



House of Commons
Justice Committee

Towards Effective Sentencing

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Volume I

Report, together with formal minutes

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The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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Footnotes

In the footnotes for this Report, references to oral evidence taken by the Justice Committee are indicated by 'Q' followed by the question number. References to oral evidence taken by the Home Affairs Committee are indicated by 'Q' followed by the question followed by HAC as in 'Q23 (HAC)'. References to written evidence published by the Home Affairs Committee are indicated by the page number as in 'Ev 12'. References to written evidence published by the Justice Committee are indicated by the page number followed by JSC as in 'Ev 12 (JSC)'.

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Summary

The almost monthly rise of the prison population in England and Wales indicates a wider problem with sentencing policy. We consider the problem to be so serious that we have made it the subject of our first major criminal justice inquiry, in order to consider how to move towards an effective sentencing policy.

The purpose of the Criminal Justice Act 2003 was to provide overall structure and clarity to sentencing, by reserving prison for the most dangerous offenders and by making effective provision to deal with other offenders through community sentences. This report evaluates the extent to which the Act's provisions have been implemented, and its impact on sentencing.

We looked at the main provisions in the 2003 Act designed to meet this strategy. We are concerned that a lack of forethought about the new indeterminate sentence of Imprisonment for Public Protection (IPP) resulted in a sentence which was insufficiently targeted at the most dangerous offenders. We are very concerned that the Government failed to engage in any adequate resource and capacity planning for the coming into effect of this sentence—particularly given the context of a general trend towards 'uptariffing' by sentencers, which together with Imprisonment for Public Protection is largely responsible for the severe current pressures on prison capacity. These sentences were the 'flagship' in the Government's crime reduction and public safety agenda in the 2003 Act, but this policy was not accompanied by the level of custodial resources required to make them work. Meanwhile, the desired shift to community penalties where public safety is not at issue has not occurred to the extent that was hoped. Similar failures to consider practicalities and resource needs have prevented the effective use and widespread implementation of the new community sentences to achieve this desired policy shift. Further we cannot see how extending a short custodial sentence by a few weeks contributes significantly to public protection, but it certainly does absorb present resources which could be much better used.

Resources are a fundamental issue in delivering an effective sentencing strategy. So too is public confidence in the criminal justice system. The Government has failed to provide the information and leadership required to facilitate an informed public debate, while the media climate for such debate often depends on isolated discussion of particular cases which inhibits calm consideration.

Furthermore, while the Government accepted the recommendations of Lord Carter's review of prisons, we found his report deeply unimpressive. We are concerned that this review was not evidence based and was a missed opportunity. It should have considered how to develop new ideas to address the problems with sentencing and provision of custodial and non-custodial facilities in England and Wales. The Government has not learnt vital lessons from past experience. It needs to adopt a strategic approach to sentencing.

Yet more criminal justice legislation, combined with a lack of time for new types of sentences to settle in, and the fact that key parts of the 2003 Act have not been implemented, has produced a complex and incomplete framework.

We make a series of detailed recommendations around these issues in order to make further progress towards effective sentencing. We urge the Government, the political parties and the media to promote informed and meaningful debate about sentencing policy.

1 Introduction

The inquiry

1. The purpose of the Criminal Justice Act 2003 was to provide overall structure and clarity to sentencing in England and Wales by reserving prison for the most dangerous offenders, while moving lower level offenders away from short prison sentences into robust and rehabilitative community punishments.¹ The purpose of this report is to evaluate to what extent the provisions of the Criminal Justice Act 2003 have been implemented, and what impact this had on developing an effective sentencing policy.

2. This inquiry is set within the context of a historically high prison population in England and Wales. On 31 May 2008 the population in custody reached a record high of 82,822.² The last nine years have brought a 26% rise in the number of people locked up with 16,000 new prison places since 1997.³ The over 80,000 people held in prison means that per 100,000 people we are holding 152 in prison—the highest rate among major countries in Western Europe, far in excess of Germany, France, Italy, Denmark and Ireland.⁴ Recent crises, involving overcrowding and the necessity of early release schemes, have drawn attention to the problems in the criminal justice system in England and Wales. The continuing upward trend in the prison population has been maintained, and enhanced, by the implementation of the Criminal Justice Act 2003, and points to more fundamental problems with both prisons and sentencing policy.

3. This report therefore evaluates the key issues that the Criminal Justice Act 2003 was designed to address and the extent to which the 2003 Act has succeeded in its aims. We also examine what steps can be taken to address problems that remain including those which were created by the 2003 Act. We explore the recent history of government initiatives relating to sentencing, focusing on the provisions of the 2003 Act, in particular:

- the impact of introducing risk-based sentencing in the form of indeterminate Sentences of Imprisonment for Public Protection;
- the attempt to establish the community sentence as a credible sentence which can provide an alternative to short custodial sentences; and
- the need for sentencing and criminal justice structures that can provide appropriate responses to people with different needs and vulnerabilities.

4. We found a remarkable degree of consensus amongst judges, practitioners, politicians and pressure groups alike, not only about the fact that prison should be the last resort, and reserved for the most serious and violent offenders, but also that non-custodial options are often more effective in reducing re-offending and in rehabilitation. This consensus makes

1 Home Office, *Making Sentencing Clearer*, 2006

2 Ministry of Justice Statistics Bulletin, *Population in Custody Tables England and Wales May 2008*, 30 June 2008

3 Home Affairs Select Committee, *Towards Effective Sentencing: Oral and Written Evidence*, HC 467, Ev 69; all subsequent references to written evidence refer to this volume unless otherwise stated.

4 International Centre for Prison Studies *Prison Brief*, updated May 2008

it even more striking that we find ourselves facing the highest number of prison inmates since records began.⁵

5. The Home Affairs Committee began its inquiry *Towards Effective Sentencing* on 6 February 2007 in order to review the implementation and the impact of the Criminal Justice Act 2003 on sentencing policy.⁶ The Home Affairs Committee collected a wide range of written evidence and also took oral evidence from the Rt Hon Lord Woolf, the former Lord Chief Justice.⁷ On 9 May 2007 responsibility for sentencing policy transferred from the Home Office to the newly created Ministry of Justice. We considered this issue to be so serious that we continued with the inquiry. A full list of witnesses who gave oral evidence in our inquiry is available on page 97. We are grateful to our colleagues on the Home Affairs Committee for their contribution to this inquiry.

6. During the course of our inquiry the Government introduced what is now the Criminal Justice and Immigration Act 2008. Many of the measures in this Act were designed to address shortcomings in the provisions of the Criminal Justice Act 2003. Where our witnesses commented on the value of the provisions expected or included in this legislation, we have been able to consider the appropriateness of the Government's solutions. It is clear from many of the topics which we have considered that the effectiveness of implementation, in particular the provision of sufficient resources and the way in which sentencers use community sentences, is every bit as important as the policy intention behind the criminal justice legislation. We will continue to monitor the effectiveness of the 2008 Act.

5 See for example HC Deb, 1 July 2008, col. 880W

6 The Terms of Reference for the Home Affairs Select Committee inquiry can be found at http://www.parliament.uk/parliamentary_committees/home_affairs_committee/hacpn070206no10.cfm

7 Home Affairs Select Committee, *Towards Effective Sentencing: Oral and Written Evidence*, HC 467

2 Background

The development of sentencing policy

Making Punishments Work: The Halliday Review

7. On 16 May 2000 the Home Secretary announced a review of the sentencing framework. The Review, led by John Halliday, was tasked with considering what principles should guide sentencing. The Report—*Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales*—was published in July 2001.⁸ The Review identified “limitations and problems” with the sentencing framework which had been established by the Criminal Justice Act 1991. This Act “provided a general framework for sentence decision making for the first time”.⁹ The basic principle was that the severity of the sentence imposed should reflect the seriousness of the offence committed.¹⁰ However, Halliday identified an erosion of this approach, which, he argued, had resulted in a “muddle, complexity and a lack of clear purpose or philosophy” in sentencing policy.¹¹

8. His Review also identified the need to put into practice “what works” in order to reduce re-offending, including developing the work of the Probation Services and incorporating restorative justice schemes.¹² Halliday emphasised the need for improved public confidence in sentencing which, he argued, could be achieved through the creation of a principled sentencing framework.¹³ Many of the Report’s recommendations were incorporated into the Government’s 2002 White Paper *Justice for All*, which formed the basis of the new sentencing framework introduced by the Criminal Justice Act 2003.

Criminal Justice Act 2003

9. The Criminal Justice Act 2003 set out a new sentencing regime, the stated aim of which was, “to create a sentencing framework in which the public has confidence and which puts public protection at its heart”.¹⁴ The Act set out key principles for determining custodial sentences: that prisons should be targeted at “serious, dangerous and violent offenders”.¹⁵ Section 152 (2) of the 2003 Act declared:

“The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with

8 John Halliday, *Making Punishments Work: A Report of a Review of the Sentencing Framework for England and Wales*, July 2001. Hereafter referred to as *The Halliday Review*.

9 Home Office, *Making Sentencing Clearer*, 2006, p.3

10 *Ibid.*

11 *The Halliday Review*, para 0.2

12 *The Halliday Review*, para 0.3

13 *The Halliday Review*, chapter 2

14 Ev 54

15 Ev 54

it, was so serious that neither a fine alone nor a community sentence can be justified for the offence”.¹⁶

The Government claimed that the Act focused on reserving custodial punishment for serious and violent offenders who present a risk to the public, and on promoting robust community sentences for the majority of non-violent offenders. The Government also identified that there were people in prison who should not be there, including vulnerable women and young offenders; those requiring mental health treatment; the majority of non-violent offenders with low level disorders, and those on remand for less serious offences.¹⁷

10. For the first time the purposes and principles of sentencing were put into statute in the 2003 Act.¹⁸ The purposes of sentencing as set out in the 2003 Act are:

- a) The punishment of offenders;
- b) The reduction of crime (including its reduction by deterrence);
- c) The reform and rehabilitation of offenders;
- d) The protection of the public; and
- e) The making of reparation by offenders to persons affected by their offences.¹⁹

The Prison Reform Trust noted that in laying down the purpose of sentencing for the first time, the Act provided “a robust metric for its [sentencing policy] effectiveness”.²⁰ While Professor Andrew Ashworth QC criticised the 2003 Act for simply providing a long list of the purposes for sentencing without any sense of priority or clarity of purpose,²¹ Lord Woolf welcomed this as “a very satisfactory statement by Parliament of what sentencing should do”.²² However, he expressed a doubt that the current sentencing regime had achieved these purposes. He said “perhaps we achieve the punishment of offenders, but when we look at the other four purposes our record is very poor”.²³ The 2003 Act contrasts with the Crime and Disorder Act 1998, which set out a clear statement of the purpose of sentencing in relation to the youth justice system rather than the shopping list provided in the 2003 Act.

11. The Prison Reform Trust claimed that since the Criminal Justice Act 2003 was intended to bring a strategic overview to sentencing and to manage the population in prison, it cannot be considered to have succeeded, especially as crucial provisions have yet to be implemented, for example Custody Plus and Intermittent Custody.²⁴ It stated that “in

16 Criminal Justice Act 2003, S 152 (2)

17 Home Office, Making Sentencing Clearer, p. 6, para 1.14

18 Ev 53

19 Criminal Justice Act 2003, S 142 (1)

20 Ev 108

21 Ashworth, Andrew, Sentencing and Criminal Justice, (Cambridge, Fourth Edition), (2005), p.99

22 Q 6

23 Q 6

24 See chapter 4 of this report for further detail on Custody Plus

fact, it has failed entirely, since it was explicitly not a raft of disparate measures but an attempt at a coherent strategy”.²⁵

12. In its 2006 document *Making Sentencing Clearer*, the Government acknowledged that although the “sentencing framework has been considerably improved by the Criminal Justice Act 2003, there is still more that we need to do,” specifically in ensuring that the system is clearer to the public, and that “we have the most effective policies in place to ensure the public is protected”.²⁶ The document sets out a wide range of measures in relation to the way that sentences are expressed and calculated, “to consider further improvements to custodial sentences and to consider the best use of probation resources”.²⁷ The proposals included:

- changes to indeterminate Sentences,²⁸
- changes to the powers of the Probation Service and a discussion of the role of probation resources;²⁹ and
- changes to community orders.³⁰

Some of the Government’s proposals were included in the Criminal Justice and Immigration Act 2008, and are discussed in greater detail below.

Change and trends in the prison population

13. Despite, and to some extent because of, a raft of new policies and legislation since 1991, the prison population in England and Wales continues to rise. Paul Kiff of the Cracking Crime Scientific Research Group told us that at the end of 1995, there were 32,000 people in prison serving sentences of over 12 months in length. This number had risen to 54,000 by 2005, an increase of 70%.³¹ The Government acknowledged this, and wrote, “sentencing has become tougher over the last decade, with offenders more likely to get a prison sentence and [...] the sentence is likely to be longer. The total number of offenders sentenced to immediate custody for indictable offences increased by 26% from 1995 to 2005”.³² Rt Hon Jack Straw MP, Lord Chancellor and Secretary of State for Justice told us that the average sentence length had risen from 14.7 months in 1995 to 16.8 months in 2005.³³

14. Professor Rod Morgan, the then Chief Inspector of Probation, explained that one of the main reasons for the increase in the prison population was increases in the severity and

25 Ev 109

26 Para 1.21, p. 7

27 Para 1.21, p. 7

28 p.13, see discussion in chapter 4

29 p.15 and p.18, see discussion in Chapter 5

30 p.19, see discussion in Chapter 5

31 Ev 76

32 Ev 54

33 Q 242

length of sentences, described as ‘uptariffing’, which, he argued, had occurred as a result of changes brought about by the 2003 Act. He explained:

“Sentences have become substantially more severe, community penalties displacing financial penalties (and to a lesser extent discharges) and immediate custody displacing community penalties and suspended sentences. Furthermore, the custodial sentences being imposed are longer”.³⁴

15. We found broad agreement with Professor Morgan’s claim. The trend he describes goes diametrically against the stated intentions of the 2003 Act. The Prison Reform Trust stated that the rise in the prison population was “not a reaction to an increase in crime but an aggregate of sentencing changes”.³⁵ It identified two main reasons for the increase in the prison population: first, that sentencers are imposing longer prison sentences for serious crimes and, second, that they are more likely to imprison offenders who 10 years ago would have received a community penalty or even a fine.³⁶ Nacro also acknowledged this trend,³⁷ while Lord Carter of Coles argued that “the key explanation for the growth in the use of prison and probation over the last decade is the increased severity in sentencing”.³⁸

16. The Council of HM Circuit Judges described the current situation as “the results of an absence of sensible planning for the escalation of the prison population which was a predictable result of the implementation of the Criminal Justice Act”.³⁹ It also stressed that “there is an urgent need to address the root causes otherwise steps taken may represent nothing more than stopgap measures”.⁴⁰ We agree. The Lord Chief Justice added: “One of the problems may well be that judges are not confident that if they impose a community sentence, it is going to be properly administered and the punishment they would like to see imposed is really going to be effective. This is a question of resources; we know that you do not always have adequate resources for the community sentences that magistrates or judges are imposing”.⁴¹

17. Changes in sentencing policy and practice leading to longer sentences have been a significant contributor to the unexpected and unplanned increase in both prison and probation populations. We urge the Government to address sentencing policy in a more considered and systematic way and to reconsider the merits of this trend. This would also provide an opportunity to deal with the proliferation of a complex range of unimplemented, or ineffective provisions.

34 Morgan, R, “Thinking about the Demand for Probation Services”, *Probation Journal* 50 (1), (2003), pp.7-19

35 Ev 109

36 Ev 109

37 Ev 87

38 Strategy Unit, *Managing Offenders, Reducing Crime A New Approach*, 11 December 2003 p.11

39 Ev 24. Key amendments to the Acts address some of this. These issues are addressed in more detail in subsequent chapters of this report.

40 Ev 24

41 Uncorrected transcript of oral evidence on the Administration of Justice, taken before the Justice Committee on 2 July 2008, HC (2007-08) 913-i, Q 32

The proliferation of legislation

18. The Council of HM Circuit Judges reminded us that the Criminal Justice Act 2003 was preceded by the Powers of Criminal Courts (Sentencing) Act 2000, which, it stated, at the time was “heralded as a codification and simplification of sentencing but which was undermined by a series of amendments within months”.⁴² Most of the provisions of the 2003 Act came into force in April 2005, and apply only to offences committed after that date.⁴³ The Council made the point that the pace and volume of constantly changing legislation not only “imposes enormous burdens on all engaged with the criminal justice system and greatly increases cost” but that “there is an added complication that for a period two different sentencing regimes exist, the application of which depends upon the date of the commission of offences”.⁴⁴ It expressed a serious concern that “on many occasions a change in policy results in changes in working practices that require effort and reorganisation yet once implemented, and before there has been time to evaluate the results properly, another change takes place”.⁴⁵ Sir Igor Judge illustrated the difficulties the proliferation of legislation caused in practice, describing a situation in which he “had to consider five different Acts of Parliament, starting with the Sexual Offences Act 1997, going through the Crime and Disorder Act 1998, a bit of the 2000 Consolidation Act—that was only in force for eight months but it was a crucial eight months when he [the defendant] had done something and been back in court—another Act, and the Sex Offences Act 2003. That is not right”.⁴⁶

19. There is clearly a dysfunctional relationship between those elements that are essential to the criminal justice system, stated government policy, legislation (including subsidiary legislation rules and guidance) and sentencing practice (in terms of decision taken by sentencers). This is not a new problem but it is now essential for the nettle to be grasped.

20. The sentencing regime has been complicated by both the pace and the volume of constantly changing legislation. In addition to dealing with new or short-lived criminal offences, sentencers are faced with Acts intended to simplify and clarify sentencing regimes that are themselves swiftly amended. The Government should undertake much more effective policy appraisal in advance of legislation, rather than implement hasty legislation which has previously resulted in unplanned but predictable consequences.

21. The Criminal Justice Act 2003 is a particular example of legislation which was not thought through and had inadequate provision for its implementation.

The Government’s response: The Carter Review

22. The Government’s response to the ever increasing prison population has been twofold. Firstly, through the Criminal Justice and Immigration Act 2008 the Government is seeking to amend some of the most troublesome aspects of the Criminal Justice Act 2003, and to

42 Ev 23

43 Ev 23

44 Ev 23 and 24

45 Ev 23

46 Q 210

reduce the demand for prison places.⁴⁷ Secondly, the Government has looked at the most cost-effective means to meet the current and future demands for additional prison places, including building new prisons. In June 2007, the Government commissioned Lord Carter of Coles to undertake a review of the use of custody in England and Wales. On 24 October 2007, Jack Straw told Parliament that “a major review conducted by Lord Carter of Coles is currently considering sentencing policy as part of a wider examination of prison and Probation Services”.⁴⁸ Lord Carter was asked “to consider options for improving the balance between the supply of prison places and demand for them and to make recommendations on how this could be achieved”.⁴⁹ This was a much narrower request than the review of all sentencing provision, both custodial and non-custodial, which had been recommended by John Halliday, a former senior civil servant in the Home Office, five years previously but which is yet to take place.⁵⁰

23. In December 2007, Lord Carter published his report *Securing the Future: Proposals for the efficient and sustainable use of custody in England and Wales*.⁵² Lord Carter summarised the primary findings of his review as follows:

Primary findings of the Carter Review

- Demand for prison places will outstrip the rate of supply of prison places in the short, medium and long-term unless immediate action is taken;
- An effective, integrated and transparent planning mechanism which reconciles penal capacity with criminal justice policy is needed. Without this, there is very little transparency or predictability in the effect of sentencing decisions on penal resources;
- Elements of the current capacity programme offer poor value for money and build further strategic and operational inefficiencies into an already inefficient prison system, principally because it has had to proceed on an emergency basis to keep pace with demand; and
- There is significant scope for increasing the efficiency and value for money of the prison system in the medium and long-term, both in respect of the services that are delivered and the way in which they are delivered.⁵¹

47 HC Deb, 5 December 2007, col. 828; see discussion of changes to sentences for Imprisonment for Public Protection (chapter 3) and changes to recall provisions (chapter 6)

48 HC Deb, 24 October 2007, col. 276

49 Lord Carter’s Review of Prisons, *Securing the Future: Proposals for the efficient and sustainable use of custody in England and Wales*, December 2007

50 Q 371

51 *Ibid*, p. 16

52 Lord Carter’s Review of Prisons, *Securing the Future: Proposals for the efficient and sustainable use of custody in England and Wales*, December 2007

24. Lord Carter subsequently made several key recommendations, including the following:

Key recommendations in the Carter Review

- A significant expansion of the current prison building programme should begin immediately so that up to 6,500 additional new places, on top of the significant expansion already planned, can be provided by the end of 2012;
- Larger, state of the art prisons should be planned and developed now so that from 2012 there can be approximately 5,000 new places that will allow for a programme of closures of old, inefficient, and ineffective prisons offering better value for money and much improved chances of reducing re-offending and crime;
- That a structured sentencing framework and permanent Sentencing Commission should be developed, with judicial leadership, to improve the transparency, predictability and consistency of sentencing and the criminal justice system; and
- There are grounds for a more efficient approach to the way operations and headquarters' overheads are structured and managed.

