]

The above three factors relate to the development of a propensity. The following are social factors or triggering factors that arise much later in childhood:

Delinquent peer group

Dishion and Patterson[11] found that while parenting practices are crucial to offending in early childhood, peer influence was a powerful cause of antisocial behaviour from middle childhood onwards. During their teens juveniles gradually break away from the control of their parents and become more influenced by their peers. In adverse circumstances (for instance, children clustered with others who are also vulnerable, for example by school exclusion or living in deprived areas) these peers can be a strong influence to encourage offending.[12]

Alcohol

The Edinburgh study of youth transitions and crime found 10 times the volume of

6 Widom, CS "The Cycle of Violence" in *Science* no 244 (1989), pp160-166
7 Summit, R "The Child Sexual Abuse Accommodation Syndrome" in *Child Abuse & Neglect* no 7 (1983), pp177-193
8 Cantwell, H "Child Sexual Abuse: Very Young Perpetrators" in *Child Abuse & Neglect* no 12 (1988), pp579-582; Watkins, B and Bentovim, A "Male Children and Adolescents as Victims: A Review of the Current Knowledge" in Mezey, GC and King, MB (eds) *Male Victims of Sexual Assault* (Oxford University Press, 1992), pp27-66
9 Pithers, WD, Kashima, KM, Cumming, GF, Beal, LS, Buell, MM "Relapse Prevention of Sexual Aggression" in *Annals of the New York Academy of Science*s no 528 (1988), pp244-60; Seghorn, T, Prentky, R and Boucher, RJ "Childhood Sexual Abuse in the Lives of Sexually Aggressive Offenders" in *Journal of the American Academy of Child & Adolescent Psychiatry* no 26 (1987), pp262-267
10 Epps, KJ, Howarth, R and Swaffer, T "Attitudes toward Women and Rape among Male Adolescents Convicted of Sexual versus Nonsexual Crimes" in *Journal of Psychology* no 127 (1993), pp501-506
11 Patterson, GR, Reid, JR and Dishion, TJ *Antisocial Boys* (Eugene or Castalia, 1992)
12 Farrington, D "Psychosocial Predictors of Adult Antisocial Personality and Adult Convictions" in *Behavioural Sciences & the Law* no 18 (2000), pp605-622

delinquency among 11- to 12-year-old children who drank once (or more) weekly than among those who never drank. A Manchester-based study found 25% of weekly drinkers had criminal records, compared with 6-7% of occasional drinkers and non-drinkers.[13] The fact that 44% of violent offenders in England and Wales were perceived to be under the influence of alcohol by their victims reflects a similar pattern.[14]

An epidemic of delinquency?

There are important interactive factors in dysfunction: children who have suffered abuse and neglect are more likely to drink alcohol and choose deviant peers. Weatherburn and Lind[15] proposed an epidemic model of delinquency in which economic stress, poor parenting, undesirable peer influences and neighbourhood socioeconomic status all interact. Disruption to the parenting process renders juveniles more susceptible to delinquent peer influence. If such juveniles reside in "offender-prone" neighbourhoods they are then more likely to become involved in crime, because of greater exposure to delinquent peers, and this process may pass a neighbourhood "tipping point" after which it accelerates rapidly.

The role of domestic violence

There are many factors along the road to criminality, and a typical cycle of dysfunctional behaviour often contains a theme of domestic violence. This not only wrecks marriages, it models violence as a valid and acceptable means to achieve ends. Also, family breakdowns in the form of divorce or separation frequently result in poverty and neglect – two factors consistently associated with higher rates of crime.

The adolescent factor

Returning to my own specialisation of violence, while adolescents carry out most violence, male aggressive behaviour is highly stable as early as age two. This is not because of genetic factors, which are weak and only activated by adverse early life experience, but because of the interplay between the development process of the infant brain and how the infant is treated. The earlier aggression is established, the worse the long-term outcome tends to be. Any successful strategy to turn the growing tide of violence in society must have as a major component reducing the number of children in society with the propensity towards it.

13 Newcombe, R, Measham, F and Parker, H "A Survey of Drinking and Deviant Behaviour among 14/15 Year Olds in North West England" in *Addiction Research* vol 2, no 4 (1995)
14 Walker, A, Kershaw, C and Nicholas, S (eds) *Crime in England & Wales 2005-2006* (Home Office, 2006)
15 Weatherburn et al, op cit

The Dunedin long-term study

Compelling evidence of how early the roots of violence are planted comes from the New Zealand Dunedin study, in which nurses identified "at-risk" three-year-olds on the basis of 90 minutes' observation. These children were tracked and compared with all other children in Dunedin of their age. At age 21, 47% of the at-risk males abused their partners (compared with 9.5% of others); two-and-a-half times as many had two or more criminal convictions; and 55% of offences committed by the at-risk group were violent (compared with 18% for others). Offences by the at-risk group were much more severe, including robbery, rape and homicide.[16] The nurses had been able to predict future criminals 18 years in advance.

The infant brain

To understand what causes this early creation of propensity towards violent crime, we must take a voyage through the infant brain.

Intelligence is the key survival tool for humans. This intelligence, however, implies a large brain, and a large brain needs a large skull. To allow this skull to pass through the mother's hips, human infants are born prematurely by the standards of other species. Part of the package of evolving into such intelligent beings includes the need to complete the development of much of the brain *after* birth, crucially before the age of three.

To put these percentages into perspective: at birth a baby's brain has 50 trillion synapses (connections). By age three, the number of synapses has increased 20-fold to 1,000 trillion. Since this is too large a number to be specified by genes alone, the new synapses are formed by early life experience. Synapses become hard-wired, or protected, by repeated use, making early learned behaviour resistant to change. Unused synapses simply wither away.

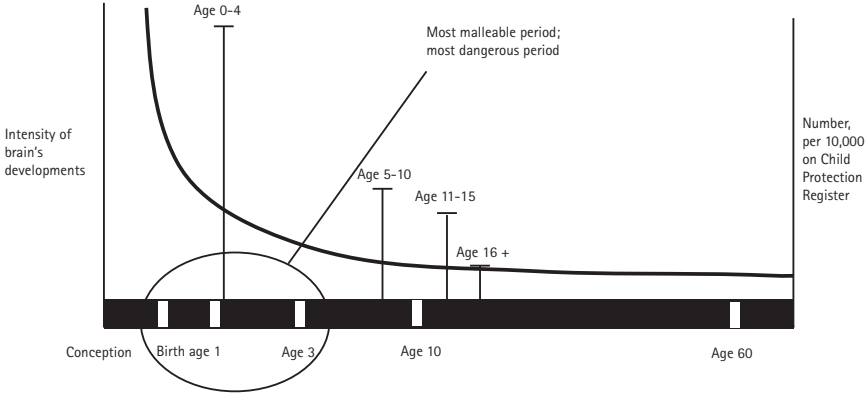
The experiences that serve to develop, hard-wire or prune different combinations of the trillions of synapses mean each baby's brain develops differently and is driven by the prevailing environment. Extreme examples of the possible variations can be seen in the neglected Romanian orphans, who lacked activity in large areas of their brains, and native American Indians, who develop acute hearing and balance skills. Current research indicates that emotional development largely takes place in the first 18 months of life.

16 Caspi, A et al "Behavioural Observations at Age Three Years Predict Adult Psychiatric Disorders" in *Archives of General Psychiatry* no 53 (American Medical Association, 1996), pp1,033-1,039

A downside of the brain's great plasticity is that it is acutely vulnerable to trauma. If the early experience is fear and stress, especially if these are overwhelming and repeated, stress hormones such as cortisol wash over the brain, causing the brains of abused children to be significantly smaller than those of non-abused – 20-30% smaller in the part governing emotions.

Figure 1 shows how the malleability of the brain (the curving line) decreases sharply with age. The chart also shows how the likelihood of significant harm (the straight columns) is by far the greatest in precisely the period in which the brain is most malleable. The peak age for children to suffer abuse is in the first year of their life.

Figure 1: Children in England are most at risk of maltreatment during the same period that their brains are most malleable



Empathy and attunement

Here I need to introduce two key words: empathy and attunement.

Empathy: where the observed experiences of others come to affect our own thoughts and feelings in a caring fashion. Empathy entails the ability to step outside oneself emotionally and suppress temporarily one's own perspective on events to take on the perspective of another.

Attunement: where parent and child are emotionally functioning in tune with each other and the child learns from the parent that its emotional needs for love, acceptance and security are met and reciprocated.

When a parent fails to show empathy with a particular emotion, the child can drop this from its repertoire. Infants also "catch" emotions from their parents. Three-month-old babies of depressed mothers mirror their mothers' moods, displaying abnormally high feelings of anger and sadness, and far less curiosity and interest.

Sadly, for many parents attunement either does not come "naturally" or is disrupted by post-natal depression, domestic violence or the effects of drugs or alcohol. If the child does not experience attunement, its emotional development is retarded, and it may lack empathy altogether.

Empathy: a key to understanding violence

Even in their first year, children already show signs of whether their reaction to the suffering of another is empathy, indifference or hostility. These reactions are shaped by parental reactions to suffering. Empathy can be well developed by the time children are toddlers.

In James Gilligan's 10 years as director of mental health in the Massachusetts prison service, he succeeded in reducing homicidal violence in the state's prisons almost to zero. In his book *Violence: Our Deadly Epidemic & Its Causes*,[17] he outlines his experience that there are certain essential preconditions for violence to take place. One is "that the person lacks the emotional capacities or the feelings that normally inhibit the violent impulses".

Lack of empathy also has an impact on choice of parental discipline method. A plethora of studies indicate that:

- harsh or explosive discipline leads to violence and criminality in children;
- discipline styles run in families over many generations, as people tend to replicate the parenting styles of their own parents; and
- perhaps 30% of children who suffer abuse or neglect (compared with 2-3% overall) go on to abuse or neglect their own children.

Cambridge Professor of Psychological Criminology David Farrington, following a study of south Londoners between ages eight and 32, put it thus:

Anti-social children grow up to become anti-social adults who go on to raise anti-social children.

17 Gilligan, JMD *Violence – Our Deadly Epidemic & Its Causes* (Grosset/Putnam, 1996)

What needs to be grasped here is that these parents are not wicked, but are simply "doing what comes naturally" by following the pathways laid down in their own early learning. However, in light of what we now know about the enormous importance of the earliest years of life, it is particularly striking that childhood is such a dangerous period for many, with the crucial years between birth and age four being by far the most dangerous (50% of child abuse deaths are of children under age one).

Unicef reports that up to 1 million children in the UK suffer emotional abuse with "devastating impact on emotional and educational outcomes". A report from the National Society for the Prevention of Cruelty to Children estimated that 7% of children in the UK experience *serious* physical abuse. Since the likelihood of significant harm is greatest in precisely the period when the brain is the most vulnerable, we conclude that a large number of our children are likely to be suffering enduring brain damage, manifesting in poor outcomes and eventual criminality.

Most at risk of becoming offenders

Most of us find it difficult to visualise the true circumstances of actual children from a catalogue of statistics, but just such a picture was given to us at last November at the WAVE Trust conference on reducing serious youth violence, for the 33 London boroughs, hosted by the Metropolitan police.

Hands-on experience of dealing daily with children already on a path to criminal offending was provided in a powerful presentation by Camila Batmanghelidjh, founder of Kid's Company. Her typical "client" is an 11- or 12-year-old boy or girl, who has been run as a drug courier or in prostitution, and has been out of school for a number of years.

Her analysis was that chronically abused and neglected children drive the culture of violence at street level. Their stores of horrific memories are compounded by the release of vast amounts of adrenalin and stress hormones. These "lone children" are not in the care of a responsible adult because often it is the adult in their lives who has caused them damage. They grow up understanding that they are solely responsible for their survival, and seeing human life as completely worthless. These are representative of the tiny minority of early-onset offenders who commit over half of all offences.

Batmanghelidjh described the model of street crime as three concentric circles: From the central circle the professional drug dealer/criminal looks into the community to recruit from the second circle, of these lone vulnerable children, who then run the drugs to the

third circle. She calls those in the third circle the "imitator" children; although relatively well cared for, they have become aggressive to survive the conditions created by those in the two inner circles. The lone children are recruited as early as age eight.

Pathways to criminality

Nationally, 30% of children in need through abuse or neglect are eventually taken into care. The future for many of these children is bleak.

Research in 2003 showed that 68% of children in residential care and 39% of those placed with foster carers were identified as having a mental disorder. In England in 2004 only 6% of children leaving care had achieved "good" (A-C) grades at GCSE level or equivalent, compared with 53% of pupils overall; only one in 100 went on to university that autumn, compared with 43% of people (aged 30 and below) in the population as a whole – or 60% of children in one of the really successful Danish care homes. These children have a 10 times greater risk of school exclusion than the average.

If the prospects for those in care are poor, there is another group of vulnerable children who suffer even worse outcomes, according to a recent study.[18] These are the children permanently excluded from school. The study compares outcomes between a five-year cohort of 438 looked-after children (meaning those in local authority care) and 215 adolescent males permanently excluded from school (of whom 22 were also looked-after children). While both groups had similar socioeconomic backgrounds, a number of salient differences emerged:

- The group who had been permanently excluded from school were significantly more likely to have criminal records (64% compared with 44%).
- The group permanently excluded from school had a suicide rate 133 times that of the general population.
- The criminality of those permanently excluded from school was significantly more violent (with a murder rate 1,073 times that of population-peers).

Putting it another way, to find one potential murderer, we need to consider just 72 of those who have been permanently excluded from school, compared with 78,000 of their age group in the population.

18 Williams and Pritchard (pending publication)

A retrospective study[19] of young people who had been excluded across a 10-year period from 1988 to 1998 found that 44% of youths had no recorded offences prior to permanent exclusion but had a record of offending following permanent exclusion, with 11% of them committing their first offence in the same month they were excluded. Nearly half of all offences of "theft and handling" by juveniles are committed during school hours.

The Audit Commission's survey of young offenders found that 42% had been excluded from school while a further 23% "truanted significantly".

The plight of "at-risk" children (and the risks they present to society) is a national issue we need to tackle proactively, not reactively. An early intervention strategy needs to translate into significant reductions in truancy and school exclusion. There are interventions that deliver this, such as Dorset Healthy Alliance and Toronto Regents Park, while examples from countries such as Denmark demonstrate that much-improved outcomes are possible for children in care.

The role of post-traumatic stress disorder

The link between adverse childhood experience and criminality follows through to our prison population: a third of our prisoners have been in local authority care as children, yet only 0.6% of the nation's children are in care at any one time; and prisoners are 10 times more likely than the general population to have been habitual truants. It is not difficult to infer – and my own experience and that of others in the prison system shows – that a high percentage of prisoners were traumatised during childhood.

Research shows that a high proportion of violent offenders in prisons and young offender institutes suffer from post-traumatic stress disorder (PTSD).[20] In addition, Steiner et al[21] found very high rates of PTSD among violent juvenile prisoners, and Fullilove et al[22] found that 59% of those attending a drug rehabilitation unit had an association with PTSD.

19 Berridge, D, Brodie, I, Pitts, J, Porteous, D and Tarling, R (eds) *The Independent Effects of Permanent Exclusion from School on the Offending Careers of Young People* (Home Office, 2001)
20 Collins, JJ and Bailey, SL "Traumatic Stress Disorder and Violent Behavior" in *Journal of Traumatic Stress* (ISSN: 0894-9867) vol 3, no 2 (1990), pp203-220; Long, CD *Posttraumatic Stress Disorder Symptomatology in Incarcerated & Nonincarcerated Adolescent Males*, dissertation (California School of Professional Psychology, Fresno, 1991); Raeside, CW *Posttraumatic Stress Disorder in a Female Prison Population*, dissertation (Royal Australian & New Zealand College of Psychiatrists, 1994); McFarlane, A "The Longitudinal Course of Trauma" in *Baillière's Psychiatry* vol 2, no 2 (May 1996)
21 Steiner, H, Garcia, I and Matthews, J "Posttraumatic Stress Disorder in Incarcerated Juvenile Delinquents" in Journal of the American Academy of Child & Adolescent Psychiatry (ISSN 0890-8567) vol 36, no 3 (1997), pp357-365
22 Fullilove, MT, Fullilove, RE, Smith, M, Michael, C, Panzer, PG and Wallace, R "Violence, Trauma and Post-traumatic Stress Disorder among Women Drug Users" in *Journal of Traumatic Stress* no 6 (1993), pp533-543

Illegal drug usage itself may have its origins in childhood neglect or abuse. Felitti et al[23] found that people who had suffered four types of adverse childhood experiences (such as neglect, domestic violence, or alcoholism in the family) were 11 times more likely to be intravenous drug users than those with no such childhood experiences.