25. HM Chief Inspectors of Prisons and Probation, the President of the Prison Governors' Association and the Director of the Prison Reform Trust unequivocally criticised Lord Carter's review as disappointing in its lack of vision, breadth and depth. Anne Owers, the Chief Inspector of Prisons, described the report as a "missed opportunity" in that it focused on efficiency rather than effectiveness in terms of rehabilitation and resettlement of offenders. She compared this "belated and narrow response" unfavourably with Lord Woolf's 1991 Strangeways Report and its broad approach.⁵³ She told us:

"My fear is that what we will get is more prisoners and worse prisons, a focus on efficiency rather than effectiveness, and also a moving away of resources from those things which are currently leading to the rise in prisoner numbers, in other words things like the over-stretched Probation Service, the under-funded mental health services, the kind of things that Baroness Corston thinks are necessary for women and the kinds of support that are needed for those with complex needs coming out of prison. I would have preferred to see a more transparent and broader inquiry. I think it is a missed opportunity to do something like Lord Woolf did 15 years ago which would have allowed all these issues to be fed in and a public debate about what kind of penal policy we want.."⁵⁴

26. Echoing this criticism, Juliet Lyon condemned the Carter report as "the most narrow of narrow reports".⁵⁵ Andrew Bridges, HM Chief Inspector of Probation, stressed that there was no point in looking at a 'one size fits all' panacea, as he said Lord Carter did in his

53 Q 349

54 Q 349

55 Q 349

review.⁵⁶ Paul Tidball said that he missed any thinking “outside the box” in Lord Carter’s report.⁵⁷

27. We are also very concerned that Lord Carter’s review does not explain in any detail the evidence or the reasoning behind his conclusions. For example, although there is a table showing changes in rates of imprisonment in different countries, there is no discussion of how countries like France and Canada (which Lord Carter shows as having a stable or reduced prison population over the period in which that of England and Wales has starkly increased) have been able to manage their prison populations. All the international examples in the report are drawn from the United States. There is similarly no explanation as to how he determined that his package of short to medium term measures would reduce the projected need for prison places by 3,500-4000 places—for example the contribution of individual measures to the overall projected saving. Nor is it clear what other measures, if any, he considered and rejected and on what grounds. When we asked Lord Carter about the evidence base for his review he was vague. We asked about the estimated saving of 3,500-4,000 places and were told: “There are always movements at the margin in these things, but I think we believe we have got it pretty right”.⁵⁸ We also asked how confident he was in the prison population projections much of his work was based on, and were told: “A key issue in our working group was how good these forecasts were and if we could rely upon them because we are basing a lot on it. I think our conclusion was that these were as good as we could get”.⁵⁹ We were told that Lord Carter had access to more data and analysis from the Ministry of Justice than was published with the report. Nevertheless because so little evidence is apparent in the report itself it is impossible to scrutinize the basis of his conclusions. It is clear that the substantial investment now being made on the basis of those conclusions is not based on solid foundations.

28. These key witnesses also identified a lack of consultation on Lord Carter’s part during the process of producing his report. For example, when we asked Anne Owers, she said: “at my request I had coffee with Lord Carter on one occasion in the Treasury in July”.⁶⁰ She was not asked to submit written evidence.⁶¹ The Prisoner Governors’ Association had a “formalish hour” with Lord Carter.⁶² They were not asked to submit written evidence.⁶³ In defending Lord Carter’s review, Jack Straw acknowledged: “I am not suggesting that this was an inquiry with extensive and formal consultation...”⁶⁴, he continued, “it is for Lord Carter and for those to whom he talked to make judgements about whether [...] the discussions that were held were adequate”.⁶⁵ Despite substantial correspondence with Lord

56 Q 350

57 Q 356

58 Q 283

59 Q 272

60 Q 340

61 Q 346

62 Q 342

63 Q 342

64 Q 390

65 Q 392

Carter to ascertain with whom and on what basis he conducted consultation,⁶⁶ we remain unconvinced that his conclusions were informed by sufficient levels of consultation.

29. Lord Carter’s review was a missed opportunity for a fundamental consideration of problems with sentencing and provision of custodial and non-custodial facilities in England and Wales. We share the concerns expressed to us that Lord Carter’s review was based on wholly inadequate consultation and a highly selective evidence base.

30. In an interview with *The Times* on 12 July 2007, Jack Straw said that “the Government would not be able to build its way out of the prisons crisis”.⁶⁷ The paper reported him as indicating that the only way pressure could be relieved was by sending fewer people to jail and using more non-custodial sentences. Even if he could click his fingers “and magic an extra 10,000 places” they would still have to have the same debate about the use of prison.⁶⁸ In the interview, Mr Straw called for a “national conversation” about the use of prison. The Committee agrees that this is needed and is actively encouraging such a conversation in its reports and evidence sessions.

31. However, in his oral statement on the Carter report on 5 December 2007, Mr Straw told the House of Commons that “there is no doubt that the prison population will continue to rise in the next few years, given the increasing effectiveness of the system in bringing more offenders to justice”. He announced the provision from the Treasury of a further £1.2 billion to deliver an additional 10,500 prison places, 7,500 of those in three new ‘Titan’ prisons, bringing the net prisons capacity to roughly 96,000 by 2014. As interim measures, he announced, *inter alia*, the conversion of a former MoD site into a Category C prison and the Ministry of Justice’s intention to secure a prison ship.⁶⁹ In his evidence to the Committee he denied any inconsistency between these two positions.⁷⁰

32. Andrew Bridges called Lord Carter’s prison building proposals and their endorsement by the Government a “high-risk option” where a small incapacitating effect could be achieved at very high cost. Juliet Lyon criticised the rapid decision to invest £1.2bn [which is more than half the current Legal Aid budget for England and Wales] into a prison building programme, “I think the greatest fear of the Prison Reform Trust is that expenditure on this scale without proper public consultation and without proper parliamentary debate will totally eclipse any real advances in rehabilitation, any real effort to solve a very long-standing problem”.⁷¹ It became apparent during our inquiry that the Government had not conducted their own cost benefit analysis prior to endorsing the recommendations in Lord Carter’s Report.⁷²

33. The Government’s focus on a huge public investment in building more prison places is a risky strategy. Building new prisons will not solve the fundamental and long-

66 Ev 96 and 97

67 *The Times*, We cannot build our way out of prison crowding, says Straw, 12 July 2007

68 *Ibid*

69 HC Deb 5, December 2007, col. 828

70 Q 403

71 Q 351

72 Q 397

term issues that need to be addressed in order to manage the escalating prison population and move towards an effective sentencing strategy. Moreover, this approach was initiated without sufficient investigation into the costs and benefits and in spite of the Government's own statements that the provision of new places does not present a long-term solution to the current prison crisis.

Reducing short-term demand

34. Recognising that the prison building programme advocated by his report would not be effective before 2010 at the earliest, Lord Carter strongly recommended taking short to medium-term measures to reduce demand for prison capacity. He said: "in addition to the expansion of prison capacity, I believe that you should make immediate changes to existing sentencing legislation to modify the use of custody for certain types of low-risk offenders and offences and encourage use of alternative remedies, in accordance with your strategy for reserving custody for the most serious and dangerous offenders".⁷³

35. Lord Carter told the Committee that, in order to reduce demand by 3,500–4,500 places, *all* of his medium-term measures would have to be implemented, "otherwise there will be a gap".

Lord Carter's proposed measures to manage the use of custody in the short to medium-term were:

- Reform of Indeterminate and Extended Sentences for Public Protection to allow for greater flexibility in the usage of these sentences;
- Reform of Bail Act Legislation to ensure that custody is reserved for serious and dangerous defendants;
- Allowing defendants who comply with the terms of their curfew to be credited for doing so;
- Aligning release mechanisms for prisoners serving sentences under the 1991 Criminal Justice Act with those serving sentences under the 2003 Criminal Justice Act; and,
- Endorsing and supporting resources being provided for the implementation of provisions of suspended sentence orders and fixed-term recall already in Criminal Justice and Immigration Bill.

The Review also supports the proposal in the *Making Sentencing Clearer* consultation paper to legislate to remove the option of a community order from the sentencing menu available to the courts for certain offences. This proposal could apply to all low level, non-imprisonable offences (removing some 6,000 community orders per year).⁷⁴ [...]

Lord Carter estimated that:

The package of recommended measures will [...] manage the use of custody so that the projected increase in the need for prison places will reduce by between 3,500 and 4,500 places.

73 Letter from Lord Carter of Coles from the Prime Minister, Chancellor of the Exchequer and Lord Chancellor, December 2007

74 Op Cit, Lord Carter, p. 28-29

36. In reaction to Lord Carter's report, Jack Straw announced on 5 December 2007 that the Criminal Justice Act 2003 would be amended so that Imprisonment for Public Protection (IPP) sentences could only be imposed by a court with a minimum tariff of two years, being the equivalent of a notional four year determinate sentence. This, and Lord Carter's further recommendations, were then taken forward through the Criminal Justice and Immigration Act 2008.

Changing demand in the long-term

37. The only advice Lord Carter could offer to change the balance between supply and demand of prison places in the long-term was for a working group to be set up to consider the feasibility and desirability of a Sentencing Commission and structured sentencing framework. Lord Carter described two American states—Minnesota and North Carolina—which had implemented structured sentencing frameworks and been able to predict the demand for prison places to within a hundred offenders. Whilst offering a structured sentencing framework as a long-term solution to prison overcrowding he did not detail how this might work—except to provide assurances that individual sentencers would not be required to take account of resources in sentencing. His proposed working group was set up in February 2008 and worked to an extraordinary timescale. It produced a consultation document in April and reported on 10 July 2008.⁷⁵ The draft legislative programme announced in May 2008, before the consultation on the value of structure sentencing framework closed, included a Bill with room to take forward the structured sentencing framework proposals.⁷⁶

38. Lord Carter's recommendation for the consideration of potential longer-term mechanisms to provide structure to sentencing are welcome. Nevertheless, we are concerned that an ambitious timetable was set for the working group tasked with this consideration. The Government should not seek to implement major changes in this area without effective evaluation of the potential consequences and the resources required to make such changes effective. We will continue to monitor developments in this area.

75 Sentencing Commission Working Group, *Sentencing Guidelines in England and Wales: an Evolutionary Approach*, July 2008

76 www.official-documents.gov.uk/document/cm73/7372/7372.pdf

3 Imprisonment for Public Protection sentences and the pressure on the Parole Board

39. The sentencing policy behind the Criminal Justice Act 2003 had two main elements—to imprison dangerous offenders, thereby protecting the public, and to move low-risk offenders into community based sentences that met rehabilitative as well as punishment aims. It introduced the indeterminate sentence of Imprisonment for Public Protection (IPP). These sentences are based on the future risk an offender might pose and are the Act’s mechanism for achieving the first element.

40. Imprisonment for Public Protection sentences came into effect on 4 April 2005 and have been widely used. In January 2007 there were more people serving indeterminate sentences (8,570), including life sentences, than there were serving sentences of less than 12 months (7,858)—“a historic shift in the make up of the prison population”.⁷⁷

41. But Imprisonment for Public Protection sentences have been strongly criticised across the spectrum of individuals and organisations in the criminal justice system as a sentence which, in its detail and operation, was ill-conceived. The mechanics of Imprisonment for Public Protection sentences limited judicial discretion and were not effectively targeted at the most dangerous individuals. Prison and parole systems were not effectively supported to implement the new sentences—which have made a significant contribution to the current extreme prison overcrowding crisis. The imposition of short-tariff Imprisonment for Public Protection sentences has created a situation in which the prison system could not provide for the sentenced to meet conditions of release before the end of the tariff was reached. While the Government has acknowledged some of the problems—and the Criminal Justice and Immigration Act 2008 takes steps to correct aspects which many commentators predicted—we remain concerned that changes to this sentence could have significant consequences for which we are unprepared.

How Imprisonment for Public Protection sentences work

42. Under section 225 of the Criminal Justice Act 2003, an offender who has committed one or more of a large number of “specified offences” carrying a maximum term of imprisonment of at least ten years has to be given a life sentence or, where the seriousness of the offence or offences does not merit such a sentence, an Imprisonment for Public Protection sentence, where the sentencing court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences. Where an offender already has a previous conviction for one of 153 “specified offences”, he or she will be presumed to be a risk to the public under section 229 of the 2003 Act and is liable to an Imprisonment for Public Protection sentence “unless it would be unreasonable to conclude that there is such a risk”.⁷⁸ When

77 Ev 17

78 This presumption of dangerousness has changed under the 2008 Act, as will be discussed in detail later

passing sentence, the judge will determine the ‘tariff’ or punitive element of the sentence the offender will have to serve in prison before he or she can be released on licence by the Secretary of State for Justice on the recommendation of the Parole Board. This tariff is determined by halving the notional determinate sentence the offender would have received had he or she not been considered dangerous and given an Imprisonment for Public Protection sentence. Unlike a normal life sentence, the licence under an Imprisonment for Public Protection sentence runs for ten years and can be both extended or cut short on application by the Crown or the offender. This is the only difference between an Imprisonment for Public Protection sentence and a life sentence. The Criminal Justice and Immigration Act 2008 makes amendments to certain of these provisions including judicial discretion and tariff length, discussed in more detail below.

43. In order to address their ‘dangerousness’ to the public post-conviction, Imprisonment for Public Protection prisoners, just as life prisoners, are expected to follow a number of programmes in prison reducing their risk factor (through participation in ‘Offender Behaviour Programmes’, such as ‘Sexual Offences Treatment Programmes’ and ‘Enhanced Thinking Skills’). However, not all prisons offer these courses and there are detailed rules in Prison Service Orders issued by the Home Secretary on the progress of Imprisonment for Public Protection and other life prisoners through the custodial estate which aim at allowing inmates to be placed in prisons offering the most appropriate programmes and interventions. It is against the participation in, and progress on the basis of, these courses that the Parole Board assesses Imprisonment for Public Protection prisoners and their suitability for release on licence after expiry of the tariff or punitive element of the sentence. Where the Parole Board is not satisfied that an Imprisonment for Public Protection prisoner no longer poses a risk to the public, it will not recommend that prisoner to the Secretary of State for Justice for release on licence. A very detailed description of the prison service regulations for Imprisonment for Public Protection prisoners can be found in Lord Justice Law’s judgment in the Imprisonment for Public Protection case of *Wells and Walker v Parole Board* in the High Court.⁷⁹

Risk based sentencing in England and Wales

44. The current Imprisonment for Public Protection sentencing regime raises the issue of the role of the criminal justice system in relation to offenders who continue to pose a risk to the public. David Faulkner, a retired senior civil servant in the Home Office and international specialist in sentencing policy, pointed out in his evidence to us that:

“Risk assessment and risk management have become a major industry in criminal justice [...]. In criminal justice, there are two sources of particular difficulty. One is the lack of certainty in the ‘science’ itself, and the pressure on practitioners to apply an automatic technology when what is needed is a considered judgement based on the balance of probabilities. The other is the accelerating movement towards punishing people not so much for what they have done but for what it is thought they might do in the future. For the courts, the Parole Board or individual practitioners to be required to make that judgement that raises serious questions about the nature, purpose and legitimacy of punishment in a modern civilised

79 [2007] EWHC 1835 (Admin), 31 July 2007, www.bailii.org/ew/cases/EWHC/Admin/2007/1835.html

society. [...] A more wide ranging debate should now take place about the proper limits of punishment by the state, and about the scope for potentially troublesome or dangerous people to be effectively but legitimately restrained by means which are not necessarily punitive in their nature or intention”.⁸⁰

In the face of the current overcrowding of the custodial estate and the negative experiences with Imprisonment for Public Protection legislation so far, this debate should start sooner than later.

45. The primary objective of Imprisonment for Public Protection (IPP) is the prevention of future harm and offending by incarceration, rather than punitive imprisonment triggered by an actual offence, or rehabilitation. We believe that such preventive detention has to be a rare exception. The use of other, less draconian, measures can be used to manage the risk of individuals to re-offend. Preventative civil orders such as ASBOs, Serious Crime Prevention Orders or Violent Offender Orders, are a complement to Imprisonment for Public Protection sentences where the latter would be disproportionate. Yet, neither the criminal justice system nor civil orders can eradicate the risk of serious offending or re-offending by dangerous individuals. The same problem arises with measures under mental health legislation. Our society will never be a risk-free one; it would be wrong to create the expectation that it can be.

46. Some of our witnesses have emphasised that Imprisonment for Public Protection sentences, where sensibly used and policed, could be an important element in the armoury of the criminal justice system. Lord Woolf noted in his evidence to the Home Affairs Committee that “there has always been a very small number of cases that are very worrying to the courts where you just do not know how dangerous the individual is. In that case an indeterminate sentence if available could be useful; it could be a merciful sentence”.⁸¹ **Where continued imprisonment for public protection in the form of an IPP sentence is narrowly targeted at those offenders who pose a very serious risk to the public, and is established on the basis of conclusive evidence before a court, we believe it can be a necessary, effective and proportionate penal intervention.**

47. There has been previous experience with risk-based sentencing in England and Wales in the form of automatic life sentences or indeterminate sentences. The Prevention of Crime Act 1908 allowed judges to pass dual-track sentences where the offender demonstrated “evidence of habituality” in his or her offending behaviour, which mandated “preventive detention”. Despite the lack of practical success with this type of sentence and a damning Home Office review of the legislation, a similar preventive detention measure was re-enacted in the Criminal Justice Act 1948 but, following severe criticism, repealed in 1967.⁸²

48. The Crime (Sentences) Act 1997 introduced an automatic life sentence for serious repeat offenders. Under this Act, a person who had a previous conviction for one of eleven enumerated very serious violent or sexual offences, had to be given a life sentence for a

80 Ev 43

81 Lord Woolf, Q 23 (HAC)

82 David Rose, Locked up to make us feel better, New Statesman 19 March 2007, p .22

second trigger offence, save in exceptional circumstances. The automatic life sentence was not available for first-time offenders even where the sentencing court considered them to pose a significant risk to the public of further serious offending and therefore differed quite markedly from the Imprisonment for Public Protection sentences by which they were replaced under the 2003 Act. Only about 200 offenders received discretionary or automatic life sentences per year prior to the coming into effect of the 2003 Act in 2005.⁸³

Criticism of the Imprisonment for Public Protection sentence system

49. Since the coming into effect of Imprisonment for Public Protection sentences in April 2005, the number of offenders receiving this form of sentence has been steadily increasing. At a rate of around 120 new Imprisonment for Public Protection prisoners per month,⁸⁴ the overall number of prisoners in the prisons of England and Wales serving indeterminate sentences (i.e. life and Imprisonment for Public Protection sentences) had reached 10,079 in October 2007.⁸⁵ It is the largest increasing category of prisoners in the prison system and set to increase under current projections to 12,500⁸⁶ or even 25,000⁸⁷ Imprisonment for Public Protection prisoners by 2012. The evidence is clear that this puts an enormous strain on the prison system and the Parole Board.

50. There are two main criticisms of Imprisonment for Public Protection sentencing—firstly that the structure of the sentences is flawed and secondly that the systems surrounding their implementation and operation were not given enough thought or resources.

Short tariffs and the impact on prison system

51. One of the main criticisms of the Imprisonment for Public Protection sentence system under the 2003 Act was directed at the rather short tariffs or punitive terms received by a large number of Imprisonment for Public Protection prisoners. Jack Straw told us that tariffs as short as one month were not unheard of,⁸⁸ and that, in October 2007, the average tariff was 38 months.⁸⁹ The Parole Board told us in their memorandum that half of Imprisonment for Public Protection prisoners had received tariffs of 20 months or less and 20% of Imprisonment for Public Protection sentences came with a tariff of under 18 months.⁹⁰

83 Ibid

84 Howard League for Penal Reform, Prison Information Bulletin 3, Indeterminate Sentences for Public Protection, (2007), p. 8

85 Ministry of Justice/NOMS, Population in custody: Monthly tables, October 2007, England and Wales, Table 1. Out of those prisoners serving indeterminate sentences, which include mandatory and discretionary life sentences, 2,900 were serving Imprisonment for Public Protection sentences in June 2007. See also HC Deb 16 January 2008, col. 1336W

86 Ev99

87 Q 196, See also Howard League for Penal Reform, Prison Information Bulletin 3, Indeterminate Sentences for Public Protection, (2007), p. 9

88 Uncorrected transcript of oral evidence on the work of the Ministry of Justice, taken before the Constitutional Affairs Committee, on 9 October 2007, HC (2006-07) 987-ii, Q 67

89 Uncorrected transcript of oral evidence on the work of the Ministry of Justice, taken before the Constitutional Affairs Committee, on 9 October 2007, HC (2006-07) 987-ii, Q 64

90 Ev 99

52. Most of our witnesses were strongly opposed to Imprisonment for Public Protection sentences with short tariffs, as these would not allow for rehabilitative and resettlement programmes and interventions properly to take place inside prison so that prisoners could address their risk factors in time for their assessment for release on licence by the Parole Board. When we asked the Chief Executive of the Parole Board, Christine Glenn, about the current situation relating to Imprisonment for Public Protection prisoners, she told us that under the current regime there was absolutely no time for the Prison Service to do anything meaningful: “it is a six-month lead-in to write the various reports that go in the dossiers [...] and if you have only got a sentence of six, 12 months, there is no time to do any work, any sentence planning. So, effectively, the judge at sentence says, ‘You are too dangerous, therefore I give you this indeterminate sentence’, and nothing can have changed in the meantime”.⁹¹ Simon Creighton, one of the leading prison litigation solicitors, echoed Ms Glenn’s comments and pointed out that:

“The life sentence system was originally devised for people serving long sentences, ten, 15, 20 years, and so all the systems that are in place, the length of courses, the assessments, the yearly reviews, the categorisation, are based on a very long prison sentence. If you put a life sentence of six months or 18 months into that system, then it clearly is not going to work. You cannot adapt the system to meet these short tariffs; it is not designed to operate in that way”.⁹²

53. A very striking example of the situation in which short tariff Imprisonment for Public Protection prisoners may find themselves was documented in the High Court judgment in the case of *Wells and Walker v Parole Board*.⁹³ In this decision, Lord Justice Laws quoted from a letter by the Parole Board to a 12 month-tariff Imprisonment for Public Protection prisoner notifying him of its decision not to recommend his release on licence for lack of participation in risk-reducing offender behaviour courses:

“You have not undertaken any offence-focused work. It is fair to say that that is not your fault. There are no appropriate offending behaviour courses at your current prison. The Panel accept that you would like to undertake such courses. However, this will require your move to another prison, which the prison authorities have failed to arrange [...] Unfortunately it is not the remit of the Parole Board to make up for the deficiencies of the prison service. We are charged with a duty not to release life prisoners while their risk of further serious offending remains high. Because you have not been able to do any of the appropriate courses you are unable to demonstrate any reduction in risk from the time you are sentenced”.⁹⁴