Need for a new approach

If the bad news is that inadequate parenting feeds into a vicious cycle of dysfunction and crime, the good news is that we now understand how these pathways to crime are laid down in childhood. Sound scientific evidence shows that if we care properly for children they will grow into pro-social citizens who are able to give their own children the type of positive parenting that feeds into a virtuous cycle.

Starting such a virtuous cycle implies changes in how we respond to the problem of crime. To effect this transformation, we need a proactive strategy – because intervening after abuse and neglect have taken place is both more expensive and less successful than taking preventive action before they occur.

Potential solutions

MacLeod and Nelson[24] studied 56 separate programmes designed to promote family wellness and prevent abuse. They distinguish between proactive and reactive approaches:

Proactive programmes begin prenatally, at birth or in infancy. They include home visiting and social support. They take place before abuse occurs.

Reactive programmes tend to begin at school age and focus on teaching parenting strategies and methods. They take place after problems have developed with children. They concluded:

- Most interventions to promote family wellness, and prevent child maltreatment, are successful.

23 Felitti, VJ, Anda, RF, Nordenberg, D, Williamson, DF, Spitz, AM, Edwards, V, Koss, MP and Marks, JS "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study" in *American Journal of Preventive Medicine* vol 14, no 4 (1998), pp245-258; Anda, RF, Felitti, VJ, Walker, J, Whitfield, CL, Bremner, JD, Perry, BD, Dube, SR and Giles, WH "The Enduring Effects of Abuse and Related Adverse Experiences in Childhood: A Convergence of Evidence from Neurobiology and Epidemiology" in *European Archives of Psychiatry & Clinical Neurosciences* vol 56, no 3 (2006), pp174–86

24 MacLeod, J and Nelson, G "Programs for the Promotion of Family Wellness and the Prevention of Child Maltreatment: A Meta-analytic Review" in *Child Abuse & Neglect* vol 24, no 9 (2000), pp1,127-1,149

- The earlier the intervention, the better.
- The benefits of proactive interventions are sustained and even grow in effect over time.
- Reactive interventions tend to fade in effect, and relapse is a common problem.

Numerous effective early prevention interventions have been identified, such as Nurse Family Partnership and Circle of Security. Cost-benefit analyses of early interventions have repeatedly shown that the financial benefits far outweigh the costs.[25] A shift to higher priority for very early (pregnancy to three years) intervention would save money from the public purse by reducing future dysfunction and offending.

A comprehensive programme

We need to work at all levels, and a comprehensive programme would make health and education agencies rather than criminal justice the first two ports of call in a strategy focused on the causes of crime and disrupting pathways to crime. Our programme would include:

- ensuring that no child should leave school without fundamental training in how to parent in a non-violent manner and, crucially, how to attune with babies so that they develop empathy (the programme Roots of Empathy would deliver this);
- early identification and subsequent monitoring of children at risk – at present children can disappear off the radar between early home visits and entry to school, or when removed from school, as witness the child who recently starved to death in Birmingham;
- sound evaluated programmes to support "at-risk" families (see WAVE report for examples);
- parent training programmes to support good parenting, with tax breaks for those who achieve "good parenting" certificates;
- giving schools more resource and a broader role in fostering the emotional development of children and teenagers, especially those at risk;
- providing more wholesome outlets for youthful energy; and
- assessing all children for post-traumatic stress disorder and, when found, treating that effectively as a matter of priority.

Post-traumatic stress disorder can be diagnosed and treated, and delivering this treatment on a large scale would make an enormous difference to reoffending. Other forms of effective rehabilitation would also reduce crime. I know – in 10 years of treating violent

25 Hosking and Walsh, op cit

offenders, not one of the many people with whom I have worked has reoffended with a violent offence.

Chapter 4

Reducing custody for young offenders

Penelope Gibbs, Director of the Programme to Reduce Child and Youth Imprisonment at the Prison Reform Trust

Reducing custody for young offenders

I am Liam's best friend ... i miss Liam so much ... Liam was like my brother because he used to live with me. It still isn't sinking in that he is never going to come back to me: RIP Liam.
Posted on website of the St Helen's Star, 4 December 2007

Liam McManus hanged himself in Lancaster Farms Young Offender Institution on 29 November 2007. He was serving a sentence of one month and 14 days for breach of licence. His original offence was affray – involvement in a fight. Little is known about why he took his life. He had lots of friends outside prison but did not live with his parents – his father was dead and his mother in prison. He was 15 years old.

Liam's death received some national news coverage but did not become a national scandal. It seems the children we lock up are out of sight and out of mind. Since 1989 the number of under-18-year-olds imprisoned in England and Wales has more than doubled.[1] In March 2008, there were 2,942 children imprisoned.[2]

An increasingly punitive approach

The increase in the number of children we lock up is a symbol of the growing punitiveness of the judiciary and of politicians. While Margaret Thatcher was Prime Minister, successive Home Secretaries managed to reduce the child custody population until it reached its lowest recorded level in 1991. In that era, the professionals who worked with young offenders had a zeal to keep them out of prison.

Many of the civil servants in the Home Office believed that teenagers grow out of crime naturally and were unconvinced by the value (financial and rehabilitative) of incarceration. Councils, including Westminster under Lady Porter, boasted of being child-custody-free zones – all young offenders in the borough received community sentences rather than being imprisoned. The fall in child custody was not headline news and the public was unaware of the professionals' crusade to drive down numbers. It was done almost by stealth.

Nowadays professionals themselves have lost the zeal to reduce custody. When a child who might be imprisoned appears before the court, their youth offending team worker prepares a pre-sentence report on them. This describes the crime committed and the

1 Ministry of Justice figures
2 Youth Justice Board custody figures as quoted on its website

child's background, and recommends an effective sentence. In the 1980s no practitioner would have advocated custody. As late as 1995 Inner London Youth Justice Services argued that court reports should always propose a community sentence "as it is for the court to decide on total removal of liberty".[3] Nowadays, youth offending team officers often recommend imprisoning children. In 2002 more than half of the reports written about children who were imprisoned under sentence at Medway and Rainsbrook secure training centres (jails for teenagers) proposed custody "explicitly or implicitly"[4] It is difficult for a judge or magistrate to go against any report advocating custody.

One of the key drivers of change has been public attitudes to youth crime, or rather perceived public attitudes to youth crime as reflected through the media. The murder of toddler James Bulger in 1993 marked the turning point. It was covered more extensively than any murder for years, and few commentators dared to suggest that the 10-year-old perpetrators should not be locked up. The James Bulger case was the first in a long line of gruesome cases perpetrated by children and teenagers. This summer saw the tragic murders of Rhys Jones and Gary Newlove, and a new wave of hysteria about feral youth.

Newspapers now provide a sounding board for victims who feel their loved ones' deaths can only be avenged by long prison sentences. Coverage of these crimes leaves the impression that the children behind bars in this country are all monsters capable of extreme violence. Few journalists point out that most children we lock up are more like Liam McManus – children who got caught at the wrong time in the wrong place, who are not a danger to society and who would be much better off receiving a community sentence.

Prison does children no good

The public knows that prison doesn't do any good to teenagers. Last year, ICM did a survey for the Prison Reform Trust of over 1,000 people. These members of the public were asked how non-violent young offenders should be treated. Two-thirds thought prison was not effective in reducing young people's offending and that prisons were "universities of crime". There was also very little support for the imprisonment of children as young as 12 for non-violent crimes.

The public's hunch that prison doesn't work is backed up by evidence. Of children who

3 Nacro *Inner London Youth Justice Services: Statements of Principle & Practice* (1995)
4 Morgan, R *The Use of Custody for Juveniles*, letter to chairs of youth court panels, youth offending team managers and others, 30 November 2004 (Youth Justice Board, 2004)

were imprisoned in 2004, nearly three-quarters were reconvicted within a year of release.[5] The challenge for penal reformers is to make the public aware of the numbers of children who are imprisoned for non-violent or not very violent offences. While people believe that children are imprisoned only for terrible, violent crimes, there will be little support for reducing numbers.

More children are being imprisoned, and more still are being sucked into the criminal justice system as a whole. Between 1996 and 2006 the number of under-18s sentenced in court rocketed by 20%. In the same period the number of 18- to 20-year-olds sentenced in court decreased by 8%.[6] In regard to teenagers, much of the increase in cases is accounted for by relatively trivial crimes.

I sat in the East London (Thames) Youth Court a few months ago. A case came up of a 16-year-old who had sworn at a policeman. The boy pleaded guilty – he had had too much to drink and regretted his words. He was fined. Because the boy had committed one previous offence, he also received a criminal record, a record that would pose a barrier to future employment.

Cases like this have fuelled numbers and sucked up local authority and court resources. Few professionals think the court system is the right way to deal with such wrongdoing. The police start the process. In many cases they would prefer to deal with such incidents informally, pre-charge, or using restorative justice. But they have an "offences brought to justice" target to meet, so the pressure is on them to take crimes through the legal process.

The criminalisation of children has many negative consequences. Once a child has become part of the criminal justice system, they are labelled by professionals, police and themselves. In 2006/07 an extraordinary 93,730 children entered the youth justice system for the first time. Once in the system, children are more likely to be convicted of crimes. Dealing with the increase in cases has stretched the resources of youth offending teams, sentencers and solicitors so much that more complex cases do not receive the attention they need.

The teenagers who are heavily involved in the criminal justice system have frequently been failed by the welfare system. Half have had experience of being in the care of a local authority; 40% of boys and two-thirds of girls have mental health issues; and most young

5 Ministry of Justice *Reoffending of Juveniles: New Measures of Reoffending 2000-2005* (2008)
6 Ministry of Justice, as quoted in *CYPNow* (23-29 April 2008)

offenders have either been excluded from school or truanted or both. Once a teenager has been labelled as a criminal, other services frequently write them off.

A teacher in a secure training centre told me about one of her pupils: a bright boy, he was to be released six months before taking his GCSEs. The teacher was trying to find a school that would accept him on release. She researched the secondary schools near his home and rang the most suitable to check whether it had any vacancies. The school said it had none. The day after, she decided to try again, but not reveal she was calling from a secure training centre. This time, miraculously, the school did have places. The school staff had lied because they did not want to open their doors to a teenage criminal.

The criminal justice system is a blunt instrument with which to deal with the failings of children's services. Youth courts and youth offending teams are designed to deal with crime and those convicted of crimes. They have neither the expertise nor the resources to deal with the more serious welfare needs of teenagers – needs that are often the underlying cause of teenage crime. Magistrates are equally frustrated by the position they find themselves in. Frequently they can see that the child in front of them needs a school place, stable accommodation, mental health treatment or even just mentoring. But none of these are easy for them to access.

Instead, most young people are sentenced to supervision by youth offending teams. They are expected to turn up for regular appointments to discuss their problems and work on their offending behaviour. Youth offending team workers are professional and caring but they are not miracle workers, and have no power to pressurise their children's services colleagues to provide what their clients really need.

Young people in trouble with the law often lead chaotic lives and don't turn up for their appointments. The youth offending team workers then take the teenagers back to court for breach and the teenager is further criminalised. Between 2000 and 2004 the percentage of supervision orders that were returned to court for breach increased from 7% to 21%. The high level of breach is a sign that youth offending teams are failing to engage young people, and that the system needs radical reform.

Alternatives to prison

Just across the border in Scotland is a youth justice system very different from ours. It has its flaws, but its approach is far more child-centred and leads to lower rates of teenage incarceration. In the case of children who offend, the Scottish children's hearing system

takes an inquisitorial rather than an adversarial approach. When the inquirer (the children's reporter) establishes there is a case to be heard, a child under 16 is referred to the local panel, made up of trained volunteers. The panel deals with welfare and crime cases, so a child who offends and has welfare needs is treated holistically.

Children under 16 are sometimes locked up, but they do not receive a criminal sentence. They are locked up under a secure authorisation, which is reviewed every six months. If the child is doing well, they are released. Only 253 children under the age of 16 were locked up in Scotland during 2006/07, and only a handful receive criminal sentences.[7] This means Scottish children do not start to be criminalised until 16. Kenny MacAskill, Scottish Justice Secretary, appears to be set on making the Scottish justice system more child-centred still. In February he announced the end of custodial remand for children under 16, a provision that was already used sparingly, saying: "I don't believe that in the long run Scotland will be well served by jailing children. Lock up a youth alongside hardened criminals and there's a risk you'll lock then into a life of crime."

While Scotland leads the way in a more child-centred approach to justice, England has championed an alternative to locking children up. Intensive fostering was borrowed from the US state of Oregon, where it had been successfully practised for 30 years. Children who have committed serious offences are offered intensive fostering as an alternative to being imprisoned. It is not a soft option. The child lives with a foster family, is not allowed to go out with old friends, and has to do basic chores. They earn the right to a TV and computer games in their room through good behaviour. During the whole of their stay they have no regular contact with their youth offending team, and do no offending behaviour courses. There is no published evaluation of the English experience but anecdotal evidence suggests this approach can help teenagers turn their lives around.

Intensive fostering started in 2005 but is still only available in three pilot areas. The barrier to its expansion is one that has a negative effect on the whole of youth justice: finance. The cost of custody for any child locked up in England and Wales is met by the Youth Justice Board. But intensive fostering is organised by the local authority and is not custody, so the Youth Justice Board cannot pay for a national intensive fostering service. Local authorities baulk at the idea of meeting the cost of intensive fostering, because their budgets are tight and the alternative – custody – is paid for by central government. So there is a stand-off.

7 *Secure Accommodation Statistics 2006-7* (Scottish Government Statistics)

A perverse system

This mirrors other situations. Whenever there is a question of a child going into custody, the local authority benefits financially because it no longer has to invest youth offending team resources in that child. If a looked-after child who has been under the youth offending team's supervision gets a sentence or is remanded to custody, the local authority saves thousands of pounds. It is impossible to know what effect this perverse financial incentive has on the system, but it won't encourage local government to prevent children being locked up.

Equally, there is no financial incentive for local authorities to provide better resettlement packages for children released from custody. Schools have no incentive to provide a place for a child on release; housing departments have no incentive to provide suitable housing. So thousands are spent on children while they are in custody, only for secure staff to spend the days before release begging local authorities to allocate resources to support that child in the community.

When I visited the Vinney Green Secure Children's Home near Bristol the staff told me that the children were often set up to fail. One boy was in their care for a long sentence, more than a year. Staff worked intensively with him and in his last months he helped create a stone garden around the building. He was vulnerable but he had the potential to be okay on the outside. The local authority put him in a bed and breakfast on release, with little adult support. Within weeks he was back on drugs, thieving to feed his habit. Only months after his release, he died of an overdose.

It is a crazy world where so many resources are poured into incarcerating children while so few are put into services that might prevent them reoffending. A better system would see money following the child, or local authorities being responsible for the whole youth justice budget, including custody. If local authorities had to pay for custody, they would be more likely to do everything in their power to stop young people offending, and to persuade sentencers to use alternatives to custody.

Government is often loath to try to influence sentencers in any direction, for fear of being accused of compromising their independence. But if the government does want to reduce the size of the child custody population (which it says it does), then it needs either to change primary legislation or to try to influence the way sentencers interpret the law, or both. While sentencers and government "blame" each other for the size of the child custody population and the use of particular sentences, neither side shoulders responsi-

bility. In order to deliver justice, the judiciary needs to be independent and to judge every case according to the circumstances.