54. Simon Creighton thus judged the practice of trying to assimilate Imprisonment for Public Protection prisoners into the existing life sentence system as “an abject failure”:

“Sentence planning for lifers, internal prison reviews and attendance on courses designed to address offence related problems are all time consuming. Formal parole

91 Q 162

92 Q 164

93 [2007] EWHC 1835 (Admin), www.bailii.org/ew/cases/EWHC/Admin/2007/1835.html

94 *Ibid*

reviews require 6 months to complete. The result is that the sentences imposed by the courts for IPP lifers are being rendered meaningless as it is quite simply impossible for offending behaviour needs to be identified and addressed and reported upon in the timescales available”.⁹⁵

55. Situations like this have already led to high-profile judicial review litigation in the High Court and the Court of Appeal in the cases of *Wells and Walker v Parole Board*⁹⁶ and *R (James) v Secretary of State for Justice*.⁹⁷ We do not wish to comment on the merits of these decisions, however, **we stress that, as a matter of policy and common sense rather than law, it is wholly indefensible to incarcerate prisoners of any category beyond the expiry of their tariff or their eligibility for release on licence simply because of a lack of resources on the part of HM Prison Service or the Parole Board.**

56. **Imprisonment for Public Protection sentences should only be imposed with a tariff of a length giving the Prison Service a realistic chance to offer the necessary interventions and programmes to allow the Imprisonment for Public Protection prisoner to reduce his or her risk factors and which give the Parole Board the time to carry out the relevant assessments and hearing to determine whether IPP prisoners should be released on licence. Where IPP sentences with tariffs as short as 28 days have been imposed, it is disturbing but unsurprising that large numbers of IPP prisoners have to remain in prison beyond expiry of their tariffs as there is insufficient time for proper completion of rehabilitative courses and programmes and for the Parole Board to carry out the relevant assessments.**

Targeting the right offenders and judicial discretion

57. The instance of relatively short tariffs under Imprisonment for Public Protection legislation has also been described as a symptom of the Imprisonment for Public Protection provisions of the 2003 Act being too broad and thus not targeting only those offenders who would actually pose a serious risk to the public meriting the imposition of an Imprisonment for Public Protection sentence. Lord Woolf, in his evidence to the Home Affairs Committee, said that it was not good sentencing policy to create a situation where a court imposes an indeterminate sentence and at the same time says that the tariff should be 18 months.⁹⁸ When we asked Jack Straw about this problem, he agreed that there was “an apparent paradox between a very short tariff, along with a declaration by virtue of the sentence, that these people represent a longer-term threat”.⁹⁹ This paradox has been said to have led to considerable confusion and frustration of prisoners given Imprisonment for Public Protection sentences: some of these prisoners had little grasp of their position and

95 Ev 28

96 [2007] EWHC 1835 (Admin), www.bailii.org/ew/cases/EWHC/Admin/2007/1835.html

97 [2007] EWHC 2027 (Admin), www.bailii.org/ew/cases/EWHC/Admin/2007/2027.html

98 Lord Woolf, Q 23 (HAC)

99 Uncorrected transcript of oral evidence on the work of the Ministry of Justice, taken before the Constitutional Affairs Committee, on 9 October 2007, HC (2006-07) 987-ii, Q 64 Jack Straw, The work of the Ministry of Justice, transcript 09.10.07, Q 64

did not fully understand why they were treated as life prisoners when they had committed relatively minor offences and received a short tariff.¹⁰⁰

58. The President of the Queen’s Bench Division of the High Court and Head of Criminal Justice for England and Wales, Sir Igor Judge, also stressed that there were “a whole lot of other offences which probably you would not regard as sufficient to justify sending somebody to prison for the rest of his [...] life”¹⁰¹ for which Imprisonment for Public Protection sentences were imposed. Sir Igor was of the view that “before you qualify for an IPP, you really [should] have to have committed something rather serious; not something which receives 28 days but which merits at least a term of x years’ imprisonment”.¹⁰²

59. Our witnesses stressed that the combination of the very wide catalogue of trigger offences for Imprisonment for Public Protection sentences, the presumption of dangerousness for second-time offenders and the thus severely curtailed discretion of sentencing judges to pass a determinate sentence rather than an Imprisonment for Public Protection sentence, led to Imprisonment for Public Protection sentences not only being imposed on high-risk offenders but also on those offenders who would not merit such severe penal intervention. Moreover, the criminal courts were imposing Imprisonment for Public Protection sentences quasi-automatically;¹⁰³ initial attempts by the Court of Appeal (Criminal Division) to restrict Imprisonment for Public Protection sentences to offenders positively found to be dangerous on the basis of the evidence before the sentencing judge,¹⁰⁴ appeared not to have been particularly successful.¹⁰⁵

60. The adverse impact of short tariffs on prisoners and the prison system as a whole was dramatically described by Christine Glenn when she told us of an exchange she had with a judicial member of a Parole Board panel:

“If I can read you what he said, it just gives you another flavour from another prison: ‘I spoke to the lifer manager of one prison. He has 200 indeterminate lifers in first stage prison, official capacity 140. Two-thirds are IPPs, few have been sentence-planned’-so that is the stages they need to follow—‘and about 70 of them are coming up to tariff expiry over the next 12 months. About 30 are ready to move on to Cat C.’ That is the training estate. ‘So far no IPP has moved on. He cannot provide any training due to lack of resources. For example, he has 40 ETS places’-that is the Enhanced Thinking Skills course-‘for 1200 prisoners in his prison, and that is his limit. He cannot take any more. IPPs are now being backed up into other prisons which have never before taken lifers and cannot sentence-plan at all.’ So, that is just a

100 Howard League for Penal Reform, *Prison Information Bulletin 3 Indeterminate Sentences for Public Protection*, (2007), p. 20

101 Q 196

102 Q 197

103 Ev 17, Ev 88

104 Especially *R v Lang* [2005] EWCA 2864, 3 November 2005, at para 17, www.bailii.org/ew/cases/EWCA/Crim/2005/2864.html; *R v Johnson* [2006] EWCA Crim 2486, 20 October 2006, www.bailii.org/ew/cases/EWCA/Crim/2006/2486.html; most recently also: *R v Terrell* [2007] EWCA Crim 3079, 21 December 2007, www.bailii.org/ew/cases/EWCA/Crim/2007/3079.html

105 Ev 28

flavour from one big prison and the desperation that that lifer manager is trying to do something to support them”.¹⁰⁶

Anne Owers added that the frustration of Imprisonment for Public Protection prisoners who were held at local prisons where they could not participate in relevant offender management programmes would increase the risk to prisoners and prison staff.¹⁰⁷

61. The removal of judicial discretion in relation to the imposition of Imprisonment for Public Protection sentences for certain second-time offenders was a retrograde step.

62. The substantial number of Imprisonment for Public Protection sentences with short tariffs demonstrate that this type of sentence has not been targeted at those offenders who positively pose a grave risk to the public for fear of committing serious violent or sexual offences, but has been imposed on a much larger group of offenders whose offending behaviour does not merit a disposal as draconian as an Imprisonment for Public Protection sentence. It is difficult to understand why an offender who might only receive a short determinate sentence should be given an Imprisonment for Public Protection sentence for having a previous conviction for a comparatively minor offence and be considered as ‘dangerous’ and thus merit an indefinite custodial sentence.

Government proposals to address structural problems with Imprisonment for Public Protection sentences

63. Lord Carter’s prisons review *Securing the future: Proposals for the efficient and sustainable use of custody in England and Wales* recommended that where the notional determinate sentence for the trigger offence would be four years and under, (thus being equivalent to a two year tariff under an Imprisonment for Public Protection sentence), an Imprisonment for Public Protection sentence should not be passed save for exceptional circumstances. When we asked him about his recommendation in relation to Imprisonment for Public Protection sentences, he told us that “the judiciary can still give an Imprisonment for Public Protection if they wish, but we believe that under four years it has not worked as I think it was intended to work and therefore it is something which should be discontinued”.¹⁰⁸ He accepted that: “there was a pressure to use [IPP sentences] where the judiciary did not want to. What this is seeking to do is to reverse that pressure but still leave the option there if they wish to use it”.¹⁰⁹

64. The Criminal Justice and Immigration Act 2008 therefore contains provisions to amend the Criminal Justice Act 2003 structure of Imprisonment for Public Protection sentences. Under these amendments, the presumption of dangerousness is removed,¹¹⁰ and judicial discretion considerably bolstered with the substitution of ‘the court may’ for ‘the

106 Q 161

107 Ev 52

108 Q 299

109 Q 310

110 Section 17, instead, previous convictions are included as factors for the court to consider when determining whether the offender presents a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences.

court must'.¹¹¹ Furthermore, Imprisonment for Public Protection sentences would only be available for first-time offenders or repeat offenders who do not have previous convictions for very serious violent and sexual offences where the tariff or punitive term would be at least two years (and thus the equivalent of a notional determinate sentence of at least four years). However, where an offender has a previous conviction for one of 22 very serious violent or sexual offences (such as murder, manslaughter, wounding with intent to cause grievous bodily harm, rape or sexual abuse of minors), an Imprisonment for Public Protection sentence can be passed without a minimum tariff.¹¹² We are unclear as to the rationale for this particular distinction.

65. We generally welcome these changes, in particular the abrogation of the presumption of dangerousness for large categories of second-time offenders will be a crucial—and overdue—step towards targeting Imprisonment for Public Protection sentences at a much smaller group of offenders posing a very serious threat to the public. We welcome the fact that it will again be incumbent upon the Crown to adduce evidence to the effect of an offender's risk to the public and make the case for an Imprisonment for Public Protection sentence before the sentencing judge.

66. However, some concerns remain. Because of the current severe lack of prison capacity and resources, we think that the minimum tariff of two years for first-time offenders and those with non-serious previous convictions may eventually prove too short for effective and sustainable rehabilitative programmes to be carried out in prison. A longer minimum term would be appropriate. We note with interest that under the dangerous offender provisions of the Criminal Code of Canada indeterminate sentences carry a minimum tariff of seven years.¹¹³

67. While we are in favour of an appropriate minimum term for Imprisonment for Public Protection sentences, we were warned by Paul Tidball, the President of the Prison Governors' Association, that the fixing of a minimum tariff for such sentences could lead to an increase in sentence levels for certain offenders. This might happen where the sentencing judges would like to pass an Imprisonment for Public Protection sentence but the offence as such would not merit the minimum tariff.¹¹⁴ Where a judge might normally impose a 40 months notional determinate sentence (equivalent to a 20 months tariff), he or she might pass a sentence of four years (i.e. a tariff of 2 years), just so that he would be put in a position to impose an Imprisonment for Public Protection sentence. We hope that judges will resist the temptation of 'uptariffing' in order to pass Imprisonment for Public Protection sentences where the presenting offence does not merit the imposition of the minimum custodial term for an Imprisonment for Public Protection sentence to become available.

68. We welcome the changes made to the Imprisonment for Public Protection sentence provisions in the Criminal Justice Act 2003. Judges will now regain unfettered discretion in relation to the imposition of Imprisonment for Public Protection

111 Section 13, new sub-section 225(3)

112 Section 13

113 Criminal Code of Canada, Section 176

114 Q 181

sentences so that this type of sentence can be targeted at those offenders posing a very real and serious risk to the public. However, we will be keeping a close eye on the impact of the changes to Imprisonment for Public Protection sentences as they by no means guarantee an effective and appropriate structure for risk based sentencing.

Improving risk assessment and sentencing information

69. Using Imprisonment for Public Protection sentences proportionately and adequately depends to a very large extent on the quality of information and evidence about an offender (and his or her previous and predicted offending behaviour) available to the sentencing judge. It appears that currently sentencers do not necessarily always have available an appropriate degree of information to form a reliable view as to an offender's potential risk and continuing dangerousness when asked to pass sentence.

70. We were surprised to hear from Paul Tidball that “at least half of those that end up in prison on IPP sentences have not had, in our view, the sort of pre-sentence assessment which determines that they are actually in need of an IPP sentence”.¹¹⁵ He concluded that if judges were given more discretion in the decision whether or not to impose an Imprisonment for Public Protection sentence, they should be required to obtain adequate pre-sentence reports.¹¹⁶ Mr Tidball's assessment was confirmed by Simon Creighton, who told us that “pre-sentence inquiries simply are not done”.¹¹⁷ He therefore advocated the abrogation of the presumption of dangerousness for second-time serious offenders: “if it was for the prosecution to establish that the prisoner posed the risk and had to establish that against the prisoner, it would give the judges the discretion, it would give greater emphasis on the pre-sentence inquiries”.¹¹⁸ In a similar vein, the Howard League for Penal Reform stressed that “investment in pre-sentence reports and those charged with preparing them should be a priority”.¹¹⁹

71. In Canada, indeterminate preventive detention of dangerous offenders under s. 753 of the Criminal Code of Canada can only be imposed on the basis of a 60 day psychiatric assessment which the sentencing court has to order. Similarly, in Scotland, the new ‘order for lifelong restriction’ under the Criminal Justice (Scotland) Act 2003 is only available following a thorough risk assessment in a ‘risk assessment report’ carried out by a trained risk assessor who is accredited by the new Risk Management Authority. The sentencing court can adjourn proceedings for up to 90 days for this report to be prepared.

72. The system of Imprisonment for Public Protection sentences presupposes a rigorous risk assessment prior to sentencing so as to put the sentencing judge in a position to be make an informed and reliable decision on the risk to the public an offender poses. Robust pre-sentence assessment procedures need to be put in place to allow the reformed system of Imprisonment for Public Protection sentences to work in the way Parliament intends. We believe that, in order to be effective, Imprisonment for

115 Q 181

116 Q 181

117 Q 182

118 Q 182

119 Ev 65

Public Protection sentences require the judge to be provided with a pre-sentence report including a comprehensive risk assessment. We believe that the Government needs to make adequate resource provision for these purposes.

Lack of adequate forecasting, planning and resourcing

73. The most damning point of criticism of the Imprisonment for Public Protection system concerns the coming into force of the IPP provisions of the Criminal Justice Act 2003 in April 2005. Anne Owers, considered it “reprehensible that there was no advance planning for this group of prisoners, in spite of the fact that their numbers have grown slightly less than was projected”.¹²⁰ Christine Glenn, of the Parole Board told us that the initial Government planning “said that the effect [of the new IPP provisions] would saturate to around 3,500 extra people in prison in this category. We know that is woefully out. The sentence planning [...] was done on the basis that most IPPs would succeed in reducing their risk because they would get fairly lengthy tariffs, and that has not happened either”.¹²¹ Simon Creighton echoed this and pointed out that while the number of people serving life sentences massively increased following the coming into force of the Imprisonment for Public Protection legislation in 2005, there had been “no commensurate increase in the number of staff working for the Ministry of Justice who identify who these people are and tell the prisons, so their case loads have gone up two, three-fold, and so you get many people halfway through their sentence and no-one actually knows they are serving a life sentence and no-one can tell the prison”.¹²²

74. Indeterminate sentences have no predictable endpoint and thus any structured sentencing framework developed while Imprisonment for Public Protection sentences were being used would have to allow a margin for the impact of prisoners sentenced to indeterminate lengths in prison.

75. The Government failed to engage in adequate resource and capacity planning for the coming into effect of the Imprisonment for Public Protection sentence provisions in April 2005. Imprisonment for Public Protection sentences were the ‘flagship’ in the Government’s crime reduction and public safety agenda in the Criminal Justice Act 2003, but this policy was not accompanied by the level of custodial resources required to make IPP sentences work.

Lack of Parole Board resources

76. The lack of adequate resource and capacity planning appears to us to have been particularly striking in relation to the Parole Board: the rapid increase in the number of Imprisonment for Public Protection prisoners with short tariffs has led to enormous pressure on the Parole Board, which is tasked with assessing Imprisonment for Public Protection and life sentenced prisoners in a quasi-judicial manner and making binding recommendations as to their release to the Secretary of State for Justice. The Chief Executive of the Parole Board told us of IPP prisoners who could not get a Parole Board

120 Ev 51

121 Q 161

122 Q 175

hearing “because we could not find a judge”. She noted that this “is an increasing problem now and, up until April this year [2007], I could fairly confidently say that we would list almost all of our cases in time before tariff expiry. I cannot say that now because of the workload having gone up”.¹²³ On the basis of Home Office projections to the effect that under the current legislation there might be 25,000 IPP prisoners by 2012 Sir Igor Judge estimated that the Parole Board would need “some extra 100 judges” and was wondering where they would come from.¹²⁴

77. Although the Government has increased the financial resources of the Parole Board we doubt whether this investment will significantly and sustainably reduce the pressure on the Board caused by Imprisonment for Public Protection sentences. The availability of judicial members of Parole Board panels will remain an issue unresolved by an increase in the Board’s budget. It needs to be solved as a matter of the greatest urgency as capacity shortages of Parole Board panels directly affect the liberty of the subject where decisions relating to release on licence are concerned.

Lack of centrally-held sentence management information

78. We were also amazed at the lack of centrally-held sentence management information. When, in the course of our inquiry, we asked the Secretary of State for Justice in writing whether NOMS or HM Prison Service would centrally hold the dates of tariff expiry of life and Imprisonment for Public Protection prisoners and eligibility dates for release on licence of prisoners serving determinate sentences, we were told that:

“Information on the total numbers of prisoners who have passed the date on which they are eligible for parole but have not yet been assessed; and by how many days they are overdue on average, is not held centrally and could be collated only by manual checking of individual case details [...]”.¹²⁵

79. Simon Creighton told us, on the basis of his experience as a solicitor dealing with a large number of Parole Board cases, there had been a failure by the Prison Service in some cases to even recognise that those serving sentences of Imprisonment for Public Protection required a review by the Parole Board at the end of the minimum term. In one case, a review by the Board at the end of a minimum term of 12 months even had to be deferred for a further 6 months as the prison had not prepared any sentence planning documents or reports for the review.¹²⁶

80. When we asked Jack Straw on 17 December 2007 about the lack of centrally-held tariff expiry and release eligibility information he expressed surprise at this situation.¹²⁷ We share this sentiment. **Realistic resource planning, both for the Prison Service and the Parole Board, cannot be done in the absence of centrally-held comprehensive tariff expiry and release eligibility data. Collating such data is not a matter of large and complicated**

123 Q 165

124 Q 196

125 Ev 103 (JSC)

126 Ev 28

127 Q 474- 475

databases and programmes like the ill-fated C-NOMIS. Collating these data has to be seen as a core management task for NOMS and the Prison Service. We recommend that such a database be created immediately and expect to be informed of the progress of the central collection of tariff and release eligibility data of all categories of prisoners.

The role and powers of the Parole Board

Transfer of judicial functions from the original sentencer to the Board

81. It has become obvious that the Parole Board, over the last decade, has moved from being primarily an executive body making administrative decisions on paper and providing non-binding recommendations to the Home Secretary and now the Secretary of State for Justice, to being, to all intents and purposes, a court, making decisions in the cases of the most dangerous offenders at an oral hearing.¹²⁸ For a wide range of offenders, such as life and Imprisonment for Public Protection prisoners, the Parole Board has now taken over the function of determining the effective sentence length.¹²⁹

Adequate resourcing and procedures for the Parole Board

82. There is some doubt over the capacity of the Board to deal adequately and timely with an ever increasing workload. We have already noted that Sir Igor Judge told us that at the current rate of Imprisonment for Public Protection sentences being passed, the Parole Board will need an extra 100 judges to sit on lifer and other panels. We have heard of cases where Parole Board hearings for IPP prisoners and other lifers had to be deferred for lack of judicial panel members.

83. The Parole Board is charged with making judicial decisions about the sentence length for life and Imprisonment for Public Protection prisoners. It is absolutely vital for the Board to be able to draw on the resources and personnel (including, crucially, members of the judiciary to sit on lifer or IPP panels) to carry out its judicial work. The Ministry of Justice should ensure the adequate functioning of the Parole Board as a court. We recommend that it take urgent action to discharge this duty.

84. It is not only the resource and personnel aspect of the Parole Board which has bearing on the adequate functioning of the Board as a court. In its written submission to the Home Affairs Committee, JUSTICE noted that the Board currently had “insufficient powers to fulfil its functions as well as possible—in particular, it lacks the power to compel witnesses”.¹³⁰ Simon Creighton was adamant that:

“One of the key problems we have as lawyers representing prisoners at parole hearings is that there is nobody with any power to make things happen, and all the Parole Board can do is ask the Prison Service or ask the prisoner’s lawyers to do

128 Parole Board, Annual Report 2006-07, October 2007, p. 7

129 Ev 75

130 Ev 75

things, but there is nobody to enforce these timetables or require people to take action and so things can drag on forever while people argue about who will do it".¹³¹

85. Christine Glenn echoed this criticism and suggested giving the Board statutory powers, which courts already possessed, such as the power to make wasted costs orders and the power to call witnesses and enforce witnesses attendance. While "that would not be the complete answer" she stressed that such new powers "ought to improve things".¹³² **Where the Parole Board operates as a court effectively determining the length of custodial sentences for a large number of prisoners it will need the requisite powers to discharge its functions appropriately and in a timely fashion. We recommend that the Parole Board be provided with powers to compel the attendance of witnesses and to make wasted costs orders.**

131 Q 174

132 Q 174

4 Short custodial sentences

86. We now turn to consider the second element of the sentencing strategy behind the Criminal Justice Act 2003. While Imprisonment for Public Protection sentences have been oversubscribed, there has been no evidence of a shift to community penalties for those who might previously have been imprisoned for short periods. Chapter 5 explores the changes that were made to community sentences to make them more appropriate for a variety of offenders, but first we examine the continuing use of short custodial penalties.

87. The 2001 Halliday Review of the sentencing framework in England and Wales described the state of short custodial sentences, as “one of the most serious deficiencies in the present [sentencing] framework”.¹³³ These concerns have not been addressed; witnesses reiterated “the pointlessness of such sentences”, describing them as “ineffectual”.¹³⁴ Upon taking up his post as Prisons Minister the Rt Hon David Hanson MP agreed that “we need to look at the lower end sentencing options, particularly for those under 12 months”.¹³⁵

88. Despite this consensus, the arrangements for short custodial sentences have remained largely unchanged since the provisions of the Criminal Justice Act 1991. The Criminal Justice Act 2003 set out new arrangements for community orders to encourage a switch away from short-term imprisonment to the new community sentences—which has not happened—and provisions (called ‘Custody Plus’) to make those short custodial sentences which continued to be handed out more effective—which have not been implemented.

89. Although the most recent review of prisons by Lord Carter of Coles did not offer any proposals to change the short custodial sentence landscape, the Government did consider this area in its January 2008 *Prison Policy Update Briefing Paper* and in recent announcements.¹³⁶ This paper announced funding for six intensive alternative to custody projects to provide community-based sentences appropriate for those individuals currently sentenced to short periods in custody. Similarly, in March 2008, the Government announced additional funding for probation on the basis that community punishments can be more effective penalties than short prison sentences for some offenders.¹³⁷

Short custodial sentences and the prison population

90. Short custodial sentences may have received less attention than Imprisonment for Public Protection sentences because tackling their deficiencies is unlikely to have a significant impact on the immediate prison overcrowding. Paul Kiff of the Cracking Crime Scientific Research Group, University of East London, explained that short sentences were often falsely interpreted as responsible for the rise in prison population—when in reality “only 6% of the growth in total prison population between 1995 and 2005 could be

133 John Halliday, *Making Punishments Work: Report of a review of the Sentencing Framework for England and Wales*, July 2001, p. iv

134 Ev 120 and Ev 106

135 Q 24

136 Lord Carter’s Review of Prisons, *Securing the future: Proposals for the efficient and sustainable use of custody in England and Wales*, December 2007 and Ministry of Justice, *Prison Policy Update Briefing Paper*, 31 January 2008

137 www.justice.gov.uk/news/newsrelease110308c.htm

attributed to the increased use of short custodial sentences”.¹³⁸ Prison places fill up with individuals on long-term sentences because short-term prisoners by definition move on. Thus prisoners on short-term sentences account for only 11% of the total prison population at any one time.¹³⁹

91. Dealing with short custodial sentences is essential for the effective overall management of the prison system. Although their impact on overall prison numbers may be small, their impact on prison resources, such as prison officer time, is still significant because of the volume of such offenders going in and out of prison each year. In 2006, the Prison Service received 90,038 sentenced prisoners into custody—57,294 of these for sentences of 12 months or less, 64% of that total.¹⁴⁰ This is a substantial increase on the 1996 figure of 46,149 receptions of prisoners sentenced to short-term custody, which made up 56% of receptions of sentenced prisoners that year.¹⁴¹ The reception of each requires a certain amount of time, and therefore resources, to process.

The Characteristics of Short Custodial Sentences

92. Short custodial sentences, those of 12 months or less, are handled under provisions from the Criminal Justice Act 1991—whereby prisoners will serve half the period of their sentence in custody and are then released unconditionally.¹⁴² Unlike prisoners serving longer sentences, those given a short sentence do not serve a licence period whereby the final half of the sentence is served in the community with particular restrictions or requirements on the individual. However, during the final half of the sentence released prisoners are ‘at risk’—thus if they commit a further offence they may have to return for prison for the final part of the initial sentence as well as any sentence imposed for the further offence. Many short custodial sentences are for three to six months, meaning between six and 13 weeks served in custody. Only a small proportion of short sentences are for six months or more. This pattern may reflect the powers of Magistrates’ Courts, which award a maximum six month custodial sentence for one offence.

138 Ev 76

139 Ministry of Justice, Offender Management Caseload Statistics 2006 indicate that of the 77,982 persons in prison establishments and police cells on 30 June 2006, 5,960 were there on sentences less than or equal to six months and 2,525 on sentences greater than six months but less than 12 months. (December 2007), Table 8.1

140 Ibid, Table 7.1

141 Ibid

142 Criminal Justice Act 1991

Sentence Length ¹⁴³	Sentenced receptions to prisons 2006
Less than or equal to 1 month	7,398
Greater than 1 month and less than or equal to 3 months	16,779
Greater than 3 months and less than or equal to 6 months	24,747
Greater than 6 months and less than 12 months	8,370
Total short sentences	57,294

93. 26% of short custodial sentences are for offenders sentenced for a category of ‘other offences’—which does not explain who these people are.¹⁴⁴ The second largest group of offences for which short custodial sentences are given (25%) is for theft and handling offences, probably non-violent and relatively low value thefts.¹⁴⁵

94. Women are disproportionately subject to short prison sentences. While prisoners on short custodial sentences make up 11% of the total prison population, women on short custodial sentences make up 17% of the female prison population at any one time.¹⁴⁶ In terms of receptions into prison, just under three-quarters of all sentenced women entering prison are there for sentences of 12 months or less.¹⁴⁷ This may be due to the differences between the offences that women are imprisoned for—which are primarily low level non-violent offences, i.e. offences that are over-represented amongst prisoners as a whole on short custodial sentences. The Fawcett Society emphasised that not only were women disproportionately likely to receive short custodial sentences but they may be more affected by the negative impacts of short custodial sentences—for example, they are more likely to be affected by the dislocation from children or to suffer financially and lose accommodation.¹⁴⁸

95. A key element of the coherent sentencing strategy envisaged under the Criminal Justice Act 2003 was to deal with low level offenders by community punishments rather than short custodial sentences. It is clear that this strategy has not worked.

143 HC Deb, 13 December 2007, col. 909W

144 Ministry of Justice, Offender Management Caseload Statistics 2006, Table 7.3

145 Ibid

146 Ministry of Justice, Offender Management Caseload Statistics 2006, Table 8.1

147 Ministry of Justice, Offender Management Caseload Statistics 2006, Table 7.1

148 Ev 44. See chapter 7 for discussion of concerns raised about women

96. The key to understanding why this change has not taken place is to examine who receives these sentences and why. Unfortunately, the data is extremely limited. It will never be possible for the Government and key stakeholders to develop appropriate punishments for people if we do not know who they are, what they have done and therefore what punishment might be appropriate. We urge the Government to review current data collection on sentencing practice, identify what areas have gaps relating to key policy objectives and set in place mechanisms to fill them as a matter of urgency.

The aims and effects of short custodial sentences

97. Both the Government and the voluntary sector agreed that short custodial sentences were ineffective and emphasised the need for a shift towards community sentences in their place. For example, the Prince's Trust told us: "non-custodial sentences should be a viable alternative to short-term sentences [...] which prove ineffectual and simply push up the prison population".¹⁴⁹ In response to his first question in his first appearance before the Committee Rt Hon David Hanson MP asserted that he needed to be "looking at how I can encourage, and the Government can encourage, non-custodial sentences, particularly for those people who are currently sentenced for sentences of under 12 months".¹⁵⁰

98. Short custodial sentences are unique among sentences for low level offending in the sense that the individual is actually put in prison. Other sentences do involve the deprivation of liberty through, for example, tagging and electronic curfews. The former Lord Chief Justice, Lord Woolf, told the Home Affairs Committee: "often the most effective thing about a short sentence—indeed the only effective thing about it—is for you to hear the clang of the prison door and to spend just a few nights knowing what it is like to be shut up for most of the day".¹⁵¹

99. The Magistrates' Association told us: "custody, of whatever length, is a sentence to mark an offence of particular seriousness".¹⁵² This definition of custody as attaining a particular status in terms of its ability to punish—one of the aims of sentencing set out in the Criminal Justice Act 2003—was echoed by the Jack Straw, who stated that "imprisonment is the ultimate means of enforcement".¹⁵³ Nicola Padfield, a lecturer in Law at the University of Cambridge and Crown Court Recorder, questioned whether this was an accurate picture of a short custodial sentence—whether it might be more punitive to impose a two year community order, with challenging demands, than even a relatively lengthy short custodial sentence that would only result in a few months inside.¹⁵⁴

100. Witnesses were concerned that short custodial sentences were almost 'setting people up' to re-offend.¹⁵⁵ Two key problems were identified—the time within prison was not long enough to put in place any meaningful interventions (e.g. improving literacy) but long

149 Ev 106

150 Q1

151 Q27 (HAC)

152 Ev 82

153 Q 407

154 Ev 97

155 For example see Ev 51, Ev 107-108 and Ev 120

enough to detach the individual from all the networks such as family and employment that may help to prevent re-offending. Anne Owers said: “it is very difficult within a short sentence to make a significant difference to someone coming into prison, and given that if there is any stability in life outside that will be disrupted, it is extremely difficult on a sentence of less than six months (and all the evidence points that way) to do anything to reduce the chance of that person re-offending in the future”.¹⁵⁶ Clinks added that: “These short sentences achieve a disruption in housing, employment and family ties, exposing offenders to the damaging impact of prison life without any benefits in terms of addressing the issues that led to the offending”.¹⁵⁷ The Lord Chief Justice has raised concerns that a short sentence would encourage re-offending. He cautioned that “particular care should be exercised before imposing a custodial sentence on a first offender. Association with seasoned criminals may make re-offending more likely rather than deter it”.¹⁵⁸

101. Short custodial sentences are very unlikely to contribute to an offender’s rehabilitation; in fact, short custodial sentences may increase re-offending.

102. Custodial sentences, even very short ones, are often seen as the ultimate punishment and an assumption is made that achieving the punishment aim of sentencing compensates for deficiencies in meeting other aims such as rehabilitation or reparation. We disagree with this approach to using custodial sentences.

Why are short custodial sentences used?

103. Short custodial sentences do not achieve the sentencing aim of rehabilitation, and potentially not that of punishment. It seems that short custodial sentences are being used for low level but repeat offenders. As Sir Igor Judge explained, it might be: “that there were so many persistent offences committed by this individual that really the time had come when he—it is nearly always a he—had to go inside for a short time, if only to learn that his actions had serious consequences”.¹⁵⁹

104. Short-sentenced prisoners are highly likely both to have previous convictions and to re-offend following release. Of those in prison on short sentences 58% have 10 or more previous convictions, 35% between 8 and 10 and only 8% have less than 3.¹⁶⁰ The Director of Probation noted that re-conviction rates for sentences of 12 months or less were almost twice those of offenders sentenced instead to carry out unpaid work—70% compared to 38%.¹⁶¹ What perhaps is not clear, however, is how far offenders coming into short sentences are already set into a pattern of recidivism and to what extent the short sentence encourages repeat offending. Professor Neil Hutton pointed out that recidivist minor offenders are a “major challenge to criminal justice” in that their imprisonment creates a revolving door: “a significant number of these offenders have a range of issues which make it extremely difficult for them to break out of this cycle. Courts feel that imprisonment is

156 Q 76

157 Ev. 20

158 R. v Seed & Anor, [2007] EWCA Crim 254, 13 February 2007 www.bailii.org/ew/cases/EWCA/Crim/2007/254.html

159 Q 207

160 Ev 62

161 Q129

inevitable because alternatives have not ‘worked’ or because the persistence of the offending behaviour is viewed almost as a contempt for the authority of the court”.¹⁶² He acknowledged that there was no easy solution but felt prison should be reserved for those people who needed to be there and community sentences should be the norm for recidivist minor offences.

105. The Council of HM Circuit Judges suggested that prolific offenders should not be dealt with by imposing short custodial sentences but rather by a sentence that would provide the opportunities to tackle the underlying behaviour: “there are many ‘prolific’ minor offenders who receive custodial sentences as a last resort when other efforts to deal with their offending have failed. In this connection there is a need to keep in mind the problems with mental health and substance abuse”.¹⁶³

106. Nacro queried whether the sentencing framework requiring previous convictions to be treated as aggravating factors was driving up the numbers of short-term sentences.¹⁶⁴ It suggested for example that the much higher percentage of those convicted of shoplifting currently imprisoned compared to five years ago—a rise from 5% to 21%—was due to these requirements.¹⁶⁵ This raises a concern that the sentence an offender receives is less on the basis of the current offence and more on the basis of previous behaviour—with the risk of disproportionate sentencing for the current offence.

107. We are disappointed at the Government’s apparent acceptance of the use of short custodial sentences for repeat offenders. There is no evidence that a short prison term will tackle recidivism. We recommend that the Government should instead produce a range of sentencing options, based on suitable evidence, after consulting sentencers, probation and other services, on what successfully removes offenders from a cycle of crime and repeat offending.

108. We are concerned that, in the absence of identified effective mechanisms for dealing with repeat offenders, defendants may be receiving disproportionate sentences for current offences based on a legislative framework that requires penalties to be ratcheted up. The Government should, as a matter of urgency, assess the impact of provisions requiring previous convictions to be treated as aggravating factors.

109. We were also disturbed by evidence that short custodial sentences are being used because more appropriate options are not available to sentencers. The Magistrates’ Association told us: “their offence is such that it is serious enough, so serious that a custodial penalty is appropriate, but we cannot draw back because we do not have the available programmes”.¹⁶⁶ In particular, programmes to treat substance abuse and mental health facilities were lacking.¹⁶⁷

162 Ev 68

163 Ev 25

164 Ev 88

165 Ibid

166 Q 97

167 Ev 107

110. The Chief Inspector of Prisons suggested to us that contradictions in current funding priorities around prison and probation also had an effect. Government evidence to the Home Affairs Committee referred to the need to “prioritise prison and probation resources on more serious offenders”.¹⁶⁸ This approach denies resources which would make community penalties available as better alternatives to short custodial sentences—meaning resources have to be used on short custodial sentences instead. The Chief Inspector of Prisons summarised the current situation: “the difficulty we have at the moment is that the rising prison population soaks up resources like a sponge and takes away resources from the other things which are not prison which you would need to have in place in order not to use prison so much; so it becomes a kind of vicious cycle”.¹⁶⁹

111. We welcome the Ministry of Justice’s statement of January 2008 announcing improved funding for intensive supervision alternatives to custody and for drug treatment. If non-custodial sentences are ever to be used appropriately then they must receive adequate funding to make them effective. However, making effective community sentences available requires more than funding for pilots or specific initiatives. The Government needs to set clear, long-term objectives and allocate resources to them.

Options for change

112. One option suggested to achieve a switch from the use of short custodial sentences to community punishments would be to abolish or limit in law the ability to sentence to short periods in custody.¹⁷⁰ This could be done through abolishing Magistrates’ ability to pass custodial sentences, limiting custodial sentences to particular offences or requiring courts to demonstrate why a community sentence was inappropriate in order to impose a custodial sentence. The Chief Inspector of Probation injected a note of caution pointing out that the general trend from past experience was that attempts to limit custodial sentencing tended to backfire: “I do think we have to learn lessons over the last 40 years (and we do not learn them) that alternatives to prison, so-called, turn out to be the opposite for alternatives to prison”.¹⁷¹ The Council of HM Circuit Judges questioned whether removing the option of short custodial sentences would simply mean longer custodial sentences were imposed.¹⁷² The International Centre for Prison Studies noted that imposing stringent community orders on low level offenders resulted in a rise in people going to prison for failing to comply with them.¹⁷³ Others had objections based on the impact of such proposals on judicial discretion—the Criminal Bar Association simply stated that: “in many cases such a sentence [short-term imprisonment] is punitive and disruptive to a disproportionate level but it would be wrong to prevent the imposition of such a sentence in any circumstances”.¹⁷⁴

168 Ev 54

169 Q 76

170 Ev 120

171 Q 372

172 Ev 26

173 Ev 70

174 Ev 32

113. The Criminal Justice Act 2003 contained a provision for Custody Plus, but this has not been implemented. The Custody Plus proposals would have meant that short custodial sentences should have entailed a shorter period actually in custody but a longer licence period—compared to the current situation where the individual is simply released at the half way point with no conditions on their behaviour in the community. This licence period offers the opportunity for programmes to change behaviour to be completed or for resettlement to be more closely monitored. The Government told us that it had not implemented Custody Plus because of the lack of resources—and most recently reported to us that models of its implementation resulted in an increased prison population, as well as probation workload.¹⁷⁵

114. A range of witnesses from Lord Woolf to the Prison Reform Trust expressed regret. The Magistrates' Association told us: “if Custody Plus had been introduced, magistrates would have seen that as a possible way forward and a progressive step [...] so that it would have been a shorter-term in prison to recognise the seriousness of the offence and punish them but, recognising their own particular problems, we could then have said, ‘yes, here is an agency that will deal with this’”.¹⁷⁶ Other witnesses were concerned that Custody Plus would have led to longer sentences overall. The Council for HM Circuit Judges, while supporting the idea of Custody Plus, suggested it would have resulted in a taste of custody for individuals who would not otherwise have faced a custodial sentence.¹⁷⁷

115. A number of witnesses questioned whether it would be possible to achieve some of the benefits of the Custody Plus proposals, such as the linkage to communities, without the potential disbenefits of ‘uptariffing’ caused by rearranging the necessary legislative framework. Nacro suggested that the Government could commission voluntary organisations to provide resettlement services for prisoners on short custodial sentences.¹⁷⁸ There are examples of good practice of such initiatives across the country in individual areas but the challenge is in enabling and ensuring they are available consistently. Clearly there are also difficulties in that prisoners get moved to different establishments to deal with prison overcrowding but these are often far from their homes and therefore make using local services to deal with the aftermath of short custodial sentences problematic.

116. Eliminating short sentences from the statute book would be an unnecessary limitation to sentencers’ discretion and would not deal with the real issues around providing an appropriate sentence structure for low level offenders. However, taking no action is also not an option. Judicial discretion seems to be already limited because of the lack of available alternatives.

117. The ‘Custody Plus’ proposals had the potential to deal with one of the key criticisms of short custodial sentences, namely that they have no rehabilitative value. While we accept that to implement these proposals without the resources to operate them effectively would be likely to make the situation worse rather than better, we recommend that the Government considers how some of the key elements of the

175 Ev 105 (JSC)

176 Q 116

177 Ev 26

178 Ev 88

Custody Plus sentence, such as enhanced resettlement support, could be brought in within the current legislative framework.

118. There is a contradiction in stating that prison should be reserved for serious and dangerous offenders while not providing the resources necessary to fund more appropriate options for other offenders who then end up back in prison. Unless this contradiction is resolved we fear that the twin aims of the Criminal Justice Act 2003 will not be realised.

5 Non-custodial responses to offending

119. The Criminal Justice Act 2003 made overarching changes to the framework for community sentences in an attempt to make them more appropriate for a range of offenders. As we discussed in the previous chapter short custodial sentences continue to be used and there is no evidence of a switch away from these to community based alternatives, despite increases in the use of Community Orders and particularly Suspended Sentence Orders (SSO). Community based penalties can work well-with lower re-conviction rates than other types of sentencing-but other evidence, insofar as it is available, suggests they are either underused or inappropriately used. Difficulties have been identified both in the resources available to make appropriate sentences available and in the confidence of sentencers, reflecting the confidence of the public, to use them.

Community Sentences

120. The Community Order, introduced by the Criminal Justice Act 2003, allows sentencers to attach requirements to the order to match the seriousness of the offence and the risks posed by and needs of the individual. This is done by creating an order with one or more of twelve possible requirements, such as unpaid work or drug rehabilitation, to be completed over a defined period. During 2006, the courts gave 121,690 Community Orders. The most common order contained a single requirement obliging the offender to complete a specified number of unpaid work hours (32% of all orders).¹⁷⁹ The requirements are:

- unpaid work (40-300 hours);
- supervision (up to 36 months (24 months maximum for suspended sentence orders));
- accredited programme (length to be expressed as the number of sessions; must be combined with supervision requirement);
- drug rehabilitation (6-36 months; 24 months maximum for SSO; offender's consent is required);
- alcohol treatment (6-36 months; 24 months maximum for SSO; consent required);
- mental health treatment (up to 36 months; 24 months maximum for SSO; consent required);
- residence (up to 36 months; 24 months maximum for SSO);
- specified activity (up to 60 days);
- prohibited activity (up to 36 months; 24 months maximum for SSO);
- exclusion (up to 24 months);

¹⁷⁹ National Audit Office, National Probation Service: The Supervision of Community Orders in England and Wales, para 1, p. 4, 29 January 2008, HC 203

- curfew (up to six months and for between 2-12 hours in any one day; if a stand alone curfew order is made there is no probation involvement);
- attendance centre (12-36 hours with a maximum of three hours per attendance).

121. Suspended Sentence Orders (also introduced in the Criminal Justice Act 2003) were designed to allow the court to impose community requirements (as listed above) together with a suspended custodial sentence, to be ‘activated’ if the community requirements of a Suspended Sentence Order were breached. These sentences intended to contribute to a reduction in short-term prison sentences by providing a robust alternative to custody, thereby addressing the problem of ‘uptariffing’.

The experience of Community Sentence and Suspended Sentence Orders

122. The new Community and Suspended Orders (CO and SSO) have been in use since 1 April 2005. In its Report *National Probation Service: The Supervision of Community Orders* in England and Wales, the National Audit Office identified that between 1995 and 2005, the number of community sentences given by courts increased by more than 50%. They constituted 14% of the 1.5 million sentences given in 2005.¹⁸⁰ However, the increase in community sentences is not, as was intended, reflecting a switch to these sentences from short custodial sentences but rather displacing those individuals who might previously have been fined or discharged. This ‘uptariffing’ effect is particularly clear with regard to the new Suspended Sentence Order.

123. The Government accepts that: “the evidence so far is that the courts are not using community orders as fully as they might. The anticipated switch to these new community sentences from short-terms of imprisonment that was envisaged has not happened”.¹⁸¹ They also stated that the number of fines has “decreased significantly in the last ten years” (for indictable offences) and that they would “like to achieve a greater use of fines at the expense of the community order”.¹⁸²

124. The Suspended Sentence Order, introduced at the same time as the Community Order in April 2005, has been more widely used than the Community Order. In a statement to the National Criminal Justice Board in January 2007, ministers indicated that the use of Suspended Sentence Orders continued to rise at around 3,500 commencements per month.