But it is not a just system if children from one area are more likely to be jailed than children from another. Of those young people who are sentenced in Newcastle, 2.5% are locked up, whereas in Manchester 10% are sentenced to custody.[8] The decisions of magistrates and judges are influenced by the culture of the court, their trust in the local youth offending service and their personal opinions. Sentencers spend most of their time in the adult courts and are not experts in youth court law.

A youth court magistrate does just one day's training before sitting in court. I asked a new youth court magistrate whether he knew that the vast majority of boys are reconvicted within two years of leaving custody. He had no idea of this, yet was making decisions on whether children should be imprisoned and within a system whose core purpose is to reduce reoffending. He also told me that he had visited young offender institutions but had never talked to any of the children in them and could not see much point in doing so.

The success of the Rethinking Crime and Punishment project in the Thames Valley shows how sentencers can become enthusiastic about community sentences. Here local magistrates and district judges have been persuaded to visit local reparation and rehabilitation schemes. Having seen community sentences in action, they have become more convinced that these can work. Youth judges and magistrates need initial and on-going training on the effectiveness of sentences (and the cost) and about what community sentences really involve. No sentencer should be allowed to sit until having had at least one conversation with a young person about the experience of being before a court and the impact of their sentence on them.

The measure that would have more effect than any other on the youth justice system of England and Wales would be to raise the age of criminal responsibility from 10. The only other European country to criminalise children at such a young age is Scotland, which diverts most under-16s into a non-criminal system. Children in England and Wales can be imprisoned for grave crimes at the age of 10 and sentenced to custody for non-violent crimes from 12. By criminalising children so young, we imply that they are mini adults, fully responsible for their misdemeanours. And by creating a criminal record that starts

8 Youth Justice Board annual statistics for 2005/06

young we increase the chance that a child's sentence will ratchet up exponentially as they get older. Only in this country could you get a child labelled a prolific offender aged 15. In other European countries a series of misdemeanours committed at such a young age are seen as failures of the child welfare system rather than failures of an individual child.

There is widespread agreement among practitioners and many sentencers that the youth justice system we have in England and Wales is not fit for purpose. It has drifted from the coherent foundations laid by the Crime & Disorder Act 1998 to become mired in process and punishment, with only limited vision of what else would work better. It is questionable whether this government in the run-up to a difficult general election will have the stomach to tackle the problems head on. But the experience of the 1980s shows that if practitioners, sentencers, civil servants and politicians share values and act on their convictions then a whole justice system can be turned around to be less punitive, and to better meet the needs of the child, without endangering public safety.

Chapter 5

Roots in, routes out – a joined-up approach to young adult offenders

Sukhvinder Kaur Stubbs, Chief Executive of the Barrow Cadbury Trust

Roots in, routes out – a joined-up approach to young adult offenders

While the last 10 years have seen a series of reforms designed to improve the youth justice system for under-18s, young adults – those aged 18-21 or even up to age 25 – have received much less attention. Although special young offender institutions house under-21s while in prison, and those under 21 are subject on release to supervision in the community no matter how short their sentence, the reality is that compared with many countries the transition to adulthood in criminal justice is sharp and sudden.

This is despite the fact that the 10,000 young adults that we lock up in young offender institutions (YOIs) and prisons have a multitude of problems. Most young adults can tell a very similar tale of how they ended up in the criminal justice system. Their background story tells of a chaotic life, often rooted in poverty, abuse and family breakdown. Yet, despite all these issues, in our current system we expect a period of punishment to sort them out. Not surprisingly, reconviction rates for young adults are very high, with approximately 80% reoffending within two years. Those leaving prison have the same problems they entered with and maybe more.

The government's plan to build titan prisons to ease overcrowding in the system is, clearly, not the answer. What we really need to do is identify and address the root causes that make young adults turn to crime in the first place: people's roots into jail, point the way to their routes out. In turn, this will cut prison numbers, make our streets safer and ensure that people leaving prison can become worthwhile members of society.

The typical route into crime

The routes into crime are clear. Many of the young people who end up in the criminal justice system have unstable lives and have received little support. A large number of young people have grown up in disadvantaged communities, which are blighted by underachievement, drugs and crime and where offending is endemic. Approximately half of the young adults in YOIs and prisons have been through the revolving door of foster homes and residential care. Upon leaving care, many of these young adults experience homelessness, which has a knock-on effect on other areas of their lives, such as accessing services or finding a job.

Around three-quarters of young people in the criminal justice system have been excluded from school, and many have very low literacy and numeracy levels. The divide in life

chances between those with and without school qualifications has widened. Many young people drift between low-skill, low-paid casual jobs and face a greater risk of social exclusion. Consequently, two-thirds of young adults are unemployed upon arrest.

The socioeconomic factors influencing a young person's involvement in crime can also influence the mental health of young people. Young adults in custody are particularly affected by high levels of mental illness, with nearly 90% of 18- to 21-year-olds suffering from one form of mental illness, ranging from severe psychosis to depression, according to the Office for National Statistics. There are also rising levels of self-harm in YOIs. Additionally, many young adults suffer from dual diagnosis, where mental health problems are linked to other problems, such as dependency on alcohol or drugs.

This description of the typical routes into crime is not surprising – these predisposing factors to crime are not new. We all understand the journey that many of these young people take. However, if we understand the routes into crime and how these young people end up in young offender institutions, then surely we should be able to understand what would be the best way to stop them becoming involved in crime in the first place, and how to help those who are already caught up in the cycle of offending.

Support during the transition into adulthood

Most 18-year-olds are emotionally and socially immature, dependent on parental or state support, powerfully influenced by peers, and living experimental lives of trial and error. Yet the legal system treats young adults as if they are fully mature and responsible for their behaviour. However, in modern Britain, some young adults are afforded significant protection during this volatile period of transition while others receive little or no support. If we compare young adults in the criminal justice system with their peers at university – both are in contained and almost self-sufficient environments – it can help us to see where we are going wrong.

Young adults who follow a different trajectory and stay in school, gain qualifications and go to university receive a very different level of support and tolerance in their transition to adulthood compared with young adults in YOIs and prisons. University students often come from supportive and stable environments where they have had the opportunity to "slow-track" into adulthood. At university, students are provided with holistic support during their transition to adulthood. They have exciting opportunities, and an ever-present safety net in case things go wrong.

University enables young adults to develop their life skills and obtain a degree, which eases them into adult life and employment while at the same time providing a tolerant and caring environment that accepts that making mistakes is part of growing up. They are, for example, offered a room in a hall of residence, counselling if caught using drugs, and financial assistance if in debt, while a blind eye is turned to petty theft and antisocial behaviour. By being given the opportunity to slow-track into adulthood, the vast majority of these young people do not ever enter the criminal justice system.

Compare and contrast the support that university students receive with that of young people growing up in highly deprived and often chaotic environments. They receive little parental support, and the state, rather than turn a blind eye to misdemeanours, is more likely to clobber them with an antisocial behaviour order. Disadvantaged young adults are often the most vulnerable and volatile and the most in need of support. Yet the state's response is to coerce rather than counsel, punish rather than protect. As a society, we expect those with the greatest needs and fewest resources to "fast-track" into adulthood with little or no support. It is hardly surprising that so many disadvantaged young adults fail and get caught up in the criminal justice system.

We should learn from the experiences of young people at university to help us understand the best approach to take with young adults in the criminal justice system. At present the distinct needs of young adults in the criminal justice system tend to be overlooked. The prison population has escalated to over 82,000, and the level of incarceration among young adults has risen considerably, with an increase of almost 10% since 1997. The UK's incarceration rates are the highest in Europe, and we are heading down the route of the US, where recent figures by the Pew Centre have shown that one in 100 Americans are behind bars.

Acute overcrowding in prisons and YOIs has a detrimental effect on the care and support of young adults. In theory, YOIs are meant to look after prisoners and to help them lead law-abiding and useful lives, both in custody and after release. However, in practice young adults can actually find the experience discouraging and damaging.

The problem of overcrowding in both prisons and YOIs can result in young adults becoming the victims of "churn", whereby they are frequently moved on to other institutions, which disrupts their education and training and pulls them further away from any family support they may have. The problem of overcrowding can also lead to young adults being transferred to adult prisons, where there is less in the way of appropriate facilities and training.

The present system fails; rather than turning young people away from crime, the time spent in secure institutions socialises young adults into criminal values, introduces them to larger numbers of offending peers, and stigmatises them in ways that make jobs, housing and stable relationships harder to find. Unsurprisingly, it makes young adults more likely to reoffend.

The support for young adults in custody is sporadic and poorly co-ordinated. There are very few programmes tailored specifically to young adults. In order to reduce recidivism, young adults need to have support for all the issues that got them into prison in the first place. They need to be in a supportive environment where they can benefit from detailed programmes to address the causes of their offending: for example, programmes tackling alcohol and drug dependency, education programmes to raise their numeracy and literacy levels, guidance on employment opportunities, and housing advice.

Young adults also need after-care support upon release from custody. A colleague at the Barrow Cadbury Trust recently visited a YOI and spoke to the young people about their experiences during and after their imprisonment. The young people all highlighted the very different support received from youth offending team supervisors – who they said have more time and interest in them and who visit their home – compared with the more hands-off approach of the probation officers supervising the older prisoners.

T2A pilots

The Barrow Cadbury Trust, in partnership with others, aims to develop a holistic and integrated approach to the transition to adulthood, in order to promote recognition of the distinct needs of young adults within the criminal justice system. The trust is in the process of establishing Transition to Adulthood (T2A) pilots that will help to manage the transition arrangements between the youth justice system and the adult justice system.

These pilots will ensure that the agencies and services dealing with young adult offenders treat them as a strategic priority and have policies aimed at improving the life chances of young adults in the criminal justice system. They will help smooth the transitional arrangements between the systems by ensuring that the youth offending team's knowledge and understanding of working with a young person is not lost once those individuals enter the adult system.

A large proportion of young people do not have anywhere to go upon release from prison. The T2A teams will help to ensure that adequate resettlement arrangements are in place,

with on-going support in the community.

Young adults in the criminal justice system also need support from positive role models. Peer mentoring enables young people to gain one-to-one support from credible people who have gone through the same experiences as them and can therefore garner their respect. They provide positive role models to young people who often cannot see a way out of crime, and let them see that there is potential for change.

There are a number of successful peer mentoring schemes, including the Prince's Trust 1-2-1 Project pilot in the South West of England. This project recognises the complex needs of offenders and offers continuing support using fully trained "supporters" who have broken the cycle of offending and now live successful lives. The concept of the programme is to change the culture of dependency on the statutory services and empower offenders to take control of their own future. The Barrow Cadbury Trust will also be developing and funding existing peer mentoring schemes, specifically targeted at young adults in transition.

The crucial role of employment

As well as support in prison, it is vital that young adults can become productive members of society upon release, and not return to offending. A big factor in reducing reoffending is employment. The government's Social Exclusion Unit reported that having a job reduces roffending by between a third and a half.

However, at present there is a lack of employment opportunities upon release from prison. A job is hard to get when two-thirds of the young adults who are sent to prison have no work experience or qualifications and a large proportion have the numeracy skills of an 11-year-old. When they leave prison, ex-offenders face the added barrier of having a criminal record, which makes them unemployable in the eyes of most employers.

We need to start training prisoners earlier, recognise the importance of work experience, and, most importantly, provide ex-offenders with job opportunities when they leave prison. Training and work experience in prison can make a real difference to a person's life.

Fiona Bryce, a young person who was sentenced to custody for 13 months, was able to take a BTEC course in digital media and, while still in prison, undertake work experience at a media company that brings media to isolated communities. Fiona says, "Work helped me to reintegrate ... And it set me on my feet when, four months into the job, I was

released." Employment raises self-esteem and provides a solid income and a financial alternative to crime, as well as strengthening families.

Increasing the number of young adults with convictions who are in work is in everyone's best interest. It can create financial savings and fill recruitment gaps for employers, while saving taxpayers money, as well as giving young adults with convictions a constructive route out of crime. Keeping young adults with convictions in work and off the street also creates a platform for progression away from reoffending.

Furthermore, when trying to address the needs of young adults in the criminal justice system, it is imperative that we consult the people who are in the criminal justice system, and those who have broken free from the cycle of offending. Mark Johnson, an ex-offender who is a special adviser to the Prince's Trust and the National Probation Service, recently commented in *The Guardian*[1] that:

[W]hen it comes to the prison service, those of us who are or have been inside it are rarely asked for our views on how it might improve ... if there's anyone who believes in a sound criminal justice system, it's those of us who've been through it and come out the other side.

As well as helping those already in custody, there is also important work that can be done to help those young people on the streets who are at risk of becoming involved in the criminal justice system. There are a number of grass-roots organisations that help young people in deprived areas who are in gangs or at risk of getting into trouble. Young Disciples, a Barrow Cadbury funded group, engages young men and women who are "hard to reach" in inner-city Birmingham.

Conclusion

Developing effective and relevant approaches in the community is not always easy, carries risks and costs money. The services the T2A pilots provide do not come cheap. But neither does prison. We are confident that supporting young adults caught in the downward spiral of the criminal justice system, with bespoke services that meet their individual needs, will ultimately reduce recidivism. Not only will this save the taxpayer money and society from crime, it will begin to address the huge inequality between the most disadvantaged young adults and those enjoying the comfort of growing in a supportive environment.

1 Mark Johnson "Like It or Not, We Know What We're Talking About" in *The Guardian*, 7 May 2008

Chapter 6

Breaking gang culture

Dan McCurry, Legal Executive in Criminal Defence

Breaking gang culture

If a 12-year-old boy joins a street gang, he's not looking to profit from the drugs business; he's looking for a surrogate family. If a normal family was so dysfunctional that the adult male was a drug dealer who was sending 14-year-old children out to deliver wraps on their bicycles, then this would be regarded as child abuse and social services would not hesitate to go in and take the child out of that situation. This same level of aggressiveness must be employed in the way that the state deals with the children involved in street gangs. However, while the government condemns those who employ child labour in, say Pakistan, in our own communities it is the children themselves that the government and others condemn as feral hoodies. I believe that by looking at these children as victims, rather than with hate, wiser policy ideas will emerge.

As a legal executive working for a firm of solicitors in the East End of London, I would say that most of the juvenile clients that I have represented in police station detention slip my mind as soon as the job is over. Mostly they don't register on my memory because they are frightened and vulnerable children, so I need not worry about them. I take the view that if being held in police detention for a period frightens and disorientates a child, then police detention has done its job; the traditional form of punishment has worked already. It is when the kids aren't affected by custody that I tend to remember them. It's those kids that worry me.

What happened to Brandon

Brandon I remember because he was a tough boy. He was a 12-year-old Hackney lad who had been arrested with a group of older boys who had chased their victim up Kingsland High Street before knocking him to the floor, jumping up and down on him, and putting him in hospital. Hackney has a number of street gangs who fight over turf and drugs. Brandon's mother was in the pub so couldn't come and be the appropriate adult, while his father had simply told the custody sergeant that he didn't want to know and hung up the phone, so a social worker had to be called: a complete stranger to act the role of parent.

Brandon was a tiny thing; he had been in his cell for 16 hours and should have been frightened, but when he came out, he swaggered across the custody suite with a bowl in his shoulders, then came into the consultation room, sat down opposite me and, before I had even introduced myself, said, "So you're my brief; know this: I'm going no comment." He probably thought he was being tough, but I just thought it was tragic.

Police station detention is solitary confinement. There are no PlayStations or even magazines. My own memory of being arrested and held overnight in Bethnal Green police station as a juvenile back in the 1980s was how frightening an experience it was. It wasn't just the boredom of being held in solitary confinement, it was the powerlessness when the cell door slammed shut and there was nothing but the claustrophobia of four concrete walls. It was the humiliation of having my shoelaces removed in case I was suicidal. It was the complete lack of empathy by the sergeant; to him I was just an object. He didn't relate to me, he just processed me.