125. As with Community Orders, the evidence does not indicate that there is enthusiasm for a sentence that provides a robust alternative to custodial sentencing—but rather that a Suspended Sentence Order is imposed on people who previously might have been sentenced to a Community Order. The Sentencing Guidelines Council said that: “the information available to the Council and the Panel appears to indicate that this increase has been accompanied more by a reduction in the number of community orders and fines than

180 National Audit Office, *National Probation Service: The Supervision of Community Orders in England and Wales*, para 21, p 1529 January 2008, HC 203

181 Ev 55

182 Ev 59

in the number of custodial sentences...¹⁸³ Although the total number of offenders starting supervision for all court orders rose by 11%, the number for community sentences fell by 7,790 while the number for Suspended Sentence Orders (SSOs) rose by 26,880. It is therefore likely that some SSOs have been given to offenders who would previously have received community sentences.¹⁸⁴

126. Furthermore, in the event of non compliance or re-offending, a Suspended Sentence Order can more readily trigger a term in prison than a community sentence. Suspended Sentence Orders have more requirements attached than Community Orders, and the Centre for Crime and Justice Studies identified that: “as a result there are indications that the breach rate for Suspended Sentence Orders is particularly high”.¹⁸⁵ The Centre for Crime and Justice Studies argued that in this sense offenders are being “set up to fail with too many requirements”.¹⁸⁶ The number of breaches for SSOs going to prison rose from 37 in 2004 to 1,640 in 2006.¹⁸⁷ There is no evidence to suggest therefore that these new orders are diverting offenders from custody but that, on the contrary, the use of the SSO may be contributing to the ‘uptariffing’.¹⁸⁸

127. In acknowledgement of the apparent overuse of community sentences where a lesser sentence, such as a fine, would otherwise have been imposed, the Criminal Justice and Immigration Act 2008 introduces section 148(5) of the Criminal Justice Act 2003 which provides that a court is not required to pass a community sentence simply because it is available.¹⁸⁹ The 2008 Act only allows Community Orders to be imposed for offences punishable by imprisonment or for persistent offenders who have previously been fined.¹⁹⁰ Speaking in the House of Lords, Lord Bach, said that previous offences sentenced with a Community Order would not count towards the provision in the new clauses because it would be unfair to have the first punishment by way of Community Order count as a reason for a second.¹⁹¹ During the passage of the legislation the Lords raised concerns that the changes would restrict the courts’ discretion, potentially resulting in further ‘uptariffing’.¹⁹²

128. The Government intended to use the Criminal Justice and Immigration Act 2008 to remove entirely the option of Suspended Sentence Orders for summary offences. These provisions were removed from the Bill at a late stage following opposition in the House of Lords, amid concern that the result would be ‘uptariffing’, with sentencers imposing an immediate custody sentence where suspending the sentence was not an option.¹⁹³

183 The Sentencing Guidelines Council and the Sentencing Advisory Panel, *The Sentence*, May 2007

184 Ministry of Justice, *Offender Management Caseload Statistics 2006*, chapter 3

185 Ev 17

186 Ev 17

187 Ev 61

188 Ev 17

189 Section 11

190 *Ibid*

191 HL Deb. 26 February 2008, col. 609

192 HL Deb. 26 February 2008, col.607-608

193 HL Deb, 26 February 2008, col. 602

129. The intended switch from the use of short custodial sentences to community punishments in the form of Community Orders and Suspended Sentence Orders has not occurred. Instead, all evidence points to these sentences displacing fines. The 2003 Act, in common with other legislation, seems only to have added to an inexorable rise in sentences. We believe the aim should be to achieve a consensus as to what is the appropriate sentence in different circumstances.

130. We welcome the Government's recognition of the 'uptariffing' problems caused by Community Orders and Suspended Sentence Orders and the attempts through the 2008 Act to control them. Nevertheless, the lesson of the 2003 Act is that legislation is not a useful mechanism to prevent 'uptariffing'. We urge the Government to bring forward proposals as to how to tackle the issue of 'uptariffing' through non-legislative mechanisms. We suggest that the Government explore public information, sentencing training and effective evaluation and development of local projects as part of these proposals.

131. There is, however, more room for optimism when looking at community sentences themselves. Clinks argued that the evidence suggests that community sentences in particular are more effective at reducing re-convictions than prison sentences.¹⁹⁴ The NAO agreed, but explained that re-conviction rates are measured two years after sentence and take a year to produce, so reliable information showing the re-conviction rates for the new community order will not be ready until 2009.¹⁹⁵ NOMS data from 2004 shows that those sentenced to old-style community sentences have a 50.5% chance of re-conviction, compared to a predicted rate of 54.1%. For the same period the actual re-conviction rate for those released from custody is 67 %.¹⁹⁶

132. Away from the re-conviction figures the picture of community orders is less encouraging. Centre for Crime and Justice Studies research suggested that the new Community Orders have not been used to full effect but, instead, had been used like the old community sentences. Even though theoretically a package of requirements could be tailor-made for each offender, the research identified that half of the 12 possible requirements have not been used or were used very rarely.¹⁹⁷ The NAO identified that the most common order given (32%) only had the single requirement of unpaid work.¹⁹⁸ Concern was also expressed about the lack of availability of some requirements, and the rise in the use of unpaid work.¹⁹⁹

133. At the other end of the scale, mental health requirements were the most rarely used options on the Community Order 'menu', used in only 1% of cases for those over the age of 25. Drug treatment (6%) and alcohol treatment requirements (3%) were also rarely

194 Ev 21

195 In a Written Ministerial Statement on 7 May 2008 the Ministry of Justice announced changes to the way the re-offending is measured to provide a more accurate analysis of the impact of different types of sentences. HC Deb col. 33WS

196 National Audit Office, National Probation Service: The Supervision of Community Orders in England and Wales, para. 21, p 1529 January 2008, HC203

197 George Mair, Noel Cross and Stuart Taylor Centre for Crime and Justice Studies, The use and impact of the Community Order and the Suspended Sentence Order 2007

198 See para 120

199 Ev 17

employed for the over 25s, and exclusion and prohibited activities requirements were not used at all.²⁰⁰ The research team identified several potential reasons for this, for example, not all requirements were available in all areas and the rigorous enforcement required to establish confidence in the new measures was not always pursued. The researchers further noted general complaints about the lack of resources and poor knowledge of available services in some areas.²⁰¹

134. In addition to reducing re-offending, each of the possible 12 requirements were designed to link to the different purposes of sentencing as set out in the 2003 Act.²⁰² However, the NAO have identified that there is a lack of research on the effectiveness of some of the Community Order requirements in achieving, for example, effective reparation to the victims of crime. While they identified that current work being undertaken by NOMS would add to the evidence base, there is a need for additional research.²⁰³

135. The delivery of robust community sentences has the potential to reduce re-offending and re-conviction rates. However, we are concerned that the full package of requirements that can be associated with Community Orders is not being used to its full effect and, as a result, Community Orders are not meeting the purposes of sentencing as envisaged in the 2003 Act.

136. We recommend that the Government undertake an immediate audit of the use of the twelve potential requirements of Community Orders and of the success of specific requirements in delivering the purposes of sentencing.

Towards effective non-custodial sentences?

137. As we have discussed, the evidence indicates much lower recidivism rates amongst offenders serving community sentences than amongst those serving prison sentences. The Prince's Trust identified that 65% of offenders and ex-offenders they supported in 2005-06 went on to employment, training and education.²⁰⁴ The Prison Reform Trust found that 67% of people released from prison go on to re-offend within two years.²⁰⁵

138. On 11 March 2008, David Hanson recognised the value of community punishments:

“Re-offending rates for offenders subject to community punishments are lower than those for short-sentenced prisoners. Community punishments can be more cost-effective and can offer more opportunities for rehabilitation than short-term sentences, dealing with the offence and the causes of offending behaviour”.²⁰⁶

200 See Chapter 7 of this report for more details

201 George Mair, Noel Cross and Stuart Taylor Centre for Crime and Justice Studies, *The use and impact of the Community Order and the Suspended Sentence Order*, 2007

202 Ibid

203 National Audit Office, *National Probation Service: The Supervision of Community Orders in England and Wales*, p. 17 para 2.11

204 Ev 104

205 Prison Reform Trust, *Bromley Briefings Prison Fact file*, December 2007

206 HC deb, 11 March 2008 col 15WS

139. Lord Woolf agreed that there were significant benefits to non-custodial sentencing options and called for a change to the “balance in the way we think about this”. He continued: “the only reason that prison should be regarded as an alternative if a community sentence available is because of the seriousness of the offence”.²⁰⁷ However, despite the existence of a broad consensus in favour of the use of alternatives to custody, several problems need to be addressed to achieve the effective and safe operation and delivery of non-custodial sentences. The two most prominent problems are the financing and provision of Probation Services and public confidence in non-custodial options.

Resources and the provision of services

140. The Police Federation said that: “in our experience properly financed non-custodial sentences can prove to be a successful means to reduce re-offending rates. Unfortunately, it is also our experience that the Probation Service is severely over-stretched, under-resourced and un-coordinated. The result—at no fault of the Probation Service—is that successes are sporadic and patchy”.²⁰⁸ Lord Woolf agreed: “I think that it [the Probation Service] is stretched so excessively and if there is a need to devote resources in general it is not always appreciated how important it is to make community punishments really effective”.²⁰⁹

141. Jack Straw told the Committee that there had been an increase in the level of resources for the Probation Service: “it has gone up over 75% in real terms since 1997 compared with an increase in real terms in prison spending of about 36% or 37%. The Government has shown by that spending that it really has invested in the Probation Service to a very significant degree”.²¹⁰ On 11 March 2008, the Government announced further funds for the provision of community sentences, including £40 million allocated to Probation in 2008/09, “so that sentencers can be confident that the resources are in place to deliver effective community punishments”.²¹¹

142. In their report, the NAO identified that between 2001/02 and 2006/07, total Probation spending increased by 54%.²¹² However, the report also identified a significant increase in the workload of the National Probation Service: the significant increase in the number of community sentences has contributed to the rising number of offenders being managed by probation: at the end of 2006, 235,000 offenders were being managed, compared to 139,700 in 1995.²¹³ This rise in workload has been supported by an increase in staff of 35% between 2001 and 2006.²¹⁴ However, the NAO concluded that:

207 Q 35 (HAC)

208 Ev 102

209 Q 30 (HAC)

210 Q 228

211 HC deb, 11 March 2008 col 15WS

212 National Audit Office, *National Probation Service: The Supervision of Community Orders in England and Wales*, p.12, para 1:10

213 *Ibid*, para 2.1

214 National Audit Office, *National Probation Service: The Supervision of Community Orders in England and Wales*, NAO para 1.14

“The impact of increased workloads on the capacity of probation to deliver what is expected by the courts and the public has not been clearly assessed. Insufficient work has been undertaken to assess whether increased resources devoted to probation are at the correct level to support the increase in services that has to be provided”.²¹⁵

143. Furthermore, the NAO identified that: “the Probation Service does not know with any certainty how many community orders it has the potential capacity to deliver within its resources, nor has it determined the full cost of delivering Community Orders. Since the potential capacity of the Service and Local Areas is undetermined, the impact of any future changes in, for example, policy or sentencing trends is difficult to estimate and therefore manage”.²¹⁶

144. The recent Cabinet Office Review on Crime and Communities has recommended the introduction of more intensive community punishments with, for example, unpaid work undertaken several nights each week and at weekends.²¹⁷ While there may be a case for this, resources will undoubtedly be needed if it is to be successfully implemented.

145. Effective community sentences require effective resources. There is no evidence base upon which to determine where resources are most needed for effective sentencing options.

146. An urgent assessment is required to evaluate whether the additional resources devoted to probation are at the correct level to support the increase in services that have to be provided as a result of the greater use of community sentences.

147. The Probation Service does not know with any certainty how many Community Orders it has the potential capacity to deliver within its resources, nor has it determined the full cost of delivering Community Orders; we recommend that this data be collated as a matter of urgency.

148. Clinks identified that in order to improve the provision of non-custodial sentences, investment was also required in “services, particularly those provided by the Voluntary and Community sector, to address problems relating to homelessness, substance misuse, unemployment, debt and family relationships,” and that these services “need to be readily accessible to all points of the criminal justice system from arrest to sentence and post release”.²¹⁸ They added that the Voluntary and Community sector should be commissioned to provide a range of welfare services to meet the needs of low-level offenders.²¹⁹ The Magistrates’ Association agreed, and pointed out the need for an “increase in public confidence in community penalties—which must include better resourcing for probation, good local links and a halt to changes that lower morale in the service”.²²⁰

215 Ibid

216 Ibid, p. 6

217 Available at <http://www.cabinetoffice.gov.uk/crime.aspx>

218 Ev 20

219 Ev 20 For more detail see next chapter

220 Ev 82

Adequate provision at the local level

149. The Local Government Association acknowledged local initiatives had a major role to play “in terms of offering unpaid work schemes as part of communities, and in their role as providers and commissioners of services” (including housing, education and leisure).²²¹ They called for a clear articulation of what a sentence involves, so that they could encourage local people in the punishment of offenders and their subsequent re-integration into the community, as this was “an important aspect of providing sustainable local solutions to reduce re-offending”.²²² The Magistrates’ Association also emphasised the importance of local delivery of key services to make requirements work.²²³ We received encouraging evidence on the impact of such local schemes, as exemplified below.

*Staffordshire Probation Service and Heantun Housing Association’s Intensive Floating Support Scheme*²²⁴

The scheme works with high-risk and prolific offenders by challenging their behaviour, providing accommodation in an approved premises hostel and providing an enhanced level of support. It is funded by a Staffordshire and Stoke-on-Trent Supporting People Grant. The strength of the scheme is its ability to respond to its client’s individual circumstances. Specific support is given with housing advice and intensive housing management support; life and social skills development; employment and education assistance.

Forty-one clients have been on the scheme since 2002 and only one has been re-convicted (and then only after moving from the area and the scheme’s support). All other cases have maintained accommodation in the community.

The direct costs are £70,000 per year plus £2,500 associated costs to the Probation Service. The scheme is currently considering using volunteers to provide additional, out of hours support based on the Circles of Support model.

Community programmes should focus on alcohol-related offending. The Howard League for Penal Reform’s own research (Out for Good, 2006) showed that much emphasis is placed on providing drug-related programmes yet, when asking young people what directly influenced their offending behaviour, alcohol was often a more prominent factor.

221 Ev 79

222 Ev 79

223 Ev 83

224 Ev 63

Inclusive Model of Partnership Against Car Crime (IMPACT), Belfast²²⁵

Co-operation at a local level is crucial for effective practice within this scheme. The various agencies involved work together through joint funding, staff secondment and delivering their core practice of intervention, diversionary and preventative work.

The project works with young people involved in car crime; undertaking diversionary work with those on the margins and preventative work with those vulnerable to involvement. In practice this means work can be carried out in environments including prisons, juvenile justice centres, youth centres, probation offices, primary and secondary schools, IMPACT's own premises, community based premises and street locations in detached methods of work.

The IMPACT Project is based on a partnership model and is built upon two fundamental premises. Firstly, it adopts an inclusive approach. Despite the political sensitivities that exist in West Belfast, IMPACT has resolved this by developing two bodies to direct its work. There is an advisory committee which includes the PSNI and other statutory agencies to advise on the role and scope of the project. The project is also managed by a steering committee made up of equal representatives from the local community sector and the range of statutory partners contributing resources to the project. The second premise guiding the project is that the operational team is drawn from a range of different backgrounds reflecting partner agency interests and remits.

This project is a truly multi-agency and partnership scheme, incorporating health, education and the criminal justice systems. The project itself was set up as the community felt there was a need and has been involved with the management and direction of the project.

Improving public confidence

150. Lord Woolf argued that, as a result of inadequate funding, the way we look after those who are punished in the community has deteriorated and that: "this has led to a loss of confidence on the part of both the public and the courts in the quality of community punishment".²²⁶ The Criminal Bar Association agreed and added: "a large part of the difficulty in passing effective community sentences rather than short custodial sentences has been because there is such emphasis as how the sentence appears to the public as opposed to whether it is in fact the right sentence".²²⁷ David Faulkner added that Courts and Probation Service and police should try to ensure that the conditions attached to community sentences and licences are "realistic and relevant" to the person's situation and circumstances, and that they are designed to help towards their re-settlement.²²⁸ He added that the need to protect the public should not "result in conditions whose only purpose is

225 Ev 64

226 Q 12

227 Ev 31

228 Ev 43

to appear ‘tough’ on the offender, and which increases the likelihood of failure for no positive purpose”.²²⁹

Boosting judicial and public confidence in community sentences: the Thames Valley projects

The Thames Valley Partnership established a series of projects in order to test ways of engaging local community groups in decisions about unpaid work, and to enable sentencers to visit community-based alternatives to prison. The latter programme involved Crown Court judges visiting a range of community-based programmes including domestic violence, drug treatment and unpaid work projects.

The experience of work with Crown Court judges in the Thames Valley 2005-06 suggested that the judicial visits were extremely worthwhile. Prior to this, probation staff and judges had little contact with each other and judges had limited knowledge of the practical operation of community sentences. They gained a realistic flavour of the work, and expressed a wish for continuing information about the schemes. It appeared that judges had not appreciated the intensity and demanding nature of some programmes, or instead the importance of good assessment and the insistence of programmes on offenders taking responsibility.

Capacity and resources were identified as crucial issues: recruitment of staff, for example, was a problem. Nevertheless, drug users were positive about their treatment and highlighted the powerful impact of court review and judicial continuity. Judges were impressed with the flexibility of these orders, and with the tough enforcement regime in place. They learned more about probation assessment and the context from which PSRs (pre-sentence reports) come, producing enhanced respect for the professionalism of probation officers. The most important conclusion was that confidence on all sides increased with knowledge. Similarly, the probation officers benefited from judges’ affirmation of their work. They found that judges’ views on domestic violence cases had changed and that their confidence in structured day programmes for drug users had much improved. The quality of the exchange between judges, probation officers and offenders was described as “remarkable”. His Honour Judge Hall was an integral part of this project and chaired the roundtable discussions that followed the visits.

151. Much of the written evidence referred to the need for public information and education in this respect. The Magistrates’ Association, for example, commented that:

“...the key...is society’s understanding both of what it is that constitutes a serious offence, and the fact that punishment in the community can be appropriate for more serious offences...when people understand that community sentences can be much

more onerous than a few weeks doing very little in prison they recognize that community sentences can be more appropriate”.²³⁰

The Cabinet Office report also recommended that the local community should receive information about community payback.²³¹

152. Nacro claimed that “community sentences...have not been promoted with the same headline-hitting effect as ‘get tough’ statements”,²³² while the Centre for Crime and Justice Studies research identified that good information can do much to change public attitudes to community sentences.²³³ Roger Hill (Director of Probation), was less optimistic as he reflected on the low level of public knowledge of probation work. He indicated that: “public understanding of the detail is not going to keep up and expectations will continue to rise...expectations are high and the difficulties are many”.²³⁴

153. Smartjustice, an organisation devoted to supporting community sentences and increasing public confidence, has conducted a number of surveys into public (and victim) attitudes to crime. Based on their findings, they argue that the starting point in addressing the public opinion issue is the need to obtain “a realistic picture of public support for alternatives to custody”. Their work has led them to conclude that victims’ fears have been fuelled by the tabloid media, and the competition to “talk ever tougher on crime”. However, surveys have shown that “the public (particularly women) do not necessarily equate ‘tough on crime’ with more people in prison”. They referred to a MORI poll of 2004 showing that better parenting, better discipline in schools, and more constructive activities for young people were perceived to be more effective than prison.²³⁵

154. The Smartjustice and Victim Support survey *Crime Victims Say Jail Doesn’t Work*, 2006, shows that almost two-thirds of victims of crime: “do not believe that prison works to reduce non-violent crime and offences such as shoplifting, stealing cars and vandalism. The survey showed overwhelming support for programmes that focus on prevention and in particular, more support for parents, more constructive activities for young people and more drug treatment and mental health provision in the community”.²³⁶ In an ICM poll, conducted in March 2006, 67% said prison was not likely to reduce offending amongst women and 73% did not think mothers of young children who commit non-violent crime should be locked up. Instead, 86% supported community alternatives to prison.²³⁷

155. Based on these findings, Smartjustice argue that there should be a focus on the promotion of these programmes as a viable alternative to prison.²³⁸ They identify the need to develop a strategic approach: the first hurdle being to change the language used–“the

230 Ev 82

231 Cabinet Office, Crime and Communities Review, available at www.cabinetoffice.gov.uk/crime.aspx

232 Ev 87

233 Ev 16

234 Lecture to National Probation Service Annual Conference, 28 November 2006. Cardiff

235 Ev 124

236 Ev 124

237 Ev 124

238 Ev 124

very term, alternatives to custody, places prison as the central concept in the debate around criminal justice". They explained that this was difficult because "prison is a singular, easily understood concept; the alternatives are broad, wider ranging and complex".²³⁹ The provision of information is therefore vital. Repeated mixed messages from Government only serve to inhibit the provision of objective information. They repeatedly supported the efficacy of non-custodial sentences for non-dangerous offenders, particularly in reducing recidivism rates and David Hanson accepted this approach in evidence:

"What we need to do is promote both the application of those non-custodial sentences, the Community Orders, the 12 options in the 2003 Act, we need to encourage their greater use, look at their imaginative use because ultimately what we are concerned about in the Department is protecting the public and the best way to protect the public in those circumstances is to look at reducing re-offending".²⁴⁰

156. Yet there is a challenge to explaining this to the public. Jack Straw said: "I look forward to a political party represented around this table...which goes out and says "if you vote for us we are going to cut the prison population".²⁴¹ Victims' Voice commented that community sentencing was "currently seen as a soft option by both the criminal and society".²⁴² They argued that: "the key argument is about effectiveness—community sentences are more effective than prison, punishment alone does not change people, in fact most of the time it makes them worse".²⁴³ Smartjustice argued that improving public confidence requires a press strategy, and a proactive, rather than reactive, approach to the media and a "well worked up communication strategy to promote community sentences focusing on best practice examples".²⁴⁴

157. We are encouraged by evidence of successful local projects based upon joined-up provision of services at the local level, such as those in Staffordshire and Thames Valley. The local authority is a key partner in the effective delivery of these services for the criminal justice system but also for important areas such as mental health and drug treatment.