The point I am trying to make is that this 12-year-old boy, like many others, had already been desensitised to incarceration. Now, if I had a stony heart, I'd say, "The kid's putting on an act. Of course he found the cells distressing, but he didn't want to show that to people". This may well be true. However, if I had a bleeding heart, I'd say, "This boy has been getting punished all his life. He's been punished so much that he expects punishment. Punishment to him is normality". Maybe so, or maybe both statements are correct, but the fact is that my heart is neither bleeding nor stony. I am a policy maker, so my thoughts are guided not by emotion but by logic, and that tells me only one fact about dealing with Brandon: that the traditional forms of punishment and rehabilitation are not going to work here.

It takes a lot of experience and commitment to get on to the ladder of a proper career in crime. Yet, like most professions, if you go and ask people how they came to be doing what they are doing, most people will admit that they didn't have a burning desire at the age of 12 to follow the career path they did. More often, they found themselves doing something relevant and someone in the business encouraged them forward and opened up the doors and the possibilities.

If we look at the actual knowledge and experience needed to be a carpenter, we must start with the schooling that teaches the child maths, so that they can measure a piece of wood, and art, so that they can learn how to use tools with their hands. In crime, the knowledge and experience start with fights in the school playground, which establishes a pecking order while learning to exert fear over the other children in the playground. This pecking order extends beyond school, into the pubs and clubs where the violence and injury caused are considerably worse than in the school playground. A lad with a reputation will go after another lad with a reputation. The one willing to act with the most violence is the winner.

It is not in the school playground that the youngster decides on a criminal career, but during this period of fighting in pubs and clubs. The youngster is forced into considering whether violence is just fun, or whether it is professional, since during this period the stakes have risen considerably. These stakes are not just to do with the amount of violence used in the fighting, but in the way that having a reputation spills over into the rest of the youngster's life. He has to walk the streets constantly watching his back, in case someone jumps out on him. In pubs he will always stand with his back against the wall and he will never be alone, for fear of a victim's revenge. The reputation has to occupy his mind full-time, if he is to survive. Either he chooses to get out of the game or he commits himself to this direction in life: a career in crime.

The thing that is so disturbing about street gangs is that they follow the path described above, but with an industrial organisation under the guidance of adult criminal mentors who are on the lookout for cheap and compliant labour. So unlike the above situation where a youngster decides for himself if he wants a career in crime, the gang makes the career a natural pathway, with guidance provided by a 24-year-old in a Porsche who is happy to be the role model, if the kids can be useful to him in return; and they are.

The child abuse angle

So it is not just the 24-year-old drug dealer who is a child abuser in this example; it is the institution of the street gang itself that is abusing children. The child abuse is institutionalised. If a school or children's home was found to be corrupting the lives of young people to this extent, training children to be criminals, training children in the art of violence and murder, what would the authorities do about it?

If a dealer sells drugs to his estate until he saturates the market, with every person on the estate addicted, then to expand his business he has two choices: he can look for a new market beyond the estate, or eliminate the competition locally. When dealers decide to eliminate the competition locally, gangs come into being. For some reason, black drug dealers generally choose to eliminate the competition locally, while white drug dealers generally choose to look for a new market beyond the estate. The reason why is a question for another day, but what matters for this essay is that skin colour is a major issue to young black males who are at an age where their identity as men is becoming important to them.

Let us return to the fact that the government wishes to condemn child labour overseas, while 14-year-olds are scooting around Hackney on bicycles delivering wraps for the local

drug dealer. Those children don't work for high wages – the pay is much, much lower than the minimum wage – they work out of admiration and because they believe they are being given opportunity.

If you think this is bad, then consider the fact that they don't deliver just drugs in order to prove their reliability and loyalty to their adult role models; I have also had cases of 14-year-olds transporting firearms for their mentors. If a murder is to happen, the killer does not want to be stopped with the gun; so a child is sent to deliver the weapon. After the murder, the child removes it. If stopped by the police, he would say he had found it and was about to hand it in. Even if the child was known as a gang member, the existing law would not be able to prove otherwise under the criminal burden of proof – reasonable doubt.

In fact, this is comparable to the phenomenon of African child soldiers, and the reason the child soldiers exist in African war zones is the same: that they are cheap and compliant and work out of admiration and love for the male role model who sends them on these missions. Yet still we degrade the victims with words like "feral" and "hoody". While political rhetoric condemns those who employ child soldiers in Africa, here in the UK the political anger is towards the children themselves.

Since legislation on antisocial behaviour orders has been so effective in closing crack houses, a common form of retail drug dealing is conducted by the dealer taking orders on his phone and sending couriers out on bicycles to deliver. This is a discreet form of dealing, which avoids antisocial upset in the community. We should continue to concentrate our efforts on closing the crack houses. However, when children are on the bicycles delivering the drugs, we must act with massive force. The war on drugs can never do more than contain the drugs industry. I propose that within that containment we seek to eliminate child gang involvement through the application of prosecution heat, and through creating a child-labour taboo to damage the reputation of those dealers who fail to comply.

To understand how best to apply this taboo, one must understand the reputation of the dealer. Name-and-shame strategies have always been counterproductive, since the strategy presumes that the career criminal cares about his good character in the same way as we do. He doesn't. As explained earlier, he has developed his violent reputation over many years, so to "name and shame" him is more likely to do him a favour by advertising his notoriety and his corporate brand.

However, there is damage to reputation that criminals would fear disproportionately, if we agreed that the use of children in the distribution of drugs was a matter of child abuse. I suggest we legislate for a child abuse register and put the dealers on it if they are shown to be users of child labour. I imagine this register would primarily act as a disincentive to the dealers, in order to discourage them from using children in their business. I also imagine the register being an opportunity for court-order powers, rather like the antisocial behaviour order. For example, a clause might read, "Not to communicate with any person under the age of 18". I also imagine that the police would have greater powers of stop and search against those on the register and against the properties frequented by them.

Currently police powers only allow officers to search a residence "owned or occupied" by the person under arrest. Since dealers know this, they tend to stash their drugs elsewhere. Although a search warrant can be obtained from a magistrate, this is a cumbersome procedure. I suggest that police be given powers to search any premises connected to the dealer, if he is on the register. By these powers, the message would soon get out that the use of children in the drugs business would be rewarded with massive prosecution heat.

Section 47 of the Children Act 1989 provides powers for social workers to remove a child at risk of child abuse. To warrant a child's removal, the act provides the threshold of the child being "likely to suffer significant harm". The local authority may remove the child in order to "safeguard or promote the child's welfare". The burden of proof would be the balance of probabilities.

So if a child has become a member of a street gang, is that child likely to "suffer significant harm"? Would intervention "safeguard or promote the child's welfare"? Let's see. A child has been drawn into a cult-like organisation dedicated to imposing its criminal will through massive violence that the child must implement in order to prove himself as a member. The child is so embedded in this cult that he would not only risk his life through knife and gun fights for the cult, but would also risk his life just to demonstrate his worth to the cult, because that is the chief manner in which the cult measures loyalty, and loyalty is the chief requirement.

I ask again: in this situation, is the child "likely to suffer significant harm" and would intervention "promote the child's welfare"? If so, then why is it public policy that action be taken only through the most onerous and difficult route that the state can course: the prosecution of a criminal offence under the burden of reasonable doubt?

When kids of African descent start to get into trouble with the police, the family don't think twice about taking them out of the community and sending them to Africa for their education. These African parents demonstrate a natural instinct of family survival in the world of globalisation. Everything else is globalised, so why not welfare and education? In fact education is already globalising, if we look at the intake of British universities. As for the globalisation of the family, how about the South American nanny who looks after the British kids so that she can send money home for her own children to be sent to school? The African parents are simply ahead of the rest of us in the globalisation of education and childrearing. It is time for the state to catch up. Everything else is being globalised, so why not school and social services?

If a child is to be sent to boarding school in Ghana, then there must be a family to send him to. Perhaps the logic of this approach could be extended to support people convicted of antisocial behaviour who have family overseas – even providing incentives for the extended families participating, such as full citizenship, where that is appropriate.

In the early 1990s there was a continued media interest in the perceived policy of rewarding delinquents with safari holidays. Since that period, the media has been far more interested in social issues, to the point that policy makers today find inspiration in shows about super-nannies. It would be best to win over public opinion by inviting a broadcaster to tell the story of the children in the pilot scheme. I also recognise that offering immigrants any advancement into British society can be controversial too, but the British people do not resent those who come to this country and contribute to society; they resent the free-loaders and those who refuse to fit in.

The main purpose of this essay is to emphasise the importance of dealing with street gangs and the cause of street gangs. The ideas are radical ideas, but practical to implement. We cannot rid society of drugs; prohibition will never work. Nor can we restore the family unit without rolling back the freedoms we have developed. The fact is that we can only reason with the difficulties of the modern world through policies that are based on the ethical and moral principle that children must be nurtured until they reach adulthood, and any pernicious organisation or industry that wishes to divert those children away from that nurture, and into the clutches of evil, must be countered with the utmost force and determination that the state can muster.

Chapter 7

Making the most of community sentences

Enver Solomon, Deputy Director of the Centre for Crime & Justice Studies at King's College London

Making the most of community sentences

Despite the fact that at any one time there are nearly twice as many people serving community sentences as there are in prison, there is relatively little focus and scrutiny of community orders. The conditions for and treatment of prisoners are subject to far wider public and political debate. Indeed there are no independent organisations that make it their business to examine community sentences and provide evidence about how they are being delivered and for whom.

Consequently a number of key factors relating to the use and implementation of community sentences have been overlooked in recent years, not least the fact that two years ago community sentences were radically reformed. While prison reform groups have promoted greater use of alternatives to custody and the Labour government has intermittently promoted community sentences in place of short-term periods of just a few months in prison, there has been a failure to understand and identify the changing use of community sentences and whether or not they are being delivered effectively.

Critically, the provision of community sentences has actually become more removed from the community, as a result of fundamental changes in practice, resulting in a weakening of probation's role in promoting community engagement. At the same time community sentences have become overcrowded with offenders who have multiple social needs.

The Criminal Justice Act 2003 radically reconfigured community sentences, creating a generic community order with 12 requirements that can be mixed and matched to create a tailored sentence for each individual offender (see table at end of essay).[1] A community order can include one or more of the 12 possible requirements and can last for as short a time as 12 hours or as long as three years.

When the sentence came into operation in April 2005 the government declared that the new community order would give "sentencers a much greater degree of flexibility in putting together tough community sentences that will be tailored to the needs of offenders and the seriousness of their offence".[2] The new sentence was also intended to contribute to reductions in short-term prison sentences by providing a robust alternative to custody and by tackling so-called "uptariffing" whereby community sentences have replaced

1 See: Mair, G et al *The Use & Impact of the Community Order & Suspended Sentence Order* (Centre for Crime & Justice Studies, 2007). At: www.crimeandjustice.org.uk/opus216/impact-community-order-2007.pdf
2 Home Office press release, 4 April 2005

financial penalties and discharges, and custody has displaced community penalties.[3]

So what has been the result of the radical reform of community sentences for adults?

Effects of the community order

Prison overcrowding is a well-known fact. What is much less well known is that community sentence caseloads are also overcrowded. In the decade between 1996 and 2006 the number of adults who started court orders in the community increased by 35% from 115,402 in 1996 to 155,614 in 2006.[4] This is comparable to the increase in the prison population, which over the same period rose by 41%.

The former Chief Inspector of Probation, Professor Rod Morgan, famously described this steady rise in probation caseloads as the "silting up" of the probation service.[5] The effect is far less graphic than images of overcrowded jails, but the impact is equally damaging. For example, sickness levels among the probation workforce are among the highest in the public sector.[6] Following the introduction of the community order the number of offenders on orders in the community has continued to rise, and there is no sign that caseloads will begin to decline.

Despite the increase, there has not been a decline in the use of custody for short periods. In fact over the last year the number of adults in custody serving less than six months has increased by 3% and the number serving between six and 12 months has increased by 7%. The evidence so far is that the courts are not using community orders as fully as they might. The anticipated switch to the new community sentence from short terms of imprisonment that was hoped would take place has not happened.

Part of the reason for this is that the courts are still using community sentences for less serious offenders who would previously have been fined. In other words, the increase in the use of community sentences has largely been at the expense of fines. So, between 1996 and 2006, the number of people given a community sentence for a more serious indictable offence increased from 85,771 to 111,724, a rise of 20%; the numbers fined declined from 84,617 to 51,628, a decline of 39%.[7]

3 For a full discussion see: Morgan, R "Thinking about the Demand for Probation Services" in *Probation Journal* vol 50, no 1 (2003), pp7–19
4 Ministry of Justice *Offender Management Statistics 2006* (2007)
5 Morgan, op cit
6 In 2005/06 the average number of sick days for each employee was 12.6. See: Solomon, E and Rutherford, M *Community Sentences Digest* (Centre for Crime & Justice Studies, 2008)
7 Ministry of Justice *Sentencing Statistics 2006* (2007)

But it is also the case that the flexibility intended with the new community order and its 12 requirements has not led to much greater innovation, with the community order appearing to mirror the old community sentences – the community punishment order, the community rehabilitation order and the community punishment and rehabilitation order.

The lack of innovation is best illustrated by the fact that only a few of the 12 requirements are regularly being used. Of the total requirements used in 2006, just over two-thirds (68%) were either supervision or unpaid work. One in five were for an accredited programme and only 6% were for drug treatment. Six requirements – alcohol treatment, residence, mental health, exclusion, prohibited activity and attendance centre – together accounted for only 3% of all requirements.[8]

This means that the introduction of the 12 requirements has not resulted in community sentences being used any differently compared with before the introduction of the community order in April 2005 when there were a number of different community sentences. Combinations of requirements are not being put together to meet the needs of offenders or the seriousness of the offence in a way that changes the makeup and use of community sentences. This is despite the fact that offenders on community sentences have a range of social needs – for example, almost half have an alcohol problem, close to a quarter have a drug problem and nearly half have mental health problems of some nature.[9]

The only significant change in how the community order is being used is that unpaid work appears to be more popular than previously. In 2006 two-thirds of community orders made up with one requirement involved unpaid work. This higher number of unpaid work requirements (previously community service or community punishment) is perhaps not surprising given its promotion by the government. A recent reducing reoffending strategy called for unpaid work to be "at the heart of community sentences, because it is about offenders making amends to the community for the harm they have done" and set a target for the number of hours of unpaid work done by offenders "to rise from 5 million in 2003 to approaching 10 million in 2011".[10]

The greater focus on unpaid work has been directly linked to the launch of the Community Payback initiative in all probation areas at the end of 2005. The scheme has two clear

8 Ministry of Justice *Offender Management Statistics 2006* (2007)
9 Solomon and Rutherford, op cit
10 Home Office *A Five-year Strategy for Protecting the Public & Reducing Re-offending*, Cm 6717 (The Stationery Office, 2006)

objectives – to make unpaid work more visible to the local community and to give the community an opportunity to participate in deciding the work offenders will carry out. It is hoped that Community Payback will promote community sentences with the public by enhancing the "public's understanding and appreciation of the contribution made by unpaid work to the well being and safety of local communities".[11] It is currently the primary means that probation is using to ensure greater community participation in the delivery of alternatives to custody. But whether or not it is the most effective means is open to question, as will be discussed below.

Another notable feature of the use of the new community order is a continuing reliance on breach. If the order is breached, the court can amend the order by making it more onerous, or it can revoke and resentence which may mean custody even where the original offence was not punishable by imprisonment.[12]

The greater use of breach and effective enforcement to deal with it has been an issue for probation for the last decade. A more consistent and rigorous approach to breach has been promoted by government and probation chiefs as key to ensuring the confidence of the public and the courts and therefore encouraging the use of community penalties. According to the most recent official data, it seems that community orders are less likely to be completed satisfactorily than were their predecessors: 52% of community orders were successfully completed in 2006, compared with 62% of community punishment orders and 78% of community rehabilitation orders.

This is perhaps surprising given that there is no evidence that offenders are being over-loaded with numerous requirements (the average is 1.7), and so raises questions about whether or not enforcement action for compliance failure is unduly harsh. It is clear that the numbers entering custody through the back door for breaching the terms of their community sentence is increasing, with an official analysis showing that they rose from 180 in January 2005 to 1,200 in August 2007.[13]

The retreat of probation from the community

Overall the introduction of the new community order with its 12 requirements has not so far led to the outcomes that were intended. Probation continues to be overburdened with

11 National Probation Service *Visible Unpaid Work*, National Probation Circular 15/2005 (2005)
12 Previously the courts could either take no action, issue a warning or impose a fine.
13 Carter, P *Securing the Future: Proposals for the Efficient & Sustainable Use of Custody in England & Wales* (Ministry of Justice, 2007)

overcrowded community caseloads, and community sentences are not being used in place of short prison sentences. At the same time there is also a critically important trend emerging of probation retreating from the communities that it is seeking to rehabilitate, as a result of the erosion of the community dimension of its practice. This has significant consequences not only for any attempt to ensure that community sentences involve greater community engagement but also for the rehabilitation of offenders in the community.

Research by Anthony Bottoms has found that probation is not actively present or involved in the communities that the offenders it is working with come from. Looking at the experiences of two high-crime communities in Sheffield, Bottoms did not find any evidence of the active presence of the probation service in these areas. He suggests that a key factor is the decline in recent years in the number of home visits conducted by probation officers.[14]

Extensive consultations carried out by Bottoms with probation staff from several parts of the country back this up, and the same picture is emerging in interviews currently being conducted with probation officers by the Centre for Crime & Justice Studies as part of our on-going project examining the use of the community order. It would appear, therefore, that probation officers are spending far less time out in the community with the offenders they are supposed to be reforming and much more time behind desks in remote officers. There are some key reasons for this that Bottoms puts forward.

Firstly, over the last decade probation has been subject to a revolution in "new public management". National standards, key performance indicators, rigorous performance management, value-for-money efficiency savings and far greater bureaucratic central control have all resulted in a managerialist culture taking root that has emphasised cost-effective approaches. Therefore there has been an efficiency consolidation strategy for probation offices to reduce costs and provide facilities appropriate for current practice.

New national standards published in 2005 which set out minimum contact time between probation staff and offenders actually recommend fewer home visits apart from in high-risk cases. At the same time there has also been a greater reliance on "what works" programmes that have led to the development of prescribed offending behaviour programmes and risk-based assessment tools, both of which lend themselves to a more

14 See: Bottoms, A "The Community Dimension of Community Penalties" in *The Howard Journal* vol 47, no 2 (May 2008)

mechanised approach of office-based work. Finally, more stringent health and safety guidance has also imposed greater controls on home visits.

For different reasons, probation supervision is now far less community based than ever before, at a time when the Community Payback initiative is seeking to make the work of community sentences more visible and gain greater community involvement. This should concern all those involved in probation, not only because it undermines the aims behind Community Payback but also because it undermines offender rehabilitation and does little to ensure greater community confidence.

Successful relationships between offenders and probation staff depend on offenders having confidence in and trusting their supervisors. Offenders gain greater confidence if they are satisfied that supervisors understand and empathise with their predicament and home environment. Office-based staff who do not visit the deprived areas from which offenders are disproportionately drawn are therefore likely to find it much harder to inspire confidence and build the relationships and positive attachments that can turn offenders away from a life of crime.

It also makes sense for probation to be seen to have an active presence in high-crime deprived areas working with the offenders who live there, as this can send positive messages to the local community. Anthony Bottoms highlights the lessons to be learned from "reassurance policing" and what Martin Innes has described as "control signals", in other words "acts of social control [by officials or residents] that communicate an attempt to regulate disorderly and deviant behaviour".[15] This means that if probation officers by their local presence and work demonstrate effective action it can help convince residents that crime and disorder is being addressed in their neighbourhood and so boost their confidence.

More than a century after probation was founded in 1907, it is ironic that recent practice has led to the delivery of community sentences becoming more remote and removed from the communities and offenders that probation is working with and from whom the work of probation originally emerged. Probation needs to be resourced to provide more effective one-to-one engagement. The value and importance of building relationships with offenders has to some extent been lost in the managerialist agenda of the last decade and the transformation of probation into more of an American-style corrections agency focused

15 Innes, M "Signal Crimes & Signal Disorders: Notes on Deviance as Communicative Action" in *British Journal of Sociology* no 55 (2004), pp335-55, quoted in Bottoms, op cit

on public protection (hence the tough approach to enforcement) rather than its social work communitarian origins. The renaming of probation officers as "offender managers", whose role is to manage rather than work with offenders, symbolises this transition.

There was a lot of sense in creating a single generic community order, but it is how the order is delivered and for whom that now matters. Community order caseloads should be freed of the offenders who have been given a disproportionately harsh punishment for minor offences, but at the same time staff need to be given the freedom, discretion and resources to engage more actively with offenders and their communities. Probation practice used to be characterised as advising, assisting and befriending offenders. This approach was by no means perfect, but its value should not be overlooked if community sentences are to have the confidence of the neighbourhoods most affected by public violence and disorder and if they are to deliver effective rehabilitation.

The Centre for Crime & Justice Studies is an independent charity affiliated to the Law School at King's College London. More information about its work on community sentences is available at www.crimeandjustice.org/communitysentences.

Table 1: The 12 requirements of the community order

- **Unpaid work (40 to 300 hours)**
  An unpaid work requirement must be completed within 12 months. It involves activities such as cleaning up graffiti, making public areas safer and conservation work. The work is intended to benefit the local community, and in some probation areas residents are able to suggest projects for offenders with an unpaid work requirement to carry out.

- **Supervision (up to 36 months)**
  An offender is required to attend appointments with an offender manager or probation officer. The focus of the supervision and the frequency of contact are specified in the sentence plan, which is based on the particular issues the offender needs to work on. The supervision requirement lasts for the period of time the community order is in force.

- **Accredited programme (length to be expressed as the number of sessions; should be combined with a supervision requirement)**
  These programmes aim to change offenders' thinking and behaviour. For example, the Enhanced Thinking Skills programme is designed to enable offenders to understand the consequences of their offence and make them less impulsive in their decision making. This requirement is particularly intended for those convicted of violence, sex offending, drug or alcohol abuse, domestic violence and drink-impaired driving.

- **Drug rehabilitation (six to 36 months)**
  If offenders commit a crime linked to drug abuse, they may be required to go on a drug rehabilitation programme. Programmes may involve monthly reviews of an offender's progress. An offender's consent is required.

- **Alcohol treatment (six to 36 months)**
  This requirement is intended for offenders who are alcohol dependent and need intensive, specialist treatment. An offender's consent is required.

- **Mental health treatment (up to 36 months)**
  After taking professional advice, the court may decide that the offender's sentence should include mental health treatment under the direction of a doctor or psychologist. An offender's consent is required.

- **Residence (up to 36 months)**
  An offender may be required to live in a specified place, such as in a probation hostel or other approved accommodation.

- **Specified activity (up to 60 days)**
  Specified activity may include community drug centre attendance, education and basic skills or reparation to victims.

- **Prohibited activity (up to 36 months)**
  Offenders may be ordered not to take part in certain activities at specified times, such as attending football matches.

- **Exclusion (up to 24 months)**
  An offender may be prohibited from certain areas and will normally have to wear an electronic tag during that time.

- **Curfew (up to six months and for between two and 12 hours in any one day)**
  An offender may be ordered to stay at a particular location for certain hours of the day or night. Offenders will normally wear an electronic tag during this part of their sentence.

- **Attendance centre (12 to 36 hours with a maximum of three hours per attendance)**
  The court can direct offenders under the age of 25 to spend between 12 and 36 hours at an attendance centre over a set period of time. The offender will be required to be present for a maximum of three hours per attendance. The attendance centre requirement is designed to offer "a structured opportunity for offenders to address their offending behaviour in a group environment while imposing a restriction on their leisure time".

Chapter 8

Unlocking potential – prisons and the voluntary sector

Clive Martin, Director of Clinks

Unlocking potential – prisons and the voluntary sector

Has much changed over the past 100 years?

Well over 100 years ago the services provided to offenders leaving prison were supplied by voluntary organisations. They waited at the prison gates and used various means to engage those leaving prisons, trying to persuade them to go straight and assisting them in doing so.

While technology, social changes to do with race, class and gender, and financial resources have certainly changed the way that these organisations look, it is worth asking how much else has changed – and if not much has, then whether it should have.

If socially excluded offenders still need to dry out, detox, find employment, build relationships and so on, then of course the services provided by voluntary organisations are going to focus on the same needs that they did 120 years ago. In fact, it could be argued that the different ways in which services are provided and how they are accessed has, over the years, become so confusing that voluntary organisations meeting people at the gate and directing them towards the multitude of service providers that now exist is exactly what is needed – and this is rightly what so many resettlement services today are about.

This model of working, based on tangible needs, should not be undermined in any way. It is now well established that socially excluded people need access to the services that enable them to manage in an industrialised society. These include literacy and numeracy skills, healthcare, accommodation and the other services that are laid out in the now well-rehearsed "pathways" to reduce offending. This access to services is also what key workers seek to achieve when working with other groups of socially excluded, for example homeless, people, and it is not surprising that resettlement workers seek to base their practice on this as well.

So why, at this time, when the sheer number of people in the criminal justice system is so overwhelming, should we be thinking about modifying a model of practice that has been in place for well over 100 years? Should we not just focus on building capacity to meet the growing volume of offenders who are sent to, and come out of, jail?

We cannot focus on building capacity

There are probably at least two good reasons not just to focus on capacity – the first is

the issue of resources. The sheer number of people going into the system makes any prison, and the subsequent resettlement and rehabilitation system that must follow, unaffordable in the long run. Any sane society would want to invest the large sums required by that scale of resettlement service into preventive measures instead.

The numbers being sent to prison have to go down, because we can afford neither those prison places nor the resettlement costs that arise following imprisonment. How you achieve that, as we all know, is very complicated, although reducing the numbers reoffending upon release is one way, so we do need to focus on getting it right – and we can only get it right if the volume of need and resources are matched.

The second reason is that while resources are enormously important they are not going to solve this particular problem on their own. The growing evidence from practitioners, and offenders themselves, suggests that meeting needs in this way is only solving part of the problem.

For example, recently Clinks ran a focus group with offenders and ex-offenders in Yorkshire, during which the participants identified that the primary issue for them in reducing offending was to change their attitudes towards crime, offending and themselves. To change their attitude towards offending they needed to feel differently about themselves – they needed to believe in their ability to lead a different sort of life, and they needed the support and skills to achieve that. They also needed to know that society could see them as more than offenders – and, clearly, if they wanted society to see them as more than offenders then they needed to see themselves as more than offenders as well.

Put simply, they seemed to be saying that many offenders do not have the self-belief or motivation to even begin to think about going straight, let alone to access the resources that would support them in that direction.

So it is not that what is currently being done in resettlement work should be stopped; rather it needs to be added to so that it becomes more effective, and the place that should start is with the person – not the system.

What has been tried already?

Before focusing on what needs to be done, it is worth noting that the simplified introduction to this essay is clearly not entirely accurate – obviously there have been new ideas over the past 100 years. In recent times, those of us who work in this field have witnessed

a range of initiatives that were presented, somewhat rashly in hindsight, as being the start of a new dawn. Included among these are sentence planning, the personal officer scheme, cognitive behaviour programmes, accredited basic skills training and, more recently, offender management and even commissioning.

Putting aside the recent political arguments about commissioning, many of these innovations have probably made a contribution towards the betterment of incarceration, or provided insights into what does or does not work, but none of them have translated into the replicable and reliable processes and interventions that the system had hoped for or so badly needs.

Why these innovations fell short is probably a very complex issue, but, watching their rollout over the past 15 years or so, three things are particularly striking.

Firstly, they were almost all developed as single-track initiatives with a relatively small number of staff being trained to develop them. What was noticeable was that other important factors that always accompany major successful and sustainable change programmes – such as institutional and professional development – were overlooked or did not, or could not, change rapidly enough to support the new initiatives.

The second issue is the vacuum in which these initiatives were both developed and implemented. For instance, there are almost no consistent examples of how community organisations can play a role in sentence planning – either at the point at which they are being devised or during their implementation.

The third is how much these innovations followed the professional practice of a different and more paternalistic time. They largely ignored the fact that the offenders themselves, and those close to them, may have an idea about how their lives could be changed and that they might, in fact, hold the key to a successful rehabilitation process.

It is easy to understand why this did not happen and to shy away from this issue – to talk about offenders not being like other users of services because they are not largely there out of their own choice; or to hide behind the complex public politics of the situation. But the reality is that, as with any human behaviour, long-term change is unlikely, if not impossible, without buy-in from the people concerned. How you get that buy-in seems pretty clear – you involve them in the process as much as possible. This is true of health-care, of education, of cleaning up the environment, and yet we steadfastly refuse to

address this within the criminal justice system.

Where now?

Imprisonment is supposed to be about punishment and rehabilitation, yet so much of the discussion focuses on punishment and the capacity needed to meet that element of the system. The concept of punishment, and the growing belief that the only true punishment is imprisonment, is driving the need for more and more prison places and thus the need to embark on the building programme that will result in titan jails.

But what about our commitment to rehabilitate and the need to resettle the residents of these titan prisons back into the community once their stay is over? The resettlement issues that will arise out of building titan jails – including such basic things as location and distance from inmates' home area, whom the jails hold, and what they seek to achieve – have undergone little or no discussion. They will be built miles from the services that prisoners need to access upon release, and the prisoners in them (like prisoners in most jails) will have to rely on redundant communications methods that will make services even more difficult to access.

It appears that we have decided that we can build prisons without any consideration for the resettlement issues that will inevitably arise when people are released. It is hard to believe that if we, as a society, really took the National Offender Management System's aim of rehabilitation seriously we would still build such prisons – and the idea that we can embark on such a building programme without any proper impact assessment about resettlement is as startling as it is foolish. In fact, if for just a second, and putting aside the concerns about security that there will always be, we turned this around and took rehabilitation and resettlement as the primary driver in the design and management of prisons, then we would come up with a very different model to that on offer at the moment.

If we did this, we could return to the notion that the removal of freedom is the punishment and that the rest of our energy during imprisonment should be strategically and operationally focused on rehabilitation and restoration – not just for the offender but also for the victim and the community.

The best solution is therefore not to build these monster prisons at all. However, if we are to do so, we should start with a proper and full assessment of how this might damage or destroy the other very valid ambitions of the system – primarily resettlement and all the

elements of restorative justice that are needed for good resettlement, including the personal and social healing that needs to happen after a crime has been committed.

If resettlement were to be at the heart of a post-prison experience, it would need to be in the hands of those who have the resources to deliver it. Currently this is not the prison or probation services, so the present direction of travel, namely that resettlement resources are placed in the hands of local authorities and their partner agencies, is a positive move. Its success will depend on the willingness of those local communities to see offenders as being priority groups, and we all have a role to play in helping them achieve this.

There are some very good examples of how individuals and communities can positively contribute to this – Circles of Support and Accountability being one, and the way in which some local authorities are being more proactive in their resettlement role another. These shoots of new practice need to be placed centre-stage as a serious part of resettlement practice. They are encouraging, not just because of what is being done, but because they also invite other social work professionals into the resettlement arena. These professionals can add to work done by enforcement staff, which by its very nature will be much more limited.

Two missing elements – engagement of service users and a focus on motivation

But this still focuses on the management of current service provision and is part of process change rather than content change. It is clear that the real progress will come about only when we add two new elements to what is already being done.

The first of these new elements is to develop a systematic and consistent means of listening to the people who have the resettlement needs in the first place. These are the imprisoned and the individuals and communities that they will return to. We need to stop being so coy about this and accept the growing evidence that services improve and are more effective when they respond to the people who use them. For services to respond to the people who use them, the agencies that run them need to listen to those people, develop the mechanisms to integrate their messages into the design and delivery of services, and maintain an on-going dialogue so that new and emerging issues are captured and responded to.