158. We are convinced of the benefits of magistrates being closely involved in the systems that deliver and monitor community punishments. The Government should encourage magistrates to build on the projects that support their engagement in individual areas. However, the Government should also consider more systematic means in order to involve magistrates with the provision of community punishments.

159. Local areas and individuals cannot operate in a vacuum. The Government needs to implement a sustained delivery and implementation strategy for increased use of community punishments. This is crucial for boosting public confidence in the robustness and efficacy of non-custodial sentences.

239 Ev 124

240 Q 7

241 Q 406

242 Ev 126

243 Ev 125

244 Ev 125

6 Back-door sentencing

160. A coherent sentencing structure is not just about the decisions made at the point of sentence—for example whether a person is fined or given a community sentence or the length of a custodial sentence—but also what happens at the end of that sentence. This brings in issues such as the consequences if someone does not comply with the terms of their sentence. The 2003 Act made a number of changes to these areas, which Nicola Padfield called “back-door sentencing”.²⁴⁵ Our witnesses were particularly critical about how changes to the systems for recall following breach of licence, or for dealing with breach of community orders, were pulling people into prison due to a failure to supervise them effectively or support them in complying with the conditions laid upon them.

Recalls and the prison population

161. The 2003 Act overhauled the system of release and licence for prisoners on sentences over 12 months (and would have changed systems for people on short-term custodial sentences, but those provisions have not been brought into effect). Previously, offenders on sentences of less than four years were released on licence from prison half-way through their sentence and then released from licence at the three-quarter point. The final quarter of the sentence was spent ‘at risk’—if a further crime was committed the time remaining could be added as an additional custodial sentence to any further penalty. In the 2003 Act the licence period was extended to last the full sentence. The 2003 Act also allowed the Secretary of State to lay down standard conditions of licence and set procedures for when licence conditions were alleged to have been breached and the individual was recalled to prison. The new procedures transferred the responsibility for deciding whether a person should be recalled to prison from the Parole Board to the Secretary of State—effectively the Probation Services. The Parole Board, however, reviewed all recall decisions to determine whether they are fair; the offender also has a right of appeal to the Parole Board against the recall decision. When considering the decision to recall, the Parole Board must also determine either the date on which the prisoner will be re-released or the date of the next review at not less than annual intervals.

162. Our attention was drawn to the number of prisoners being recalled to prison for breach of licence because it is an area where numbers are rising rapidly. The Prison Reform Trust stated that in the five years to 2005 there had been a 350% rise in the number of offenders recalled to prison for an alleged breach of conditions.²⁴⁶ In 2006-7 11,231 offenders were recalled to prison compared to 8,678 the year before—a 29% increase in one year alone.²⁴⁷ This compares to 2,457 people recalled during 2000-1.²⁴⁸ Although the overall percentage of the prison population made-up of recalled prisoners at any one time is relatively small, the Prison Reform Trust pointed out that it was rising very quickly—both because of the increased number of persons recalled and because the changes to licence

245 Uncorrected transcript of oral evidence on Sentencing Guidelines, taken before the Justice Committee 22 January 2008, (HC 279-i), Q 4

246 Prison Reform Trust, Bromley Briefings, Prison Fact file, December 2007

247 Ministry of Justice, National Offender Management Caseload Statistics 2006, Table 10.8

248 Ibid

arrangements in the 2003 Act meant that individuals were liable to stay in prison longer if they are recalled.²⁴⁹

163. We heard two main criticisms of this system for recall of prisoners: first, that people are not supervised effectively in the community when on licence and that this contributes to the level of breaches and, secondly, that the system was too inflexible and focused on returning people to custody rather than enabling them to comply with conditions.²⁵⁰ The Parole Board had particular concerns about how the increasing numbers of recalls impact on their resources—particularly in light of the other pressures on these in relation to Imprisonment for Public Protection (see Chapter 3).

164. Witnesses presented a picture of a supervision system that was not able to manage people effectively whilst they were on licence. Lord Woolf was concerned that those on licence were almost set up to fail because “the way we look after those who are punished in the community has deteriorated”.²⁵¹ He raised concerns about overstretched probation resources which made it difficult to provide effective community supervision. The Council of HM Circuit Judges concurred, pointing out that “breaches will continue to occur as long as underlying problems remain”.²⁵² If the underlying issues are not dealt with either in the prison sentence or during the licence period then the offender is much more likely to breach the conditions. The Prison Governors’ Association raised as a particular problem the fact that offenders with substance abuse problems may have chaotic lifestyles so that keeping to a regular schedule of appointments would be a real challenge. Unless we have a more “realistic” expectation of individuals on licence then we are bound to see breaches of those conditions.²⁵³

165. We are concerned at evidence of the inflexible system of response to breaches. The Prison Reform Trust told us that using prison as a means to enforce breach of conditions: “...is a non-sophisticated response in that it is a default setting [...] if somebody does go back to prison, if it is a relatively minor infraction, such as, for example, being late for appointments, then if you send them back to prison and they can, in practice, spend most of the rest of the face value of the sentence in custody, that is disproportionate in relation to the seriousness of what the person has done”.²⁵⁴ In answer to a recent question, the Ministry of Justice was unable to provide a breakdown of reasons why offenders were recalled, although it was able to state that only about a quarter of those recalled were called back for committing a further offence.²⁵⁵ The Prison Reform Trust noted that the most frequent reason given for recall is that the individual is “out of touch”.²⁵⁶

166. The Parole Board had particular concerns about the current recall system due to the strain on its resources and questioned whether looking at every single recall case added

249 Prison Reform Trust, Bromley Briefings, Prison Fact file, December 2007

250 See for example Ev 19

251 Q 12

252 Ev 24

253 Ev 107

254 Q85-87

255 HC Deb, 4 February 2008, col.941W

256 Prison Reform Trust, Bromley Briefings, Prison Fact file, December 2007

value—only a small number of cases might concern those who were considered dangerous or serious offenders. Its view was that the current system was “wasteful of resources, does little to protect the public or to prevent re-offending”.²⁵⁷ The length of time taken by the Parole Board to hear recall cases has been held in the courts to be in contravention of the European Convention on Human Rights; the reason given by the Parole Board for the length of time taken to get to a hearing was that lack of resources meant that it was not possible to have the hearing any sooner.²⁵⁸

167. The Government is aware of the concerns raised and the 2008 Act contains provisions to change the recall system. The 2008 Act provides for a revised recall system, including a fixed period of recall whereby an eligible recalled prisoner would be released automatically after 28 days provided the Secretary of State is satisfied that he will not present a risk to the public.²⁵⁹ This means both that the Parole Board would not be required to review every case and that offenders would not be waiting in prison for long periods awaiting that review. Referral to the Parole Board of recalled prisoners ineligible for automatic release (extended sentence prisoners, those sentenced for a specified offence and those not considered suitable for automatic release) will take place after the 28-day period or before if the prisoner makes representations to that effect.²⁶⁰

168. These new arrangements seem likely to ease some of the resource pressures on the Parole Board and to tackle concerns that individuals were receiving potentially very long custodial periods for relatively minor acts that breached their licence conditions. As such, the Parole Board told us that they supported the principle of the 28-day fixed recall system.²⁶¹ The Prison Reform Trust commented that, on practical grounds, the proposed system could be an improvement: “so, for the more minor infractions it would be sensible to have a limit. What tends to happen at the moment is that people often stay in custody, having been sent back for relatively minor failures to comply, for very long periods, because there is no realistic hope of the Parole Board reviewing the case within a very short period of time”.²⁶²

169. However, the 28-day fixed recall period does not tackle the more fundamental issues expressed to us, such as the fact that the recall system is too inflexible to assist people to comply with their licence conditions rather than simply returning them to custody. Simon Creighton expressed concern that a 28-day recall period could worsen matters because it would face recalled prisoners with all the problems of any short sentence—breaking ties and systems that support an individual and help them not to re-offend, without helping them in any other way to tackle the problems. He suggested that the result might be simply a revolving cycle of individuals coming back, and back again, for 28-day periods because re-offending was not managed. The Committee stage within the House of Lords of the 2008

257 Ev 97

258 R Cooper v Parole Board [2007] EWHC 1292 (Admin) (18 May 2007), www.bailii.org/ew/cases/EWCA/Crim/2007/254.html

259 Clause 29, new subsection 255A

260 Clause 29, new subsection 255C(4)

261 Q 184

262 Q 87

Act involved significant debate on these provisions, highlighting the inflexibility of the 28-day fixed period.²⁶³

170. We welcome the Government’s acknowledgement that the recall system set out in the 2003 Act is not appropriate, as evidenced by the changes to the system in the 2008 Act. The 28-day fixed recall system should deal with particular concerns about the strain placed on Parole Board resources by the need to review every recall decision.

171. We remain concerned, however, that the system for recalling prisoners on breach of licence is unnecessarily rigid. Changes to the recall system do not extend the flexibility that people working with offenders need if they are to enable the highest levels of compliance.

Breach of Community Sentences

172. Similar concerns about inflexibility were raised with regard to breach of community sentences. The 2003 Act set out procedures for breach of the new community sentences. The Centre for Crime and Justice Studies report that their research suggested that where orders are breached, sentencers have less discretion than previously to avoid imprisonment.²⁶⁴ In the past, sentencers could choose to take no action, issue a warning or impose a fine. Probation officers had more discretion about whether they took a breach case back to court. However, when Community Orders are breached, courts can only amend them the order by imposing more onerous requirements, or revoking the order and re-sentencing, possibly with a custodial sentence, even where the original offence was not punishable by imprisonment. When Suspended Sentence Orders are breached, courts can activate the custodial sentence, impose more onerous requirements or lengthen the supervision period.

173. The Centre for Crime and Justice Studies, therefore, argued that there was an urgent need to “address the rise in the number of people who breach community sentences or are recalled to custody for breaching their licence conditions”.²⁶⁵ The Mayor of London’s Office also agreed and warned that the increase in custodial sentences for those who breach community penalties “risks undermining the principles of sentencing”. It continued: “a better balance must be found between enforcement and enabling offenders to be given every support and opportunity to comply with a community sentence”.²⁶⁶ The trade union and professional association for family court and probation staff (NAPO), described breach as a “nightmare”.²⁶⁷ The Criminal Bar Association warned that a “lack of resources, insufficiently experienced personnel and insufficient facilities will lead to the almost

263 HL debate, 27 February 2008, col. 664. Concern was particularly significant regarding clause 31 which gives the Secretary of State increased discretion to recall life-sentenced prisoners on licence. In existing provisions, the Secretary of State has this power but only when it is ‘expedient in the public interest’ to recall the person before a recommendation by the Parole Board is practicable: section 32, Crime (Sentences) Act 1997. It is unclear, however, whether this change would significantly affect the number of people recalled by the Secretary of State as the Government have said that the existing power is used and anticipate the same test will be applied by the Secretary of State—‘expedient in the public interest’: HL debate, 27 February 2008, col. 670-671

264 Ev 16

265 Ev 19

266 Ev 86

267 Ev 17

inevitable breakdown of such sentences and the almost equally inevitable imposition of custody”.²⁶⁸

174. As with breach of licence conditions, witnesses sought a system for breach of community sentence conditions that was flexible enough to support the offender in meeting the conditions. David Faulkner believes that: “breaches of condition should be dealt with firmly, although with more flexibility for those which involve no more than a missed appointment, and it is just as important for the supervisor or offender manager to try and make sure that breaches do not occur in the first place”.²⁶⁹ The Howard League’s concerns were with the “inflexibility and automatic nature” of the current system.²⁷⁰ The Centre for Crime and Justice Studies suggested that a system to enable compliance, rather than counterproductive enforcement, might be developed through a graduated system of positive rewards and a graduated hierarchy of responses to a breach.²⁷¹ Clinks suggested that probation staff be given greater discretion to deal with failures to comply with conditions in the context of an offender’s individual circumstances—they describe drug rehabilitation scenarios where offenders’ chaotic lifestyles are taken into consideration and missing appointments treated as a learning experience.²⁷²

175. We urge the Government to reconsider the systems by which the Probation Service and the courts are required to deal with breaches of conditions or breach of licence. A more flexible system which enables these services to support compliance, rather than automatically punish what may be minor infringements, would contribute much more in the long run to public protection by preventing re-offending than sending people to prison.

268 Ev 31

269 Ev 43

270 Ev 66

271 Ev 19

272 Ev 22

7 Vulnerable People

Introduction

176. The consultation paper *Making Sentencing Clearer* identified a number of groups of offenders for whom the Government believe community sentencing is more appropriate than custody, including vulnerable women offenders, vulnerable young offenders and some offenders with mental health needs.²⁷³ The paper also suggested that more should be done to tackle prolific offenders, including drug users.

177. The overuse of custody for particular vulnerable groups was a central concern of many witnesses. There was overwhelming consensus that, despite the 2003 Act, there continue to be many women, young people and people with mental health and substance misuse problems in prison, whose offending behaviour and other specialised needs could be dealt with both more effectively and more appropriately in the community. We received little evidence on sentencing drug users so the needs of drug users as a vulnerable group will not be specifically addressed in this report.

178. Categories of offenders such as women, young people and people in need of mental health or drug treatment have been identified as particularly vulnerable in prison. Clearly not all offenders in particular categories can be considered vulnerable or automatically unsuitable for custody and we recognise that there will be offenders who, because of the gravity of their crime and the dangers they pose, cannot be dealt with safely in the community. However, it is generally agreed that more emphasis must be placed on ensuring that those vulnerable people who do not fall into this group are not sentenced to custody for want of practical community alternatives.

Women

Background

179. The Government first signalled its intention to develop a distinct response to women's offending in 2000, when it published the *Strategy for Women Offenders*.²⁷⁴ Responses to consultation on this strategy highlighted the need for a cross-governmental approach to reducing women's offending and to developing appropriate alternatives to custodial sentences for women.²⁷⁵ The availability of such community provision is essential for implementation of the generic community sentence under the 2003 Act and, in recognition of this, in March 2004 the Home Office launched a three year *Women's Offending Reduction Programme*, coupled with a cross-departmental action plan.²⁷⁶

180. The main priorities of the action plan included:

273 *Making Sentencing Clearer*—a consultation and report of a review by the Home Secretary, Lord Chancellor and Attorney General, November 2006

274 Home Office, *Strategy for Women Offenders*, 2000

275 Home Office, *The Government's Strategy for Women Offenders Consultation Report*, September 2001

276 Home Office, *Women's Offending Reduction Programme: Action Plan*, 2004

- making community interventions and programmes more appropriate and accessible for women;
- meeting mental health needs;
- dealing with substance abuse; and
- building up the evidence base.

181. The *Together Women Programme* was launched in March 2005 providing £9.15m investment in multi-agency community demonstration projects for women offenders. Five one-stop-shop projects were subsequently funded in two regions, two in the North West and three in Yorkshire and Humberside.

182. One year later, Baroness Corston was commissioned by the Home Office to examine what could be done to avoid women with vulnerabilities ending up in prison. Her report, published in March 2007, identified three categories of vulnerabilities:

- domestic circumstances and problems such as domestic violence, child-care issues, being a single-parent;
- personal circumstances such as mental illness, low self-esteem, eating disorders, substance misuse
- socio-economic factors such as poverty, isolation and unemployment.²⁷⁷

183. The Corston Report made 43 recommendations, the key themes of which included:

- improvements to high level governance and cross-departmental working for women offenders and those at risk of offending, including the establishment of an Inter-Ministerial Group to govern a new Commission for women who offend or are at risk of offending;
- the reservation of custodial sentences and remand for serious and violent women offenders and the use of small local custodial centres for such offenders within 10 years;
- community sentences used as the norm and the development of a wider network of one-stop-shop community provision for women offenders and those at risk of offending; and
- improvements in health services and support for women offenders.

184. The Government's response, which accepted the vast majority of the recommendations and set out how these would be addressed, was published 9 months later.²⁷⁸ At the same time the Government announced that Maria Eagle MP would become Ministerial Champion for Women and Criminal Justice. NOMS have since published the National Service Framework for women offenders and new guidance on working with

²⁷⁷ Home Office, *The Corston Report: A Review of Women with Particular Vulnerabilities in the Criminal Justice System*, March 2007.

²⁷⁸ Ministry of Justice, *The Government's Response to the Report by Baroness Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System*, December 2007, Cm 7261

women offenders to take this work forward.²⁷⁹ On 24 June 2008 the Ministry of Justice published a progress report detailing how their work on Baroness Corston's recommendations had moved forward.²⁸⁰

185. A further driver for enhancing the effectiveness of provision for women offenders is the new gender equality duty introduced under the Equality Act 2006, which came into force in April 2007. This places an obligation on public authorities, including Prison and Probation Services, to assess the impact of current and proposed policies and practices on gender equality. Judicial decision-making is not covered by the duty.²⁸¹

Is sentencing and subsequent provision for women offenders effective?

186. Although women represent only about 6% of the total prison population at any one time, serious concerns were raised in the evidence we received regarding the sustained growth in the use of imprisonment for women. Between 1995 and 2005 the female prison population increased by 126%.²⁸² Concern centred on the overuse of custody for women convicted of non-violent offences. 31% of women in prison in January 2007 had been imprisoned for drug offences, 12% for theft and handling and 7% for fraud or forgery.²⁸³ However, these snapshot figures do not reveal the full extent of imprisonment for non-violent crime. In 2005, the latest year for which figures are available, 31% of women sent to custody were sentenced for theft and handling of stolen goods. Furthermore, over a third of women in prison have no previous convictions, double the equivalent proportion for men.²⁸⁴ As outlined in Chapter 4, women are also more likely to receive short custodial sentences. Nearly two-thirds of all of the women who were sentenced to custody in 2005 received sentences of six months or less in 2005.²⁸⁵ Gelsthorpe, Sharpe and Roberts recently found that women are particularly likely to have problems related to accommodation and emotional well-being, and high levels of drug abuse according to the offender assessment OASys.²⁸⁶ In the decade since 1996, the number of women starting community sentences has risen by 22 per cent, from 16,136 in 1996 to 19,741 in 2006. However, between 2005 and 2006, there was a 6 per cent decline in the number of women starting community sentences.²⁸⁷ The Centre for Crime and Justice Studies attribute this to the introduction of the Suspended Sentence Order.²⁸⁸

187. The higher use of short custodial sentences and expansion in the use of custody for non-violent offences may, in part, be explained by the quality, availability and effectiveness

279 NOMS, National Service Framework for Women Offenders, May 2008 and Offender Management Guide to Working with Women Offenders, May 2008

280 Ministry of Justice, Delivering the Government response to the Corston Report, June 2008

281 Fawcett Society, Understanding Your Duty: Report on the Gender Equality Duty and Criminal Justice System, July 2006

282 Home Office, Offender Management Caseload Statistics 2005, 2006

283 Home Office, Population in Custody-January 2007, 2007

284 Prison Reform Trust, Bromley Briefings Prison Fact file, December 2007

285 Ibid

286 Gelsthorpe, L, Sharpe, G. and Roberts, J, Provision For Women Offenders In The Community, 2007

287 Prison Reform Trust, Bromley Briefings Prison Fact file (December 2007)

288 Patel, S. and Stanley, S. The Use and Impact of the Community Order and Suspended Sentence Order for Women, 2008

of community sentences for women offenders. Representatives of both the Magistracy and the Criminal Bar were of the opinion that existing community sentences are not effective in addressing women's offending or their wider needs. The magistrate John Thornhill told us that: "more constructive earlier intervention than a fine or fixed penalty notice... would deal with some of the causes of offending so that a prison sentence doesn't become necessary at some later point".²⁸⁹ Furthermore, the Criminal Bar Association observed that women are frequently sent to prison for low-level offending after other options have failed.²⁹⁰

188. These views were supported by Dr Loraine Gelsthorpe who expressed her concern that the introduction of a number of purposes of sentencing under the 2003 Act risked "confusing "needs" and "deeds" [and]... perhaps gives a green light to up-tariffing women on the sentencing ladder so that their needs can be addressed via different sentencing options".²⁹¹ Hence, the absence of appropriate community sentencing options that address women's needs can contribute to an increase in the use of imprisonment. However, as we discussed in Chapter 4, short prison sentences are even less effective at addressing such needs. Dr Gelsthorpe further suggested that the paucity of provision can result in a higher frequency of breaches—for example, due to the distance women have to travel to complete punishments in the community—and in so doing further push up the numbers of women in custody.²⁹²

189. Action for Prisoners' Families drew our attention to the unavoidable consequence of imprisonment in punishing the family as well as the offender. Whilst we acknowledge that it is also important to consider the effects of imprisoning fathers, we heard that: "the impact on children is particularly acute when a mother is imprisoned...each year, the living arrangements of around 11,000 children are disrupted by the imprisonment of a mother, with only 5% remaining in their own home during sentence".²⁹³ They also reminded us that the children of prisoners are more likely to end up in the criminal justice system themselves.²⁹⁴

190. The Criminal Bar Association advocated the avoidance of custodial sentences for women with young children where possible, suggesting that: "the responsibility for young children should be a good reason for considering every other option before prison regardless of sex and this is often going to be a relevant consideration for women rather than men".²⁹⁵ Sentencers Judge Hall and John Thornhill shared the view that offending by women with children should, where possible, be dealt with in the community, advocating the use of a Suspended Sentence Order as an alternative to imprisonment. They suggested

289 Q 112

290 Ev 31

291 Ev 48

292 Ev 49

293 Ev 15

294 Ev 16

295 Ev 31

that a gap exists in existing sentencing options, which should allow judges to sentence proportionately to the offence and to take account of the needs of women with children.²⁹⁶

191. JUSTICE, Nacro, Action for Prisoners’ Families and the Fawcett Society all shared the belief that many women now in custody could be given community sentences or serve sentences in alternative accommodation that focused more effectively on the causes of offending behaviour.²⁹⁷ The new economics foundation (nef) cited the example of the 218 Centre in Glasgow, which opened in 2004 specifically to “provide an effective, community based alternative to sending women to prison for short periods”.²⁹⁸ The Centre, funded by the Scottish Executive, works with women to identify the root cause of their offending and provides the necessary support to help them address their offending behaviour. It includes a detoxification facility, residential and day programmes, and can also help offenders reach health, social work and housing services.²⁹⁹ New Economics Foundation (nef) highlighted the Asha Centre in Worcester as an alternative model.³⁰⁰ This provides support to disadvantaged women, including women offenders. It offers a range of courses and activities to build confidence, improve skills and facilitates access to other services and organisations.