Currently there is no structured means by which prisoners' experiences can inform the design and delivery of the rehabilitation and resettlement process. Where it does happen it is piecemeal and often at arm's length from the main providers, being carried out

through the voluntary sector with no clear path into the decision-making process. This is amazing given the amount of resources that have been spent and what is at stake – not only is it wasteful but it is also failing to capture vital knowledge about how things can be improved.

Personally, I can still remember how struck I was by meeting a prisoner who had run a housing advice service within a prison establishment for many years. She had an office and a phone, a caseload of prisoners, and years of experience about how to find accommodation for prisoners upon release, having spent many years working to meet their needs. She had become an expert on housing problems, and how they could be solved, simply by doing it. Yet no one with the power to change a policy or practice had ever asked her about what the main issues were and what could be done to make the whole system more effective.

For her part, she had enough on her plate managing the requests from offenders, hanging onto the phone so she could carry out her work, and serving her sentence, without taking on the challenge of trying to get anyone to listen to her – although she clearly knew she had a lot to offer. There was simply no system for her to feed into.

This is one of the issues that the Clinks service user task force has been seeking to address, and we hope that the time is right for this voice to be heard. The task force report will make recommendations about how the voice of service users might be heard and how their knowledge and expertise could be such an important part of the solution.[1]

The second element that needs to be developed is one that places self-esteem and motivation at its core. We can tinker with the process, bring in the private sector, personalise services and so on, but until we put more resources into understanding how we motivate offenders and encourage them to buy into their rehabilitation we are bound to fail. The only way we will achieve this is through speaking and listening to offenders.

These two elements – namely service user engagement and a better understanding of how to motivate offenders to have the confidence and belief to change – are therefore fundamentally linked and have to become an integral part of the resettlement and rehabilitation process.

1 *Unlocking Potential* (Clinks, June 2008)

We can only work out how to motivate people and build their self-esteem when we listen to them. To achieve this we need a professional culture that can listen, interpret and respond, offering a realistic and meaningful contribution to the transformation process that each offender will need to experience if they are to move from criminal to neighbour. It will be to our shame and will diminish us all if we give up on this difficult but achievable task.

Public confidence

Finally, we need to keep working to give the public confidence in the rehabilitation process. It seems that the public, for a number of reasons, is losing faith in rehabilitation and thinks the only solution is to constantly manage the risks posed by offenders. Managing risk and dangerousness is something that the system cannot ignore, but on its own it will not bring success.

At the moment we reassure the public that risk is being managed and that they are safe in their community. This is of course important, but a more positive and sustainable message would be that "rehabilitation works". The public need to know that policy makers and leaders believe this. They, together with allies in all sectors, need to convince the public that the real and sustainable way of managing risk is through successful rehabilitation.

All of us working in the system need to be consistently and confidently promoting community interventions and successful rehabilitation initiatives. The director general of the National Offender Management Service, chief executives of voluntary-sector organisations and, most crucially, offenders themselves need to be telling the stories of transformation, promoting the thousands of instances where offenders have turned their lives around. This is the way in which the public will begin to believe in rehabilitation, and this is what offers us a way out of the criminal justice cul-de-sac that has kept us going around in circles for the past 100 years.

Clinks was established in 1998 to strengthen and develop the partnerships between voluntary and community-based organisations and the prison and probation services in England and Wales. This continues to be the basis of its work, with an additional strand focusing on developments relating to the introduction of the National Offender Management Service.

Chapter 9

Using the arts as a route into learning and out of offending

Professor Martin Stephenson, Director of Social Inclusion Strategy, Nottingham Trent University

Using the arts as a route into learning and out of offending

The belief in the potential for the arts to make people better goes back to classical times and Greek philosophers. In the 18th century the Enlightenment embedded the notion of the arts as a cultural force for enhancing moral and emotional life within Western intellectual orthodoxy, and by the 19th century there was a pervasive social policy assumption that public access to high art would have a significant improving effect on people.[1] Within this, the belief in the moral and educative benefits of involvement in the arts for those in the criminal justice system is long-standing and continues today, with many passionate advocates.

Much of the work has occurred within custody, but there is a growing emphasis on the use of the arts in the community within youth justice and the wider criminal justice system. The Youth Justice Board and Arts Council England have a joint strategy for the engagement of young people who offend, and one of their initiatives – Summer Arts Colleges – is used here as a case study, where some promising outcomes have been identified.

The wider context for the non-participation in cultural activities is the number of young people in the youth justice system who are out of education, training and employment. There is a relatively substantial body of evidence attesting to the association between being out of school and being involved in offending. While there are no reliable official estimates of the total numbers of children and young people who have become detached from education, training and employment, best estimates indicate it could be over a third of a million.[2]

The power of the arts to transform the lives of people who offend has often been proclaimed. A recent review found that out of 700 projects catering for both young people and adults who had offended, 400 had used arts-based activities.[3] There is a wide range of benefits claimed, including:

- development of self-confidence and self-esteem;
- increased creativity and thinking skills;

1 Carey, J *What Good are the Arts?* (Faber & Faber, 2005)
2 Stephenson, M *Young People & Offending: Education, Youth Justice & Social Inclusion* (Willan, 2007)
3 Hughes, J *Doing the Arts Justice: A Review of Research Literature, Practice & Theory* (Department for Culture, Media & Sport/Department for Education & Skills/Arts Council England, 2005)

- improved skills in planning and organising activities;
- improved communication of ideas and information;
- raised or enhanced educational attainment;
- increased appreciation of the arts;
- enhanced mental and physical health and well-being;
- increased employability of individuals;
- broadened outlook; and
- reduced offending behaviour.[4]

The quality of the research underpinning this impressive list of claims tends not to be high. Common limitations include evaluations with small sample sizes, a lack of baseline information, lack of control groups, few appropriate measures, over-reliance on anecdotal evidence, difficulties accessing information relating to offending, and unsupported assumptions about the links between intervention and outcome.[5] Much of the evidence relates to behavioural changes, usually of adults, within custody, such as a reduction in adjudications following an arts intervention. The plethora of indirect and testimonial evidence often adduced to support the effectiveness of the arts in the criminal justice system does not come close to the rigorous methodologies required by the Home Office.

Some of the American studies have used more robust evaluation techniques, but these are usually on work with adults. Almost all show positive effects on attitudes and social skills, but few have measured the impact on offending behaviour. Very few have combined arts activities with attempts to improve the educational attainment of participants.

The initiative used here as a case study had its design rooted in both the research findings on specific arts projects and also in the wider body of research into effectiveness in youth justice. It has had successive in-depth evaluations.[6] Despite their relative rigour, these evaluations have two important limitations: the lack of a comparison group; and a shorter follow-up period than traditional two-year reconviction studies.

The Summer Arts College is an intensive six-week programme intended for young people on intensive supervision and surveillance programmes and those recently released from custody or detention and training orders. In many areas there is a major gap in education and training provision during the summer months for young people, particularly those of

4 Jermyn, H *The Art of Inclusion*, Arts Council research report 35 (Arts Council, 2004)
5 Hughes, op cit
6 National Foundation for Educational Research *National Evaluation of Creative Partnerships* (2006)

compulsory school age. Leaving custody from late spring onwards, there are often great difficulties in finding a school placement until the start of the new academic year in the following September.

Summer Arts Colleges are designed not simply to fill the gap but to reattach these young people to formal learning by engaging them in a creative arts curriculum. The specific objectives are:

- to implement a structured, full-time, arts-based project combining arts enrichment and arts appreciation activities, and to explore possible routes into employment and careers within the arts and creative industries;
- to increase educational engagement and facilitate the transition into mainstream education, training and employment after the programme;
- to reduce levels of (re)offending among participants during the project and in the following months; and
- to work with the arts to improve literacy and numeracy skills and to achieve a qualification through the Arts Award.

The outcomes were assessed in three main categories: educational, artistic and offending. Educational outcomes looked at engagement, attainment and progression. For many of the young people, Summer Arts Colleges provided access to full-time education for the first time in several months, and sometimes even longer. Enhanced engagement – as measured through attendance, positive attitudinal changes towards learning, increased motivation and improved behaviour – was achieved for most of the participants.

Attendance averaged 68%, with about a quarter attending 75% or more. This is in the context of many of the young people undertaking this programme through compulsion rather than choice and having a poor recent history of attendance or participation. The behaviour of the groups and individuals was noted as improving over the course of the Summer Arts College by both staff and young people.

Attainment was assessed from two perspectives: gains in literacy and numeracy; and achievement of the Arts Award. Almost two-thirds (64%) increased their literacy scores in 2007 and just over half (54%) improved their numeracy scores over the six weeks. Nearly 95% of the young people who completed the programme (101 out of 108) achieved this award at bronze level. Achievement levels were high even when taking account of those young people who did not finish the course for whatever reason, with 72% gaining the

Arts Award. For nearly 80% of the young people this was the first formal qualification they had achieved. Given the importance of qualifications in gaining employment and the association between employment and desistance from offending, these are significant outcomes.

Progression in terms of placements in education, training or employment was assessed by comparing the young people's experiences in the three months preceding the Summer Arts College with the two months following. In 2007 on average nearly a third (30%) were without any placement in education, training or employment arranged prior to the course; afterwards this was reduced to just over a fifth (22%).

The focus on the arts was associated with a number of positive outcomes. In addition to gaining the Arts Award there was a significant shift in attitudes towards the arts in terms of participation and a substantial increase in both the awareness of, and interest in, a career in the creative industries.

Offending outcomes

Assessing the patterns in offending was complicated by some of the young people being in custody at times during the five- to six-month monitoring period, and therefore not in the "at risk" population for offending. Measures of offending were adjusted to take account of these custodial episodes.

Analysis of the data on the 232 young people who started on Summer Arts Colleges in 2006 and 2007 reveals a fall of a third (33.3%) in the mean offending rate compared with the previous three months. If those who did not experience a custodial episode are examined, then there were more significant changes, with a fall of 44% in the mean offending rate during their participation which was sustained in the months following the programme.

Significant numbers of the young people attributed the reduction in offending directly to their participation in the Summer Arts College. There was quite a large shift in beliefs that the programme could reduce their reoffending recorded between the beginning and the end of the Summer Arts College, when just over 60% responded that it had had a positive impact on the likelihood of their reoffending.

An insight into how the programme may have had a positive effect on reoffending was provided by a series of interviews with the young people. The three main reasons identified

could be classified as containment, removal from delinquent networks, and facilitating behavioural change.

Containment

A number of interviewees described how being involved in a timetabled programme of activities during the day and, during the intensive part of their order, being on an electronic tag in the evening, had achieved the objective of stopping or reducing their offending. They focused primarily on the practical implications of "containment"; if they were kept occupied during the day, they would not be on the streets with like-minded peers, succumbing to drinking alcohol, taking drugs and committing crimes through boredom:

It kept me out of trouble because if I weren't on that, I would have been out doing burglaries and stuff.
Anon

Some young people, that is why they go out and do crimes and stuff, because they haven't got nothing to do, and that is what people don't understand, really: why they go and do it. It is because we haven't got nothing to do. If you are put in the Summer College for the summer, and they go on it, they will probably stop offending – well, maybe not stop offending, but they may cut down on offending. But with me, on this Summer Colleges thing, it was Summer College all day and I had to be in at 10pm because I was on tag, so you would only get three or four hours to yourself, so I would just go round to my mates and sit round there, so I wasn't offending at all.
Anon

Removal from offending network

Associated with the issue of containment, a number of young people highlighted the disassociation from offending peers as a prime factor in their cessation of criminal activity.

It was for the best intentions really, because there is peer pressure on the street, there is drugs and alcohol, there is just lots of stuff that can go wrong. I mean even if you weren't doing anything, the people that you are with could have an effect on how you are.
Anon

Actually, it did help keep me out of trouble ... because I knew that if I was in there at certain times, I wouldn't mix with the people I meet. It was good that I was there. A few

of them did [get picked up by the police] while I was there, so it was good.
Anon

Behavioural change
Some young people felt that attending the Summer Arts Colleges had made the difference to their mindset and approach to life:

For me, it's changed me, because I don't really have a temper no more. When I come out of prison, I had the maddest temper ever, I was coming back with broken knuckles every day, just beating up people for no reason, and now I ain't got a temper, I'm not even interested in doing criminal things ... Summer College put me on track, though, because it made me think of what I need to do and what I don't need to do.
Anon

However, a number of the young people also reported that simply attending the Summer Arts College programme was not enough to engender change per se; the young person had to have the drive and willingness to change:

It can help young people but, as I said, only if they want to do it themselves. If they don't have no ambition, no motivation, then they are just going to be back where they started.
Anon

The Summer Colleges isn't a programme where you go and miraculously you come back and you are a law-abiding citizen, it is in yourself really, so if you want to do something, then nobody forces you to do it. Well, that is the way I see it. The only thing that is going to change a person is you, if you are positive already.
Anon

Family relationships
A number of factors related to the Summer Arts Colleges appeared to have an influence on family relationships. The first related to the issue of containment: if the young person was not in the house all day, then arguments ceased, as the prime agent in the majority of disputes was felt to be the young person's inactivity. Once the young person was occupied during the day and no longer "lazing about" or "getting under her feet all day" the catalyst was removed.

In the past, I would just lie in bed all day with my music blasting and, I just don't know,

I think that she got a bit bored and a bit pissed off with me.
Anon

I know for a fact, if I was at home all day, I'd be waking up late, I'd have nothing to do but cause trouble and create mayhem for my sisters and my mum and stuff and there'd be just all arguments, fire blazing all the time, so it just kept me busy, it kept me on my feet, kept me up and running.
Anon

Young people who had previously nothing to discuss with their parents, as their time had been spent "smoking weed and stuff" or hanging about on the streets to "have a few beers, get blitzed" could show their parents, with pride, the work they had been completing, which opened the channels of communication again.

I was always going home and telling them what I was doing and that it was good.
Anon

In [the past] she was "You are wasting the electric" and me screaming "Shut up!" and just stupid things like that, but when I went to the Summer College, I was able to go "I have some photos here, look at these."

There was one point where we wouldn't ever talk really and that, but now if I have the slightest problem ... then we sit down and have a good proper chinwag; we have got a bond now.
Anon

While, in the past, a young person may have paid lip service to the notion of change, actually attending a programme during the school holiday provided a tangible demonstration that they had started the journey. A number of young people reported that for parents or carers, the extent of their achievement did not hit home until attending the final live performance, where the young people were able to showcase their talents. A parent becoming emotional at the sight of their children performing was not uncommon:

She ended up getting the day off and was dead chuffed with me at the end of it, even though I knackered up the end of the song. I lost it a bit, because my mam started crying and I looked at her and I could see, so I lost it and all the words came out wrong and back to front ... I don't know, I think that I had proved to her that I can sort myself out in the end.
Anon

This final performance held at the end of the project provided them the opportunity to prove not only to themselves that they could accomplish a set aim but also to others:

Because that were in front of hundreds of people there and we were able to show that we weren't just little rats, that we can do summat good.
Anon

Why the arts?
Can these positive outcomes be directly attributed to the role of the arts? A definitive answer is elusive, but there are some interesting clues. It could be argued that any full-time, well-organised educational programme should have positive outcomes whatever the content. This, though, ignores the young people's poor prior experiences of education and does little to explain their relatively high levels of engagement. In fact, the young people rated this programme more highly than their primary or secondary school experiences and almost three-quarters contrasted the Summer Arts College favourably with their last educational placement.

All the young people participated in at least three art forms, and there is no discernable pattern of more positive effects associated with, for example, the performing rather than visual arts. There is more evidence that the artists themselves commanded respect and increased engagement, which made the process of embedding literacy and numeracy much easier.

Conclusions
On the basis of this evidence, there appears to have been a marked drop in the numbers of young people offending and the number of offences committed during the Summer Arts Colleges. It is important not to overclaim on matters relating to desistance from offending, but there seems to have been a considerable reduction in offending, at least during this intervention, with those young people at highest risk of reoffending.

In the absence of a larger sample and control groups, caution must be exercised in claiming causal relationships between participation in Summer Arts Colleges and these outcomes. Nevertheless, there is such an impressive convergence of positive hard outcomes covering education, the arts and offending that, taken in conjunction with the attitudinal changes and the testimony of both staff and young people, it is reasonable to attribute much of this directly to the experience of these projects. However, it is salutary to note that while this programme may have provided a route out of criminal activity for some young people, others lost their way again as the focus and intensity of engagement was removed.

Chapter 10

From pathways to firewalls – a more "solid" approach to prison reform

Julian Corner, Chief Executive of Revolving Doors Agency

From pathways to firewalls – a more "solid" approach to prison reform

There are innumerable essays, articles and strategy papers proposing new approaches to prisons, few of which register in the policy-making process. Even when they do, a confident launch in a white paper followed by actual legislation is not enough to ensure that they are ever implemented. Remember community prisons? Intermediate custody? Community custody centres? Custody Plus for short-term prisoners? The last six or seven years have been strewn with false starts, many of which were set to "reshape" the prison system.

This essay tries to get under the skin of what might actually enable and motivate the system to change. Experience tells us that good ideas are not self-justifying, no matter how much evidence you are able to cite. In 2002 I led the team that produced the Social Exclusion Unit report *Reducing Re-offending by Ex-prisoners*. As many people commented when it was published, our analysis was much stronger than our recommendations. This was not because we couldn't think of any decent ideas. We just couldn't persuade departments to implement them. Up until our report, the SEU had pretty much got away with the assumption that watertight analysis would lead inexorably to fundable solutions. That was before we took on prisons.

Our analysis revealed a prison population that consisted of people drawn largely from the very bottom of the social heap. All the social exclusion factors and profiles that had been identified by the SEU to that date were found distilled and compounded in this small group who were churning in and out of unwholesome and crumbling institutions. Any systems that were in place to rehabilitate them were not merely ill equipped to respond, they were *un*equipped. And yet, even though systemic failure was inevitable, failure on the part of the individual prisoner was still handled punitively.

Our recommendations (the few approved for publication) were modest and ameliorative. Join up and target the service response better, particularly across the prison/probation divide. Remove some of the obvious obstacles and pitfalls facing released prisoners. Fill in some of the key gaps in services, most obviously in housing advice and support. Nothing too radical, given the extremity of what we had unearthed. Penal reformers sensed a "once in a generation" opportunity slipping away. Little did they know that even the most basic of these recommendations had been hotly contested for months within government.

It seems vital to the success of any new ideas currently bubbling through the system that we understand where this last "big push", commissioned by the Prime Minister himself, went wrong. We had all our arguments lined up. The level of need. The waste of money. The perverse incentives. The consequences of failure. The demonstrable gains of working differently. But little of this counted in the often acrimonious negotiations that led to the publication of the report.

With the benefit of hindsight, it seems to me that we were so preoccupied – understandably, I think – with the technical co-ordination of eight government departments' priorities and programmes that we never really registered that prison reform is always already a sociological, philosophical and ideological task that is completely caught up in historical movements that stretch far beyond view. The neat optimism of an "action plan", in this area of all others, becomes an attempt to extract some semblance of orderly administration from social forces that are deeply complex and problematic – and, we might also now add, chaotic. This is a commonplace of academic discourse, but translation of such into practicable action is very rare.

A real example from the time of the SEU report might illustrate best how these challenges seeped into and infected our thinking at every turn. Most people involved in this area of policy will be familiar with the "finance gap" that exists between release from custody and the first benefit payment made at least a fortnight later. The prison service's discharge grant equates to a maximum of £3.20 a day, from which all living expenses must be afforded. As a glaringly counterproductive pitfall in the system, it has become somewhat totemic as a focus for reform.

Here are some of the quandaries we faced:

(i) HM Prison Service pointed out (rightly) that the grant often found its way into the pockets of drug dealers within minutes of release. They wanted some kind of mechanism that prevented a person walking out into freedom holding more cash than they had seen for months or years. Others felt, on the other hand, that individual "fecklessness" wasn't the state's problem.
(ii) The prison service was keen to stop paying the discharge grant altogether because welfare payments were not its responsibility. The grant, it argued, was a relic of an outdated philanthropic notion of "prisoner's aid", and it had quietly been letting the grant wither on the vine by failing to index-link it for years.
(iii) The Department for Work & Pensions saw no additional role for itself, even though it

was the only other feasible source of money for an ex-prisoner. Ex-prisoners were no different in their eyes from any other "new jobseeker". Changes for prisoners, they said, would have to be made available for everyone. The equivalent case was cited of a mother who had stayed at home to look after her children, whose husband was the sole breadwinner but who then died, with the result that she suddenly had to claim benefits while she sought work ... Such were the technicalities with which the DWP occupied itself.

(iv) The DWP vehemently opposed any exception to its golden rule of retrospective payments for job seeking. One enlightened minister proposed that every prisoner should be given access to a job club pre-release, so that their last two weeks could be classified as job seeking, thus allowing them to claim jobseeker's allowance immediately on release. This was opposed by the DWP on the grounds that the person also had to be "available for work". The prison service refused to guarantee in return that every prisoner would have the right to temporary release for a job interview in their final two weeks, because they might be deemed a risk to the public ...

(v) A staged payment, part on release and part at the Jobcentre Plus office, was proposed, but was scuppered when a survey of prisoners revealed that around a third of them were receiving incapacity benefit in the community, and so had no need to attend the job centre.

(vi) News of our work leaked out to the media and led to vitriolic comments by members of the public being posted on a BBC message board, signalling a level of intolerance I could not have guessed at.

(vii) Ministers viewed the finance gap in the light of an "easy win" issue, which ought to demonstrate their ability to deliver competence and change. They were exasperated by the failure of civil servants to design or agree a politically deliverable solution, nor could they believe that something so straightforward could prove so complex and time consuming.

The amount of civil service time that was spent on this one small issue (and continues to be) was astonishing and depressing. One colleague commented that we had expended as much resource negotiating the issue between departments as the full cost of any of the proposed reforms. The lowest point was reached when the incapacity benefit data was revealed, causing one senior colleague to exclaim: "This is outrageous. If they're well enough to rob my house, they're well enough to work."

While the finance gap is a particularly vexed and vexing issue, it was but one of dozens of such systemic glitches and conundrums that we faced. It felt like we had been given a clapped-out old car to restore, and we were fiddling around with the wing mirrors and seatbelts when the engine and chassis needed replacing. Above all, what this episode highlighted was the lack of any clear or agreed philosophical underpinning on which we could build improvements to the prison system. The system was treated by many in government as a grotesque anomaly in the midst of other public services. Every which way we turned, there were civil servants describing paths leading to almost certain ruin. Every decent idea was deemed unworkable or unfair or unaffordable or unsellable. On this basis, the way forward could only have been forged by an act of political will, and as the BBC message board illustrated, this would have been foolhardy.

Without any philosophical underpinning to drive change, such as was used in welfare reforms, we found deep ambivalence at all levels regarding the rights and responsibilities of prisoners. As one person wrote on the BBC site:

If I let my child run wild, ignore his truancy and bad behaviour, turn a blind eye when he commits criminal acts and gets sent to prison, society will kindly educate, feed, clothe and now PAY him to re-establish himself in society in the optimistic hope that he will change his ways and become a good citizen? What happened to personal responsibility?

What is dismaying about views such as this is that we lack a coherent and compelling response. It is impossible to sell new ideas to politicians and the public when we can't answer such basic concerns.

To this day, the turnover of prisons ministers (most of them good) ensures that strategic drive and philosophical vision is almost impossible, and civil servants are left to fight over administrative detail. Indeed, prison policy often looks like a process of deciding on which details to prioritise in that particular year, and then of threading those details together to resemble a narrative. The proliferation of these details, and all of the agendas that accompanied them, overwhelmed the SEU's ability to see and address the fundamental philosophical challenges. These might be summarised as:

(i) the balance between social and individual responsibility in the reduction of (re)offending;
(ii) clarity on the role of prison in our society, and then in turn the role and attendant responsibilities of other services;

(iii) the implications for community-based services of the needs profile of the prison population; and
(iv) ways of drawing the political heat out of the prison debate.

If we had seen and addressed these challenges head on, we might have escaped – and so, paradoxically, resolved – much of the detail that beset us. This is obviously a very tall order, but an inescapable one. Many recent solutions have failed because they have sought to sidestep the problem, for example by finding arithmetical solutions to deep-seated trends such as the prison population. People simply don't buy it. The solution has to be found in the problem.

Balancing social and individual responsibility

Although we didn't know it at the time, the SEU report was attempting to reverse the swing of a pendulum that had gone too far in the direction of holding the individual responsible for their offending.

Between 1990 and 2005, the prison service and (particularly) the probation service were dominated by a drive to deliver cognitive behavioural programmes, imported word-for-word from North America. These programmes had been proven to reduce reoffending in North America by 10-15%, and so suited the drive in the UK for evidence-based policy. The zeal to implement these programmes, however, suggested that they suited another agenda as well. Their purpose was to improve the offender's cognisance of the impact, triggers and patterns of their offending behaviour, and persuade them of other ways of thinking and behaving. They thus placed the locus of offending behaviour firmly with what were described as the person's "cognitive deficits".

This focus on the person's cognitive make-up was so marked that it was delivered to the exclusion of even the most basic practical support. While it invested tens of millions every year in these programmes, the probation service had no national policies to address any of the following needs: homelessness; education and training; employment; mental and physical health; welfare and debt; alcohol; or family relationships. Drugs were prioritised, in line with the rest of the criminal justice system, because cognitive behavioural programmes existed for people whose offending was drug-related.

At one point, during the writing of the SEU report, our focus on the near-absent social issues was characterised by a senior civil servant as "unevidenced do-gooding". At the time I lacked the historical context to understand why this focus on the individual was

quite so pronounced. It is now clear that we were in the midst of a reverse swing of the pendulum away from the predominant doctrine of the 1970s that placed the locus of responsibility for offending almost exclusively with society. I cite my own ignorance to illustrate the point that those charged with developing policy rarely understand or are aware of the historical movements within which they are working.

As the finance gap case study illustrates, another problem with emphasising social responsibility is that it requires *all* social care and support organisations to agree on their responsibility at the same time. Even if this were possible, it would be hopelessly fragile and therefore inevitably temporary. It is also counterproductive, because if you lead an individual to believe that the state will set them back on the straight and narrow, and one street-level bureaucrat doesn't deliver, then you only alienate and disappoint the individual even further. Little wonder that individual responsibility resonated so strongly with successive governments.

The real frustration with this struggle between the opposite extremes of individual and social responsibility is that neither has evidence on its side. Empathising with the stigma and structural exclusion of very serious offenders is no more effective than delivering a 12-week Enhanced Thinking Skills course to a homeless, illiterate drug user who has no family and suffers from chronic depression. The point is that both these extremes are on a par with each other in their departure from common sense, and yet both have thrived as dominant doctrines in recent years.

We are currently somewhere between the two, a position that is both welcome and anxiety-provoking, because now we don't know what to believe in. The temptation is either to opt for the "bit of everything" approach (which is probably what most people need but don't get) or to get more sophisticated about tailoring and targeting. The latter is where the smart thinking is at the moment, and has even been dressed up as a coherent doctrine. However, it is in reality only a holding position, because (i) the services to be tailored and targeted are in short supply, and (ii) the line between individual and social responsibility is a very fine one and we simply don't have systems sophisticated enough to tread it.

We currently ask prison governors to co-commission a range of services, including health-care, drug treatment, learning and skills programmes, housing advice, family support services and offender management, each with a different commissioning system. Alongside all the traditional security and operational pressures, they must also find a way

of knitting all these services together in a way that creates a coherent regime. Somewhere in their prison, someone will still be delivering cognitive behavioural programmes that train the prisoner to rethink everything, while all around them a dozen other approaches have crept in, each with a different if not competing ethos. This is increasingly looking like a broken system.

We are slowly but surely getting to the point of acknowledging that the prison population is far too diverse and complex for any prevailing doctrine or for any off-the-shelf approach. In other words, there is no avoiding the fact that some – if not most – people are going to lose out. They will neither be helped nor held to account. One of the implications of the SEU report that we never followed through was that the government actually faces a very clear choice: either (i) it must cram each prison full of assessors, professionals, services and therapeutic programmes to give each prisoner exactly what he or she needs in exactly the right order; or (ii) it must reduce the diversity and complexity of the prison population. It is hard to avoid the conclusion that it is the population that needs to give.

Defining a clear role for prison

When Enoch Powell made his famous "water tower" speech in 1961, effectively ending the era of asylums, he captured the sense of these institutions having lost their social function as they fell outside of the prevailing ethos:

There they stand, isolated, majestic, imperious, brooded over by the gigantic water-tower and chimney combined, rising unmistakable and daunting out of the countryside – the asylums which our forefathers built with such immense solidity to express the notions of their day.[1]

It seems that while asylums lost their credibility, society did not lose its need for "immense solidity". The role of the containing, paternalistic institution re-emerged amid turn-of-the-century fears about the state's ability to deliver safety, security and justice.

What is now tragically clear is that very vulnerable people are invariably and often unintentionally swept up by every incarnation of our desire for solidity. We now know that many people in asylums had no need for incarceration. Among the eccentric, the homosexual, the promiscuous and the vagrant, there were many who couldn't cope with

1 http://www.mdx.ac.uk/www/study/xPowell.htm

the demands of everyday life, but who needed a helping hand, not a cell. In the community, they would have slept in "spikes", large dormitory blocks provided by local authorities, each housing hundreds and perhaps thousands.

Like asylums, spikes also lost favour as reformers pursued a vision of independent living. The intention was right, but the execution was flawed. In 1998, Frank Dobson, then Secretary of State for Health, acknowledged that we had failed to deliver independent living for the most vulnerable in our communities:

Care in the community has failed. Discharging people from institutions has brought benefits to some. But it has left many vulnerable patients to try to cope on their own. Others have been left to become a danger to themselves and a nuisance to others. Too many confused and sick people have been left wandering the streets and sleeping rough. A small but significant minority have become a danger to the public as well as themselves.[2]

This was written the same year that the Office for National Statistics revealed that nine in 10 people in prison had a mental disorder, and that half had at least three co-occurring disorders. Just as noteworthy was their finding that many of those with a mental disorder had received no support whatsoever for their mental or emotional needs from any community professional in the previous year: 42% with psychosis; 79% with a personality disorder; and 81% who had been drinking hazardously.[3] The SEU report later found that half of prisoners were not even registered with a GP,[4] and a third were homeless on imprisonment. Revolving Doors Agency found that nearly half of those arrested with a mental health problem were not registered for any of the statutory benefits to which they were entitled.[5]

What these statistics highlighted was the extent to which institutions of various types soak up those in society whom community services cannot or will not work with. They act as sumps, draining off the "hard to place". Prisons not only inherited this group almost directly from the asylums, but they inherited the *role* of the asylum in relation to the new generations of vulnerable people coming through. While the prevailing ethos of society may have moved on from asylums, the role of the institution was undiminished. We

2 http://www.dh.gov.uk/en/Publicationsandstatistics/Pressreleases/DH_4024509
3 Singleton, N et al *Psychiatric Morbidity among Prisoners in England & Wales* (Office for National Statistics, 1998)
4 Social Exclusion Unit *Reducing Re-offending by Ex-prisoners* (Cabinet Office, 2002)
5 O'Shea, N, Moran, I and Bergin, S *Snakes & Ladders: Findings from the Revolving Doors Agency Link Worker Schemes* (Revolving Doors Agency, 2003)

simply exchanged one institution for another.

While using asylums as social sumps was hard to defend, it is currently making even less sense in relation to prisons. In asylums, the mixing of socially vulnerable people with very ill people served often to distract attention from the latter, with the result that everyone suffered but particularly those in most need. In prisons, the mixing of vulnerable people with very dangerous people distracts and distorts the prison service's ability to protect the public, as so much of its attention must be given over to ensuring that swathes of socially disadvantaged people are properly cared and provided for. Inevitably this diminishes the focus on dangerousness.