192. Despite Government efforts to improve the availability of community provision for women, the evidence we heard suggested that it continues to be patchy, and many probation areas are unable to provide community sentences sufficiently tailored to the needs of women offenders. Projects similar to Centre 218 do exist in England and Wales, including the five demonstrator projects established under the *Together Women Programme*. **We support the views expressed by Baroness Corston, that there is a need for more alternative sanctions and disposals which are gender-specific and in which sentencers have confidence. We recommend the extension of a larger network of community centres. In particular, we support services set up explicitly to consider the needs of women with children and to develop specific measures to support women and their families.**

193. Recent research commissioned by the Fawcett Society argues that, in the absence of funding to establish projects like the *Together Women Programme* demonstrators in other regions, there is a need to look beyond widespread statutory funded provision for more realistic options, and proposes that women offenders could benefit from voluntary sector community-based services that exist for women in general, with the caveat that such provision would need to be securely funded to support this wider work.³⁰¹ According to the report:

“...there is sufficient voluntary sector provision to encourage exploration of what existing initiatives and projects might be available within each NOMS region, and to

296 Q 112

297 Ev 75, Ev 46 and Ev 49

298 Ev 95

299 Ev 95

300 Ev 92

301 Ev 49

examine how they might not only *supplement* mainstream statutory provision, but be incorporated into *core* services for women offenders”.³⁰²

194. We recommend that NOMS conduct a full regional audit of the provision of services and examine the current scale and nature of provision in comparison to the scale and nature of need. Where gaps are identified these should be built as a matter of urgency into programmes commissioning womens services.

195. Sentencers must also be willing to use these options where they exist. John Thornhill told us that magistrates would welcome more widespread provision: “if there were opportunities for us to tackle [women’s offending] in different ways, again the magistrates would take them... It would be nice to see more programmes available for vulnerable females in the courts”.³⁰³

196. Judge Hall acknowledged his limited experience of sentencing women but suggested that the Probation Service could be slow to recommend community sentences.³⁰⁴ This is most likely to be a further reflection of the lack of appropriate community provision which probation officers are able to recommend to sentencers. David Hanson accepted that the Government must do more for women on short sentences pointing to the “need for a wider level of community-based sentences, particularly focused on women, for those people who are in the under 12-month category, because the time in prison is not sufficient to help with some of the problems. The sentence itself can, in my view, help prevent re-offending in a much stronger way and we are certainly going to be looking at that in much more detail”.³⁰⁵

197. The Government has reviewed the future of the women’s prison estate and established a working group to consider the merits of small custodial units, to house 20-30 offenders, which Baroness Corston recommended. The working group concluded that there were a number of weaknesses with proposals to introduce these units including their ability to cater for the variety of needs of women who could not be safely dealt with in the community.³⁰⁶ The Government is, however, committed to ensuring that the existing custodial estate better meets these needs. The Government is proposing to test the principle of small local custodial units with one 77 place wing at HMP Bronzefield, sub-divided into three blocks.³⁰⁷ Limited additional funding has been committed to make such changes. Furthermore, unlike its commitment to extend the capacity of the male prison estate, the Government has suggested that savings would need to take place in other areas to finance improvements to the women’s custodial estate. Its view is: “there is currently no additional funding available for implementation of these proposals so part of the work of the projects to consider their feasibility will need to include an assessment of the likely investment that would be needed and whether the benefits of doing so would justify the

302 Gelsthorpe, Sharpe and Roberts, *Provision for Women Offenders In the Community*, 2007, p.54 (emphasis in original)

303 Q 110

304 Q 105-110

305 Q 45

306 Ministry of Justice, *Delivering the Government Response to the Corston Report*, June 2008

307 Ibid

disinvestment that would be required in other areas”.³⁰⁸ The working group state that there are insufficient resources to invest in changes to the women’s custodial estate until improved community provision has reduced the women’s prison population and hence freed up resources.

198. The Prison Reform Trust and Anne Owers raised concerns about the Government’s commitment to Baroness Corston’s recommendations. Anne Owers commented on the original Government response that: “it is very disappointing that it was possible the day after Lord Carter’s report [on prisons] to allocate whatever significant resources there are to the prison building programme but nine months after the Corston Report no money is forthcoming”.³⁰⁹ Following the publication of the progress statement, Juliet Lyon of the Prison Reform Trust said: “it’s clear that this government is so busy planning how to waste billions of public money on so-called ‘titan’ prisons that it cannot find the time or money to create a decent, effective justice system for women”.³¹⁰

199. The failure to invest in community provision for women is a central factor in driving the sustained increases in the number of women sentenced to custody. We welcome the Government’s acceptance of most of the recommendations of the Corston Report, as well as the recent NOMS National Service Framework for Women Offenders and the Offender Management Guide to Working with Women Offenders. We are also encouraged that the Secretary of State for Justice emphasised his commitment to reducing the number of women in custody. However, we share the disappointment expressed to us by the Chief Inspector of Prisons and the Director of the Prison Reform Trust that sufficient resources have not been made available to deliver appropriate community provision for women and their regret that such provision for women has been overshadowed by the drive to expand prison places.

200. We invite the Government to reconsider the recommendation to establish a Commission for Women Offenders which would provide a stronger driver to the implementation and resourcing of Corston’s reforms. We are convinced that women’s offending will only be reduced by urgent investment in a network of community provision designed for women offenders. In addition, we believe that the small local custodial units with 20-30 places suggested by Baroness Corston, should be genuinely tested through a pilot unit in an area where there is currently a gap in provision for women, such as Wales or the South West. This would allow for evaluation of whether the working groups concerns are well founded or can be dealt with.

Mental health

Background

201. Levels of mental illness are high amongst all offenders. According to national assessment data from OASys (the Offender Assessment System) 45% of offenders can be

308 Ibid, p.9

309 Q 354

310 Prison Reform Trust press notice, 24 June 2008

identified as having a mental health need, measured in terms of ‘emotional well-being’.³¹¹ The incidence amongst prisoners is even higher. Prisoners are three times more likely to have a mental health problem than the general population.³¹² For women prisoners the incidence rises to five times those in the general population.³¹³ Around 72% of male and 70% of female prisoners have two or more mental health disorders³¹⁴ and approximately 5,000 have serious and enduring mental illnesses.³¹⁵ Furthermore, there were 92 apparent self-inflicted deaths by prisoners in 2007, representing a reversal of the trend in which such deaths fell significantly over the previous three years.³¹⁶

Government approach

202. The Government has placed increasing emphasis on ensuring that mainstream health provision is available for offenders. Health and Offender Partnerships (HOPS) were introduced in 2004 as joint ventures between the Department of Health and NOMS. These aim to improve health, address health inequalities and reduce crime by maximising the opportunities provided by better integration of health, social care and criminal justice systems. The Department of Health subsequently issued guidance to improve mental health provision for offenders throughout the criminal justice process, however, this focused predominantly on care for prisoners.³¹⁷ Responsibility for prison health care was transferred from the Prison Service to the National Health Service in April 2006, leading to the widespread introduction of mental health in-reach teams. By October 2007, 80% of prisons had such a team.³¹⁸

203. The 2003 Act enabled a mental health treatment requirement to be attached to a Community Order for up to 36 months with the offenders’ consent. This requirement is deemed suitable in particular cases where the mental illness is serious enough to require community treatment but not too serious to warrant a hospital admission.

Is sentencing and subsequent provision for those with mental health problems effective?

Court based schemes

204. Diversion and criminal justice liaison schemes aim to divert offenders with mental health problems from the criminal justice system (via police stations and courts) and into treatment in NHS mental health facilities. Nacro defined diversion as:

311 Home Office Findings 278, The Offender Assessment System: an evaluation of the second pilot, 2006

312 Ev 119

313 Prison Reform Trust, Bromley Briefings, Prison Fact file December 2007

314 Prison Reform Trust, Bromley Briefings, Prison Fact file December 2007

315 Ev 89

316 Ministry of Justice press release, Deaths in Prison Custody 2007 1 Jan 2008, available at www.justice.gov.uk/news/newsrelease010108a.htm

317 Department of Health, Offender Mental Health Pathway 2005

318 HMIP The Mental Health of Prisoners: A Thematic Review of the Care and Support of Prisoners with Mental Health Needs, October 2007

“A process of decision-making, which results in offenders with mental health issues being diverted away from the criminal justice system to the health and social care sectors. Diversion may occur at any stage of the criminal justice process: before arrest, after proceedings have been initiated, in place of prosecution, or when a case is being considered by the courts. If a prosecution is initiated, the Crown Prosecution Service (CPS) might decide to discontinue it, or, if the offender is prosecuted because prosecution is appropriate, the courts might opt for a relevant disposal under the Mental Health Act 1983, such as a hospital order, in place of a criminal justice disposal, such as imprisonment”.³¹⁹

205. Such services can be effective in diverting people with severe mental health problems from the criminal justice system into health and social care. However, Nacro and the Sainsbury Centre for Mental Health noted research which demonstrated wide-ranging variation in the funding, organisation and geographical distribution of such schemes.³²⁰ Where schemes do exist, their effectiveness can be hindered by a lack of staffing and resources to meet needs, for example, to provide 24 hour cover or to fund a medical practitioner with the power to admit patients to beds.³²¹ Evidence from Her Majesty’s Inspector of Prisons further suggests that NHS commissioners have limited knowledge of court diversion schemes.³²²

206. Paul Cavadino, Chief Executive of Nacro, explained that the funding of diversion and liaison schemes by health authorities is discretionary whereas he “would like to see a requirement in vulnerable areas to provide those services and also to provide a range of back-up services”.³²³ **Health Authorities should not have a choice as to whether or not they fund diversion and liaison schemes with criminal justice agencies. Accordingly we recommend that there should be a statutory requirement to provide funding for these schemes. The Ministry of Justice should work with the Department of Health to promote knowledge and understanding of diversion and liaison schemes amongst NHS commissioners.**

207. The Government has repeatedly advocated the use of diversion and liaison in its good practice guidance issued as Home Office Circulars.³²⁴ The latest HOPS strategy reiterates this with the aspiration for court diversion and liaison schemes to be made available to all offenders and integrated into mainstream health services.³²⁵ The strategy stresses that no new requirements will be placed on NHS or social care providers without additional funding but states that work is planned to both demonstrate the cost-effectiveness of such schemes and to encourage NOMS and NHS commissioners to adopt such models. The

319 www.nacro.org.uk/mhu/about/faqs.htm

320 Ev 89, Ev 119

321 Ev 119

322 HMIP, *The Mental Health of Prisoners: A Thematic Review of the Care and Support of Prisoners with Mental Health Needs*, October 2007

323 Q 77

324 Home Office, *Circular 66/90 Provision for Mentally Disordered Offenders* and Home Office, *Circular 12/95 Mentally Disordered Offenders: Inter-agency working*

325 *Health and Offender Partnerships, Improving Health, Supporting Justice: A Consultation Document*, 2008

Government is also currently reviewing existing guidance on the prosecution of mentally disordered offenders.

208. Comprehensive court diversion and liaison schemes should be made available nationally as a matter of urgency. Whilst we welcome efforts to make NHS commissioners more aware of the benefits of such schemes, we believe that simple encouragement to fund them is insufficient. Strengthening guidance on diverting mentally disordered offenders will be similarly ineffectual while there continues to be a lack of suitable hospital and community provision to divert them into. Without additional funding the availability and effectiveness of such schemes is unlikely to improve.

209. Specialist mental health courts have been introduced in the USA, Australia and Canada whereby judges, magistrates and other court personnel have specialist expertise and training in dealing with mentally disordered offenders. Nacro advocated the introduction of similar courts in England and Wales as another mechanism to ensure appropriate sentencing for offenders with mental health needs.³²⁶ The Government recently indicated its intention to conduct an assessment of the potential impact of mental health courts.³²⁷

210. We consider sentencers would benefit from better guidance on their options with regard to persons requiring different levels of mental health support—including diversion schemes and mental health treatment requirements as part of a community sentence. We recommend that such guidance is provided as soon as possible.

Community, custodial and alternative residential provision

211. Community mental health services for adults in England have undergone significant expansion since the *National Service Framework for Mental Health* was published in 1999. We heard, however, that community provision continues to be limited at best. This affects sentencing decisions, in particular contributing to an under-use of mental health requirements on Community Orders and resulting in an inappropriate use of custody for some vulnerable offenders.

212. The Director of Probation advised that, whilst offender assessments show that 43% of offenders have mental health problems, only 0.3% of requirements on Community Orders are for mental health.³²⁸ He believed that this was either the result of a lack of appropriate provision or because provision was not accessible.³²⁹ Recent research has shown that the use of these requirements is steadily increasing but that both poor service provision and ‘legislative obstacles’ continue to contribute to their low use.³³⁰ The latter include the susceptibility of the offender for treatment, the need for evidence from a medical examiner, the appropriateness of community-based treatment rather than a hospital order and the

326 Ev 89

327 Ministry of Justice, *Prison Policy Update: Briefing Paper*, January 2008

328 Q130

329 Q132

330 Seymour, L. and Rutherford, M. *The Community Order and the Mental Health Treatment Requirement*, 2008

requirement for treatment to be provided at short notice. Courts also experience difficulties in getting mental health needs assessed.³³¹ In written evidence, the Sainsbury Centre for Mental Health further suggested that even where assessments are made and community facilities are available, many of those given such requirements do not consent to them and opt to go to prison instead, possibly because of the stigma of having to admit to mental illness in open court.³³²

213. The Fawcett Society noted the importance of ensuring that sentencers have sufficient information on community drugs and mental health services so they do not see custody as the main place for detoxification or, inappropriately, as a ‘place of safety’.³³³ However, evidence from sentencers themselves focused particularly on their inability to sentence appropriately because of community mental health provision. John Thornhill cited the example of an area that had recently lost three mental health units to various forms of drug treatment.³³⁴ He felt that magistrates “would use a wider range of community based penalties so that we can tailor them to the individual, but they are not there, and that is one of the difficulties”.³³⁵ The Council of Her Majesty’s Circuit Judges revealed that judges similarly struggle with the few options available to them in sentencing offenders with mental health problems:

“Prisons are not equipped to deal with the treatment and management of such offenders. Without treatment and management they continue to offend on release with the inevitable consequence that they are returned. Again a failure to address the need to provide policy and resources to cater for the mentally ill offender results in Courts being left with no alternative but to imprison people who have little prospect of securing the treatment necessary in prison and then re-offend”.³³⁶

214. The Chief Inspector of Prisons questioned the use of custody for prisoners with mental health problems and agreed that there was a need for more appropriate forms of healthcare provision.

“It is very well-known that a high proportion of those in prison suffer from some kind of mental disorder. Prisons have got better at dealing with those kinds of prisoners... but that really can only scratch the surface of what is a huge problem and I think the prior question is to ask whether prisons should be places that are dealing with that or whether we need more diversion from prisons and we need more places where people could be diverted to that or actually healthcare environments”.³³⁷

215. Prison in-reach teams similarly struggle to find community services for prisoners when they are released.³³⁸ **We recommend that NOMS work with the Department of**

331 Ibid

332 Ev 119

333 Ev 47

334 Q 98

335 Ibid

336 Ev 25

337 Q 56

338 Ev 120

Health to conduct an audit in each region as to how much community mental health provision is available to those outside prison in relation to needs.

216. The Sainsbury Centre for Mental Health suggested that the key to improving community provision is effective and committed commissioning.³³⁹ However, we were convinced by the evidence from Paul Cavadino that commissioning appropriate services is not simply a question of funding probation; it is also the responsibility of Primary Care Trusts (PCTs). There are, however, difficulties in getting hold of resources which exist outside the criminal justice system. For example, some PCTs are unable to understand their responsibilities for the wider health needs of offenders³⁴⁰ and there has typically been a low level of engagement of health organisations with ROMS.³⁴¹ This was recognised by the Government in 2005: “the health of offenders is not an explicit priority for the health services and the commitment of management resources reflects this. A focus on addressing the health and social care needs of offenders as a contribution to the reduction in health inequalities, which is a priority, is generally not recognised”.³⁴²

217. The Government has similarly recognised the shortage of community mental health provision for offenders.³⁴³ The HOPS strategy states that the Government would like to see a range of alternatives to custody to be made available including more secure acute services and non-residential community support.

218. Addressing the crucial issue of the lack of community mental health provision for offenders will require co-operation between Primary Care Trusts, regional NOMS commissioners and Probation Trusts. The Government needs to take a lead role in supporting and structuring engagement between these organisations, and should not simply rely on commissioning to solve these problems.

219. We learnt of concerns regarding the reversal of the trend of reducing suicides in prison custody. Anne Owers told us that there had been a rise in self-inflicted deaths since January 2007, a figure which had been decreasing.³⁴⁴ Evidence suggested that this was in part related to prison overcrowding which has, for example, resulted in some prisoners having to change prison after court appearances, with a detrimental impact on the ability of those with mental illness to maintain supportive relationships with staff.³⁴⁵

220. There have recently been improvements to the process by which prisoners with mental health problems are transferred to appropriate hospital accommodation. Home Office snapshot figures reveal that an increasing proportion of restricted patients detained in hospitals in December 2005 had been transferred from prison.³⁴⁶

339 Ibid

340 Q 77

341 Department of Health, Offender Mental Health Care Pathway, 2005

342 Ibid, p. 70

343 Offender Healthcare Strategies , Improving Health Services for Offenders in the Community, 2005

344 Q53

345 Q57

346 Home Office Statistical Bulletin 05/07 Statistics of Mentally Disordered Offenders, 2005

221. Several witnesses highlighted the need for more residential treatment facilities for mentally disordered offenders as an alternative to the use of prison. However, we heard that efforts to divert mentally disordered offenders from prison are hindered by a lack of NHS secure beds. Nacro told us: “we are seriously underpowered in respect of intensive residential placements for difficult people. Prisons fill the gap”.³⁴⁷ Anne Owers referred to mentally disordered offenders as “casualties of closure of large mental health hospitals” and that they “should be more properly treated in a therapeutic environment, either secure or community based”.³⁴⁸ The rising length of sentences and greater use of indeterminate sentences is likely to increase further the need for the use of hospital transfers from prison.

222. We agree with the Sainsbury Centre for Mental Health which recommended a review of the facilities available to prisoners for compulsory mental health treatment. This should consider the scope for timely transfers to treatment in facilities other than simply medium-secure accommodation.

223. It is evident that the Government is conscious of the need to re-examine the use of custody including, for example, the potential use of specialist hybrid prisons for serious offenders with significant mental health problems.³⁴⁹ Lord Bradley is currently carrying out a review for the Department of Health and Ministry of Justice on how more offenders with severe mental health problems and learning disabilities can be diverted away from the criminal justice system and prison and into more appropriate facilities. He is expected to report his findings in summer 2008. We welcome this review.

224. We recommend that the current review by Lord Bradley into the diversion of offenders with mental health problems from the criminal justice system and prison conduct a needs-based review of mentally disordered offenders, including an examination of the need for various types of prison and other residential treatment and community based treatment.

225. The Government should urgently proceed with assessing the potential impact of Mental Health Courts. We believe that the Bradley Review of the diversion of individuals with mental health problems from the criminal justice system and prison should examine and consider the costs and benefits of Mental Health Courts.

Young People

Background

226. A distinct approach is taken to sentencing young people aged 10 to 17. The range of sentencing options for young offenders is set out in the Crime and Disorder Act 1998 which introduced what the Youth Justice Board (YJB) described as “significant changes” to the sentencing framework and established a number of new sentences including Reprimands and Final Warnings (which replaced cautions), Reparation Orders, Action Plan Orders and Detention and Training Orders.³⁵⁰ These were supplemented in 2002 by

347 Ev 70 and Ev 72

348 Ev 51

349 Prime Minister’s Strategy Unit, *Building on Progress: Security, Crime and Justice*, 2007

350 Ev 134

Referral Orders.³⁵¹ The 2003 Act did not extend the community rehabilitation order to young people but the introduction of the Youth Rehabilitation Order in the 2008 Act will rationalise current orders, although the Reparation Order and Referral Order will be retained, and give greater flexibility to the courts on the use of interventions and conditions.

227. The YJB called for similar but distinct “purposes of sentencing” for children and young people as those set out in the 2003 Act.³⁵² The 2008 Act defines the primary purpose of sentencing children and young people as preventing offending and for the first time sets out supporting purposes of sentencing—namely punishment of the offender, reform and rehabilitation of the offender, protection of the public and the making of reparation. These mirror the purposes of sentencing for adults set out in the 2003 Act but without the fifth aim of reducing crime present for adults. The welfare of the young person is included in the Act as a consideration in sentencing but not as a distinct purpose of sentencing.³⁵³

228. The youth justice system has been criticised for failing to address adequately the welfare needs of young offenders and there has typically been a lack of congruence between mainstream children welfare policy and youth justice policy, illustrated in *Every Child Matters* and *Youth Justice: The Next Steps*.³⁵⁴ Many young people, in particular the more persistent and serious offenders, have considerable needs to be addressed. Young people on the Intensive Supervision and Surveillance Programme (ISSP), for example, experience multiple problems including self-harm, attempted suicide, living with known offenders, history of abuse, lack of education and homelessness.³⁵⁵ It is not realistic to expect that lives and behaviour will change in a short amount of time. While the youth justice system may play a critical role where young people have committed criminal acts to change behaviour there is clearly a role for children’s services more broadly.