In effect, our failure to provide decent support to vulnerable people in the community has allowed them to be drawn into another inappropriate institution, and has thus hopelessly clouded and confused that institution's purpose. History has repeated itself with exactly the same group. But by distinguishing this historical pattern, we can start to construct a narrative that takes us away from it.

The primary role of our prisons is to contain and correct dangerousness that imminently threatens society. Soaking up community failure weakens and confuses this function. On the other hand, the role of our community services is to ensure that vulnerable people can live independent lives and can realise their aspirations. The "free good" or "pressure valve" of the prison system diminishes the accountability of community services to get this right.

If each service is allowed and required to do what it does well, then the ambivalence regarding social and individual responsibility will also start to diminish. Any "social" interventions undertaken within prisons would start to be understood purely in terms of legitimate and imperative risk management. Not a product of apologist liberalism, but the exercise of clear professional judgment. The reason why the public debate is so clouded on this issue is because we are undoubtedly having to provide welfare to vulnerable people in prison who should not be there at all.

The current discourse is dominated by "pathways" and "journeys" in and out of the criminal justice system for socially excluded groups. All this achieves is a tidier version of the same broken system. We should be talking instead of putting in place *firewalls* not pathways, designed to prevent community failure permeating into our prisons.

The effectiveness of such a firewall could be policed by an annual census of the profile of

need of the prison population. Amazingly, the only authoritative profile data available dates back to the 1998 Office for National Statistics report. This is because the prison service only collects profile data for its own operational purposes.

If there was an annual census that included data on factors such as mental disorder, homelessness, drug use, family ties and connection to services, it would be possible to establish, year on year, whether prisons were soaking up particular problems from community services, and it would be possible to track those problems back to the accountable community services. This would allow the Ministry of Justice to talk to the Department of Health or the Department for Communities & Local Government and alert them to the telltale signs of failure within their own strategies.

Of course, we would need buffer zones between community services and the criminal justice system, so that the inevitable low-level offending by vulnerable groups could be picked up early and handled appropriately. Police and court liaison schemes and out-of-court disposals could cover most of this. But the crucial point is that community services would be held to account for designing and targeting their services to ensure that our prisons did not fill up with inappropriate inmates.

Implications for community-based services

A key implication for community-based services is that they would need to be much less involved in prisons. One of our mantras in the SEU was that "these are your people", and if they are in prison, then you need to be in prison. A real incentive for keeping people properly supported in the community is avoiding the headache of creating pathways in and out of custodial settings. A great deal of thought is currently going into "justice reinvestment", and this model should obviously be shaped by the need to correct once and for all the failure to invest properly in the services that can secure genuine independent living.

However, this is not just about redirecting investment from one place to another. It is clear that the safety net of services did not work for many vulnerable people because the services were not designed to meet people's needs in the first place. A large proportion of the people who gravitate towards prisons have complex needs; in other words, they are enmeshed in multiple dimensions of crisis and disadvantage. As services are currently designed, there is not a great deal that can be done about this. Each individual problem has its corresponding service, along with a system for accessing that service, and there is very little read across between systems. Similarly, when people with the most complex

needs were discharged from asylums or spikes, they fell straight into the gaps between services. Where attempts have been made to find a response, the behaviour of services has been almost as chaotic as that of the people they have attempted to help.

This was acknowledged in a recent (more sophisticated) report on social exclusion, *Reaching Out: An Action Plan on Social Exclusion* in 2006:

Services are focused on delivering to the majority and are not well set up to address the needs of those with more complex problems ... Individual agencies ... often miss those who have multiple needs but need less help from any one service. Thus, people may not meet the threshold of any given agency to trigger a fuller intervention – despite the scale of their problems or the harms caused to the communities in which they live ... These high-need individuals ... are often also unable or unwilling to navigate their way through public services to get the support they need. Their contact with services is instead frequently driven by problematic behaviour resulting from their chaotic lives ... and management revolves around sanctions such as prison, loss of tenancy and possible removal of children.[6]

In response to this report, the government conceded that it did not know what the best way of supporting this group of people might be. Not only were there insufficient means of joining up the approaches and priorities of existing siloed services, there were no clear strategies for reaching and working effectively with a group of people whose lives were so damaged that they were alienated from every available source of support.

As a result of this work, a pathfinder focused on adults facing chronic exclusion has been launched, with 12 different approaches being tested. In a sense, this new scheme has completed the logic of the previous social exclusion report on prisons. If our most socially excluded citizens are to be found in prison, then lessons need to be learned in the communities from which they came, and not necessarily in prison. This is a line that will need to be held robustly and sensitively. Whether there is the strategic overview and follow-through to connect this promising pathfinder initiative with prison reform remains to be seen.

Perhaps the most effective way of linking the two would be to introduce a local area agreement indicator in 2011 (when the pathfinders are due to report) that requires local

6 HM Government *Reaching Out: An Action Plan for Social Exclusion* (2006), p74

services to drive down the numbers of people being sent to prison from their areas. Such a measure would not interfere with an independent judiciary, which would continue to sentence on precisely the same basis. Instead, it would recognise the role of mental health, drugs and housing services in preventing higher-level crime among the more challenging and vulnerable people using their services. This would be a strong move, because it would reduce the prison population by reducing the offending that drives sentencing.

Drawing out the political heat

It has been shown repeatedly that criminal justice solutions to social problems simply do not work. The reason why politicians wade out deeper and deeper into this hot water is because "being nice" to offenders simply doesn't wash with the general public. While we all support "tough on the causes of crime", this has never read across to "tough on the causes of reoffending". Even though crime and reoffending are the same thing, being tough on the cause of reoffending still reads as "soft on offenders". If we are to exercise genuine social responsibility, we have to get to the causes of crime *before* imprisonable crimes have been committed. As discussed, this requires early interventions and social solutions designed and tailored for those who need them most.

It is hard to be nice to a vulnerable person once they are in prison because, as in every institution, they are lumped together with everyone else and tarnished them with the same stigmatising brush. The public will never be able to make fine distinctions between a prisoner who is a social victim and a prisoner who is a calculating perpetrator, because prisons are meant to provide "immense solidity", not beg difficult and uncomfortable questions. Hence ministers need to embrace solidity and use it to drive the case for more effective prisons focusing exclusively on the most dangerous offenders.

The minister who can finally deliver prisons that work in securing public safety will be the minister who puts careful measures in place to monitor the needs of prisoners and who can then argue hard with colleagues in health and social care departments that they must deliver equally effective community services. By focusing prisons on the people they were designed for, it is almost guaranteed that the effectiveness of cognitive behavioural programmes will increase immeasurably, causing reoffending to fall and increasing public (and Treasury) confidence. An approach that holds health and social services accountable for people staying out of prison will find little political opposition, and will even reduce the public and political focus on prison releases.

If there is a lesson from the last "big push", therefore, it is to acknowledge that people

want prisons because they want a society that feels just, safe and robust. If prison reform is seen to be driven by a desire to deliver on these most basic of needs, then it might just be achievable. We have to argue simply and consistently that prison reform is not hell-bent on undermining the pillars of the state; it is about giving them the solidness that most of us need.

Chapter 11

Reducing reoffending – an offender-centric business model

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Reducing reoffending – an offender-centric business model

This paper describes how an "offender-centric" business model would work to reduce reoffending. It is written as if the model already existed, in around 2015. An account is also given of how such an apparently radical model might come to gain acceptance.

The paper's overall thesis is that if the government is serious about using the offender management system as a lever to drive down reoffending rates, it needs a new business model for the service which has the right kind of incentives.

To explore this further, let us introduce an imaginary private company called Reducing Reoffending plc.

Reducing Reoffending plc

Reducing Reoffending plc has been set up for one purpose: to reduce the level of re-offending in the UK population. It operates under a contract to the UK government and is paid solely by results. The company is financially rewarded if it shortens the average time it takes for first-time offenders coming into contact with the justice system to desist from reoffending. The pay of its chief executive and directors depends entirely on the extent to which this goal is achieved.

The incentive to reduce the average length of criminal careers means that Reducing Reoffending plc will continue to gain commercially from successful delivery even as its customer base shrinks.

Reducing Reoffending plc's management team have been to business school, so they follow certain principles of good business strategy and management:

- Understand your customers
- Develop a tailored and targeted product range
- Involve customers in product design
- Design an organisational structure that supports your business strategy

We will now explore how the company might apply each of these principles to its offender management operation.

Principle 1: Understand your customers

Reducing Reoffending plc knows that it will generate a profit only if it is able to provide services to offenders who are ready to make a change to their lives and desist from crime. Supplying services to those who are not able or willing to change will generate no profit for the company.

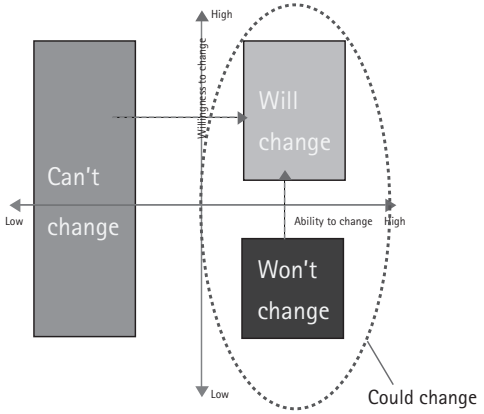
It has, therefore – in line with good marketing practice – segmented its customer base along attitudinal lines. An old-fashioned demographic or crime-type segmentation is not helpful for this organisation, because it needs to know about the likely behavioural response of its customers to the services it wants to provide.

Using available data and research on offending careers, criminogenic need and risk profiles, three segments are identified:

- those who *can't change* (perhaps because they are drug abusers, or have mental health problems);
- those who could change but *won't change* (because they choose to be criminals for whatever reason); and
- those who *will change* (in other words, those who do not want a criminal career and are willing and able to change).

The diagram below summarises how this simple segmentation might look, where ability and willingness to change are the two variables used to characterise the customers.

Figure 1: The segmentation of offenders along attitudinal lines



The early estimates of the percentage of offenders in each segment are: 50% *can't change*, 25% *won't change*, and 25% *will change*.

Principle 2: Tailor and target your product range

The company provides a different service offering for each segment. It has a screening process to identify which segment an offender is in.

- The Can't Change market is offered no services direct from Reducing Reoffending plc, but is directed to other organisations that can address underlying factors such as drugs, mental health and illiteracy. This is a worthwhile investment for the company because it boosts the potential size of the Could Change group.
- The Could Change segment is screened to identify those who belong in the Won't Change sub-sector. No services are offered to this market. Indeed, they are referred on to Punishment & Deterrence plc for processing.
- The Will Change customers receive most of the company's attention. There is a substantial research and development budget deployed to develop products that meet the needs of this segment, and these customers are engaged in the process of developing them.

Principle 3: Involve your customers in product design

Reducing Reoffending plc knows that it is most likely to achieve its business objective and maximise profit if it co-designs its services in partnership with its customers.

Offenders in the Will Change group (those that have demonstrated that they are committed to changing their lives) are given vouchers that they can use to build their own rehabilitation service package.

- With the support of a company mentor, the customer designs the package that they think will work for them.
- Termination of an offender's sentence will be contingent on them completing the co-designed rehabilitation package successfully (which is likely to have a restorative justice element to it).
- Engagement with a company mentor is required throughout the process, and non-completion leads to a reprofiling of the offender and a possible shift to the Can't or Won't Change segments (and a withdrawal of services).

Reducing Reoffending plc has built conditionality into much of its service, alongside other

public behaviour changing methods. Thus, prisoner release depends upon successful conclusion of rehabilitation programmes such as literacy, numeracy, anger management or parenting programmes. The concept of indeterminate sentences for public protection (IPPs) has been shifted to indeterminate sentences for rehabilitation. This cuts both ways, as early completion of rehabilitation results in early release. This latter aspect was incorporated at the instigation of offenders involved in the service design. Conditionality served, in part, to counter the notion that the new approach was "soft" on criminals.

Principle 4: Design an organisational structure that supports your business strategy
Reducing Reoffending plc specialises in designing and delivering rehabilitation support services to customers who are willing and able to change. Its staff are recruited and trained for this express purpose.

The company does not provide services in markets where it has no competitive advantage or operational expertise. This means:

- It does not compete in the custody and punishment market, where the public and private prison service providers dominate.
- It outsources highly specialised services – such as those designed to encourage customers to join and remain in the target Will Change group – to niche providers (some of which are from the voluntary sector).
- It forms collaborative partnerships and networks with organisations that can have an upstream impact on the size of the company's target market. This includes organisations that help potential customers deal with their drug, illiteracy and other social problems.

Why might it happen?
The coincidence of many factors might produce the conditions for Reducing Reoffending plc to be born:

A new government with a new mandate
A new deal between the government and the electorate could cast the balance between tax and public expenditure not as investment versus costs but as money well spent versus money wasted. In these circumstances higher public expenditure would have to be earned by first delivering higher value for money. Taxation would in effect be capped at 40% of GDP unless or until public service performance were to improve noticeably.

Offenders as customers

The beauty of having a business for reoffending reduction would be the absence of emotion and history in deciding how to do it. Thus Reducing Reoffending plc could adopt best organisational practice specifically by organising around offenders.

While society is the customer for punishment and incarceration, the offender is the customer for rehabilitation, just as you or I are for our healthcare. Emotionally we find it difficult to divide our response to a street thug or burglar into a desire for retribution on the one hand and concern and care on the other. A business has no such difficulty, when given a clear brief and not required to deliver conflicting objectives.

The world is awash with private, public and voluntary organisations that have transformed the quality and efficiency of their services by concentrating on the attitudes and behaviour of their customers.

Sticking to one's knitting

Although a technical rather than visibly political issue, another enabler of Reducing Reoffending plc might be the realisation that the prison service was not the right organisation to rehabilitate to any significant extent. The prison service has proved exceptional in terms of preventing prison escapes and housing a prison population well in excess of national capacity without major incident, and it has many rehabilitation programmes.

But, as extensive research and theory have demonstrated, organisations should "stick to their knitting" and be acutely aware of what they are good at. Just as conglomerates have failed, so it might prove impossible to have the culture, processes and systems for punishment/incarceration and rehabilitation in the same organisation.

Recognition that the criminal justice system needs new institutions

The criminal justice system has depended on new institutions for really significant change and improvement – the Bow Street Runners, police forces, magistrates courts and the introduction of prison as a liberal alternative to transportation, among others.

The 20th century saw, in the main, the development and consolidation of the criminal justice institutions. But their major reform and innovation in service slowed as the Treasury persisted with institutional funding. Leaders within and without the criminal justice system realised that the logjam in performance could be cleared only with new institutions.

High-quality analysis

While the data had existed for years (from police, court and offender records), it took some bright young analysts to turn it into information to shift ministers' and civil servants' thinking.

The first change might be to develop a far more differentiated – personalised – service offer. The old offender management system grouped prisoners into a small number of security classifications (category A, B, C prisons and so on), and the probation service used four classifications based on assessed risk and severity of sentence.

But other countries had developed far more sophisticated systems that allowed them to categorise – and hence deal with – offenders in a much more targeted way. The Netherlands, for instance, operated a system based on 40 offender types and 40 offender pathways, each with a different configuration of services designed to rehabilitate offenders.

The first customer segmentation in the UK distinguished between offenders who were "young thieves", "career criminals" and "mid-life mistakes", each demanding a very different response from the criminal justice system than did the essentially one-size-fits-all approach of the past.

Conclusion

This paper has described one possible future of a reformed system. The questions it raises are twofold. First, will it take a Reducing Reoffending plc to bring about the change needed, or is a milder, less challenging option realistic? Second, are the circumstances described above, or something like them, feasible?

The problem with the radical option described is that it overturns many existing power bases, jobs, roles and rewards. Big change is always destabilising. So a question arises about whether incentives from within to change are sufficient for customers' interest to be put first. I would like to think that somehow vision will triumph from within the system. If it does not, the politicians must do what they are elected for.

The Smith Institute
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