229. We welcome the recent changes to responsibility for youth justice policy and sponsorship of the Youth Justice Board which became the joint responsibility of the Ministry of Justice and Department for Children, Schools and Families following machinery of government changes in June 2007. We urge the Government to address the welfare of young offenders as an explicit purpose of sentencing.

Is sentencing and subsequent provision effective for vulnerable young offenders?

230. Rod Morgan, former Chair of the Youth Justice Board, outlined his views on the problems with youth justice policy and the failure of the YJB to meet their target to reduce custody in his open resignation letter:

“[the youth justice system] is being swamped, however, by a form of mission-creep which neither the YJB at the centre or the YOTs locally is able effectively to control. I

351 Youth Justice and Criminal Evidence Act 1999 s.23

352 Ev 134

353 Criminal Justice and Immigration Act s.23

354 HM Treasury, *Every Child Matters*, 2003 and Home Office, *Youth Justice: The Next Steps* 2003

355 Ev 139

refer to the growth in the number of children and young people in custody and the substantial increase in the numbers of children and young people being criminalised and/or prosecuted. Neither policy is in my judgement sensible, cost-effective or sustainable: it threatens our statutory commitment to reduce offending and re-offending. The gains we have made in the custodial sector are being thrown into reverse due to system overcrowding. Meanwhile the youth court and the YOTs are dealing with a growing number of relatively minor young offenders who could more effectively, speedily and cheaply be held to account for their behaviour either informally *in situ* or pre-court. This growth in the number of relatively minor offenders being prosecuted is analogous to the decline of the fine and the one third of the Probation Service's caseload which, when I was Chief Inspector of Probation, I argued did not need the professional attentions of the Probation Service. I described this trend as 'silting up'. The same phenomenon characterises youth justice. It is wasteful of scarce, overstretched criminal justice resources and diverts YOTs... from providing a more intensive service for medium and high-risk offenders".³⁵⁶

231. This is supported by evidence we received from the Centre for Crime and Justice Studies who told us that there has been: "a 26% increase in the number of children and young people criminalised in the past three years, while there is no apparent increase in known offending by this age group".³⁵⁷ The Criminal Bar Association spoke of a "worrying increase" in the number of punitive orders being made without conviction, for example, ASBOs and fixed penalty notices, which are ultimately serving to widen the net of the youth justice system³⁵⁸. Similar concerns were raised by the International Centre for Prison Studies, JUSTICE and the NSPCC. Concerns were also raised that the length of sentences is increasing.³⁵⁹

Pre-court diversion and 1st tier disposals

232. According to the YJB, the Crime and Disorder Act 1998 brought 'clarity to the pre-court system' and led to the end of repeat cautions with no intervention, but we heard that there is still more scope to use cautioning to avoid minor offences reaching court.

233. Conditional cautioning for children and young people will be introduced under the 2008 Act. Witnesses gave a mixed response to the proposed introduction of the conditional caution as an alternative to prosecution for young people. JUSTICE questioned the appropriateness of the imposition of punishment by police and prosecutors. Whilst the Magistrates' Association were in favour of keeping young people out of the criminal justice system wherever possible and appropriate, it told us that: "existing pre-court measures are extensive, more than sufficient to deal with low level offences and nothing further is needed", adding that the array of disposals that are already in existence can be confusing to young people.³⁶⁰ However, the YJB supported an additional level of diversion for cases

356 Rod Morgan, open resignation letter to Youth Offending Teams, 26 January 2007

357 Ev 17

358 Ev 31

359 Ev 92, Ev 75 and Ev 70

360 Ev 84

where they felt a more formal criminal justice response was disproportionate.³⁶¹ The Prince's Trust felt this was "crucial" and cited an example of a Crown Prosecution Service pilot project which used conditional cautioning as a mechanism to engage young people in positive activities.³⁶² Research on conditional cautions for adults, introduced under the 2003 Act, has demonstrated the potential for 'uptariffing' to occur and highlighted that effective implementation was hindered by a lack of understanding of the types of cases that should be targeted and a lack of additional resources to them.³⁶³

234. We welcome the introduction of the conditional caution as an additional mechanism to keep low level cases out of the youth justice system. It is essential that an assessment of the resources required to support their use is made prior to their implementation, and that implementation is supported by clear guidelines on their intended use.

235. Restorative Justice principles are already widely used as part of final warnings. The Magistrates' Association advocated for an extension of the use of Restorative Justice in dealing with minor incidents that are not serious enough to require a charge stating that: "too many minor incidents are being brought to court where in previous years prosecution would not have gone ahead".³⁶⁴ This was supported by the YJB, Lord Woolf, the International Centre for Prison Studies, the Restorative Justice Consortium and JUSTICE, who agreed that incidents in schools and care homes could be dealt with more appropriately using behaviour management and restorative conflict resolution interventions such as mediation.³⁶⁵ Concerns were also raised that Offences Brought to Justice Targets had pushed children into unnecessary formal disposals for minor misbehaviour and witnesses advocated for the wider use of direct resolution between the victim and the offender led by the police on the street and neighbourhood mediation in such cases.³⁶⁶

236. There should be a stronger Crown Prosecution Service policy against prosecution in less serious cases when other more effective measures are available. The Department for Children, Schools and Families, the Ministry of Justice and the Youth Justice Board must work together to develop proposals to ensure that schools and children's care homes expand the use of Restorative Justice for minor incidents.

Community

237. The 2008 Act introduces a generic Youth Rehabilitation Order on a similar model to the current adult community order. An order can be made with a range of requirements largely matching those available for adults (see para 120) with the exceptions of the adult drug rehabilitation and alcohol treatment requirements which become drug treatment, drug testing and intoxicating substance treatment requirements; unpaid work

361 Ev 137

362 Ev 104

363 Ministry of Justice Conditional cautions: An examination of the early implementation of the scheme, December 2007

364 Ev 84

365 Ev 137, Ev 70, Ev 117 and Ev 75

366 Ev 75 and Ev 137

requirements can only be imposed where the young person is 16 or 17. In addition to the requirements available for adults, a Youth Rehabilitation Order can include education and local authority residency requirements. The court are also able to make a Youth Rehabilitation Order coupled with intensive supervision and surveillance or intensive fostering.

238. The YJB told us it is in favour of some rationalisation of the sentencing framework especially to match sentences to issues raised through YOT assessment and court reports, but that it wished to retain reparation and referral orders as separate sentences.³⁶⁷ It is also keen to ensure that the Youth Rehabilitation Order does not produce a quicker escalation of young people through the sentencing framework. The issue of breach and the demanding nature of requirements was heavily debated during the passage of the 2008 Act. In preparation for the implementation of the Youth Rehabilitation Order, the YJB has introduced a targeted approach which links risk assessment to the length of the order and the nature of additional requirements. But the Board has acknowledged the difficulties of adopting a risk-based model because, by their very nature, young people have less criminal history on which to base an assessment of risk.³⁶⁸

239. We suggest clear guidelines should be introduced on the tiered approach to the use of the Youth Rehabilitation Order. We also have concerns regarding the cost implications of implementation and the capacity of Youth Offending Teams and partner agencies to deliver the range of requirements necessary to meet the needs of the courts. Lessons must be learnt from the implementation of the generic Community Order, where key requirements have not been used because of lack of resources to deliver them.

Intensive supervision and surveillance and custody as a last resort

240. The principles related to the use of custody for young offenders set out in the *Strategy for the Secure Estate* state that custody should only be used as a last resort and should be used “particularly sparingly” for young people because of their “dependent, developing and often vulnerable status”.³⁶⁹ Despite a commitment by the YJB to reduce the use of custody by 10% in the three years to March 2008, the number of young people in secure accommodation has remained stubbornly high, peaking at 3036 in September 2007, although the use of custody as a proportion of overall court disposals has marginally decreased. A significant proportion, approximately two-thirds, of the YJB budget is spent on providing custodial places.³⁷⁰

241. Concerns were raised by several witnesses regarding the principle to use custody as a last resort as specified in Article 37 of the *United Nations Convention on the Rights of the Child*.³⁷¹ The YJB told us they have worked to develop the robustness of, and confidence in, Community Orders to minimise the need for custody. Evidence highlighted in particular

367 Ev 137

368 Ev 138

369 Ev 135

370 Youth Justice Board, Annual Report and Accounts 2006/07

371 Ev 135, Ev 106 and Ev 92

the value of the Intensive Supervision and Surveillance Programme as a robust alternative to custody. Intensive Supervision and Surveillance can now be coupled with the Youth Rehabilitation Order to provide an increased level of intervention and monitoring for young people on high-end community sentences. Yet, whilst the Magistrates' Association agrees that the Intensive Supervision and Surveillance Programme has proven successful in terms of reducing re-offending, they felt that there was a lack of resources to ensure the availability of the programme for all serious and persistent offenders who could benefit.

242. The YJB told us they would welcome placing Intensive Supervision and Surveillance on a statutory footing as separate requirement of Youth Rehabilitation Order. Nacro, JUSTICE and the Centre for Crime and Justice Studies also supported this as a mechanism to ensure that custody is truly reserved as a last resort. Policy and practice in relation to the use of custody, and in particular the use of custody as a last resort in England and Wales, has been consistently strongly criticised for contravention of the *United Nations Convention on the Rights of the Child*. The UN Committee has registered a formal protest and requirement for the UK, as a signatory to the Convention, to correct breaches of children's rights in this context.³⁷² **We share the concerns of the Joint Committee on Human Rights that simply making Intensive Supervision and Surveillance part of the Youth Rehabilitation Order does not do enough to make custody a last resort.**

243. The draft Youth Justice Bill published by the Government in 2005 contained a provision that would have prevented courts from passing Detention and Training Orders on young people, except for those convicted of grave crimes, unless they had already tried an Intensive Supervision and Surveillance Programme.³⁷³ JUSTICE suggested going further and expanding the 'last resort' criterion to provide that a custodial sentence may only be imposed where offending behaviour demonstrates a risk of serious injury or death to members of the public.³⁷⁴ The YJB stated that they would welcome, either in statute or in sentencing guidelines, the development of an operational definition of last resort in terms of custody for young people to promote greater consistency.³⁷⁵ Full sentencing guidelines for youths were planned by the Sentencing Guidelines Council in 2005 but have been postponed pending finalisation of the 2008 Act.

244. **We are encouraged that the Government shares our view that there is excessive use of custody for young offenders. The Ministry of Justice should concentrate on finding mechanisms for driving down the numbers of young offenders in custody. However, current proposals do not go far enough. There is a need for clear guidance to ensure that the Intensive Supervision and Surveillance requirement is used as a last resort and for Youth Offending Teams and courts to ensure that they are realistic about breaching and re-sentencing young people on these orders who, by their very nature, are particularly vulnerable. It is essential that the Sentencing Guidelines Council produce guidelines for the new Youth Rehabilitation Order before implementation. We also have concerns about the funding and the availability of programmes to meet the needs of the court in sentencing young people to this requirement. It is imperative that**

372 Ev 92

373 Ev 18 and Ev 89

374 Ev 75

375 Ev 137

funding is prioritised to ensure that young people do not end up in custody for want of a place on an Intensive Supervision and Surveillance Programme.

245. We have concerns about resources and the capacity of Youth Offending Teams to implement the intensive fostering requirement for young people whose offending is linked to their home environment. We recommend that this element of the 2008 Act is not implemented until the Youth Justice Board is confident that Youth Offending Teams have sufficient resources to do so.

Effective custodial provision

246. Children sentenced to custody can be placed in local authority secure children's homes, secure training centres or young offender institutions depending upon their age and vulnerability. The primary custodial sentence for children and young people under 18 is the Detention and Training Order. The length of the sentence can be between four months and two years. The first half of the sentence is spent in custody while the second half is spent in the community under the supervision of the Youth Offending Team. For more serious offences young people are sentenced under Section 90 and 91 custodial sentences. The 2003 Act also applies extended sentences and imprisonment for public protection to youth justice.

247. Evidence suggests that, as with adults, short custodial sentences are ineffective for many young people because little can be done in this time to change the circumstances which may have led to offending. Custodial staff have "simply no time" to engage or to do anything realistic in terms of resettlement making it virtually impossible to change circumstances which may have contributed to the offending in the first place.³⁷⁶ The YJB acknowledged there was "not a sufficiently long period of time to expect work in custody to have any lasting impact".³⁷⁷ Judge Hall and other witnesses highlighted the tendency for offenders to disengage from school at a young age and criticised the lack of impact of short-term custodial sentences on reading and writing.³⁷⁸

248. Whilst the high numbers of young people in custody have not resulted in physically crowded establishments to the same degree as adult men, we heard that overcrowding increases the extent to which young people are moved around the system. Anne Owers cited the case of a young man who had moved institutions three times, describing his experience as "a bit like musical cells, you have to see where you have got a bed".³⁷⁹ Furthermore, we heard that the shortage of spaces affects effective sentence planning because it increases the distance from home, Youth Offending Team and family, hinders young people's ability to complete courses and obstructs the flow of information around the system.³⁸⁰ There is some evidence that the pressures on the prison population affect detrimentally the flexibility of the youth justice estate, causing for example the recent

376 Ev 111

377 Ev 136

378 Q 116

379 Q 69

380 Ev 112

closure of Thorn Cross Open Prison to juveniles and a new purpose built unit for young women being closed to accommodate young men instead.

249. We are concerned that the Youth Justice Board has been unable to reduce or stabilise the youth custodial population and that continued growth is reversing earlier progress in improving the juvenile estate. The efficacy of the use of very short custodial sentences for young people should be reviewed as a matter of urgency. We agree with HM Inspector of Prisons that, where young people have to be held in custody, it is imperative that vulnerable young people are held in establishments close to their families.

Appropriate custodial provision

250. The vast majority of custodial places in the youth justice system are in young offender institutions. Recent reductions in the number of local authority secure children's homes have left only 235 places for vulnerable young people together with a further 301 places available to younger offenders in secure training centres. The vulnerability of a young person is determined by an assessment which examines: the risk of self-harm; whether young people have been bullied, abused, neglected or depressed, or experienced separation, loss or care episodes; risk taking behaviour; substance misuse and other health-related needs; and the ability to cope in a young offender institution or other custodial establishment. In theory the vulnerability of the young person influences what type of custodial establishment they are placed in, but the extent to which this is possible when there are limited places available has been highlighted by inquests into recent self-inflicted deaths of young people in custody.³⁸¹

251. Some witnesses questioned the use of prison service custody for children. JUSTICE argued for the removal of young people from prison service custody altogether, regarding the "incarceration of damaged children in unsuitable and dangerous institutions" as "a national scandal".³⁸² Their suggestion that local authority children's homes should accommodate those who genuinely need to be held in custody was also supported by NSPCC.³⁸³

252. There was some concern over the introduction of extended public protection sentences for children and young people under the 2003 Act. According to the YJB "significant numbers have been subject to these new orders".³⁸⁴ The NSPCC raised concern over this development and JUSTICE suggested the needs of this group be adequately catered for in custodial provision, for example, by expanding dedicated juvenile psychiatric provision and specialist provision for young people who require a high security environment.³⁸⁵ The International Centre for Prison Studies cited the example of Finland in this regard: "If Finland, with a tenth of our population, locked up children at the English rate, one might expect a prison population of 300. In fact there are just a handful of boys in

381 HL Deb, 1 April 2004, cols 1565-1568

382 Ev 75

383 Ev 92

384 Ev 136

385 Ev 75

prison. Looking at psychiatric provision however, Finland has about 4,000 beds for adolescents, compared to a total of 1,128 in England”.³⁸⁶

253. Young sex offenders were highlighted as a particularly vulnerable group. The NSPCC argued that there was a need for greater focus on coordinated treatment and rehabilitation for these young people than was currently allowed under the current sentencing framework.³⁸⁷ They suggest that use of criminal justice routes to address such offending ignores the wider safeguarding needs of young sex offenders who are often vulnerable. They often have a history of abuse themselves and they are more likely to self-harm and suffer harm from others.

254. There is an urgent need to examine the needs of vulnerable young people in the youth justice system and the appropriateness of secure accommodation for those who need to be held in custody. Better alternatives to secure accommodation for vulnerable young people who do not represent a danger to the public should be found.

386 Ev 70

387 Ev 92

8 Conclusion

255. The Criminal Justice Act 2003 was designed to provide a coherent overall structure to sentencing in England and Wales by setting out in legislation, for the first time, the purpose of sentencing. This report has demonstrated how and why the 2003 Act has fallen short of its aims. The Prison Reform Trust said “in fact, it has failed entirely, since it was explicitly not a raft of disparate measures but an attempt at a coherent strategy”.³⁸⁸

256. The practical implications of the failures of the 2003 Act are not limited to, but are most recognisable in, the current prison overcrowding crisis. A general trend towards longer sentences in the Crown Court has contributed to the long-term upward trend in the prison population, but many of the starkest short-term pressures have arisen from the 2003 Act—in particular the impact of Imprisonment for Public Protection sentences. While the failure to promote a shift from short custodial sentences to community penalties has not been such a considerable influence on prison overcrowding, this issue is at the heart of the failure to build a coherent strategy for sentencing. It is a sign that there is no coherent approach as to when and for whom different sentences are appropriate.

257. The excessive use of custody for particular vulnerable groups was a central concern of many witnesses. There was an overwhelming consensus that, despite the 2003 Act, there continue to be many in prison whose offending behaviour and other specialised needs could be dealt with both more effectively and more appropriately in the community. In particular, these are women, young people and people with mental health and substance misuse problems. We heard that the reasons for this are complex. Paul Cavadino of Nacro suggested that it is “partly due to dysfunctions within the system, and it is not simply due to the general rising level of punitiveness in sentencing”.³⁸⁹ The Council of HM Circuit Judges suggested that these failings relate particularly to a lack of community provision for such groups, stating that it “does not believe that courts routinely pass custodial sentences on vulnerable offenders if there is a viable alternative available”.³⁹⁰ The Magistrates’ Association reminded us that “there should be no assumption that because people come from vulnerable groups then prison is inappropriate. There will be circumstances when this is the right disposal; people are given custodial sentences because they have committed serious crimes. There are however, circumstances where it would be extremely helpful to have better provision elsewhere for those with particular needs”.³⁹¹

258. One of the key lessons of the 2003 Act and the current sentencing system is that we must be able to implement policy aims. Lord Woolf commented that: “The Act was very well intentioned, but...we did not have the resources to make the punishments in the community work well, and we did not have the resources to do the other things intended by the Act”.³⁹² **Throughout our inquiry we saw that failures in anticipating resource**

388 Ev 109

389 Q 77

390 Ev 25

391 Ev 82

392 Q 7 (HAC)

needs and providing appropriate resources for the implementation of policies stood in the way of results.

259. **The experience of the 2003 Act also points towards the importance of not assuming that legislation is the only mechanism to achieve policy aims—it is only one tool and, in many cases, not the most appropriate tool. For example, the deficiencies in the 2003 Act illustrate the limited efficacy of legislation in bringing about cultural change such as a shift from the use of short custodial to community sentences.**

260. We have recently announced an inquiry into Justice Reinvestment. In this inquiry we hope to go further in tackling questions such as:

- the extent to which it is legitimate to take resources into account in sentencing and criminal justice policy;
- whether there are locally based approaches that can reinvest money spent on prisons in areas such as healthcare and housing that help prevent people committing criminal acts; and
- questions around what we consider to be effective in a criminal justice context.

Public Opinion and Sentencing

261. While we hope this new inquiry into Justice Reinvestment will provide further ideas as to how to build a coherent and effective criminal justice framework, there is one final gap which the Government needs to find the courage to tackle—the public debate. Witnesses emphasised to us, over and over again, the links, sometimes perverse, between public opinion and sentencing policy.

262. Lord Woolf argued that public opinion had a direct impact on the increase in the prison population. He explained: “I believe that society’s attitude has become more punitive as reflected in the media...there has been competition as to which political party can have the reputation of being tougher on crime. I think that rhetoric has an effect on sentencing”.³⁹³ However, the message that came through from other witnesses was that in fact the media are not accurately reflecting public opinion, and that public opinion itself was liable to change if given information. The Centre for Crime and Justice Studies conducted research where people were asked to choose an appropriate sentence on the basis of a mock-up newspaper report and then asked to choose an appropriate sentence for the same case after being given further information. 49.5% of those who originally chose the prison option changed their minds.³⁹⁴ Meanwhile, witnesses such as Professor Neil Hutton raised concerns that politicians might be prevented from presenting a rational, evidence based penal policy because of the risk of being portrayed in the media as being “soft” on crime.³⁹⁵ He went on: “This has not been an orchestrated campaign nor has it been the product of new legislation. This can only be explained by a largely unconscious

393 Q 12 (HAC)

394 Grimshaw.R (2006) *What the Public Really Thinks about Community Sentences*. London: Centre for Crime and Justice Studies.

395 Ev 66

judicial response to an increasingly punitive cultural environment...the prison population has in effect been ‘talked up’”.³⁹⁶

263. The suggestion therefore was that the cultural shift which the 2003 Act was intended to create did not happen because the Government’s handling of public debate around these issues was weak—Rethinking Crime & Punishment described it as a “comedy of errors”.³⁹⁷

264. We have identified a need for clearer thinking about the role of punishment. The Criminal Bar Association suggested “what is essential in order to achieve an effective long-term sentencing policy is an informed acceptance by the public, as well as those more directly concerned with the criminal justice system, that success is not measured by the length of a sentence of imprisonment”.³⁹⁸ The Dialogue Trust recommended that “the government embarks on a process of education and a programme of information with regard to effective sentencing and, as a result, effective crime prevention. This should be supported by the police, Probation and the Prison Service”.³⁹⁹ The NSPCC strongly recommended that the Government “sponsor market research...explore what construction or expression could be used effectively by a judge to explain to the public what a sentence is likely to mean and what the process is for supervising offenders”.⁴⁰⁰ Professor Hutton suggested that the creation of a new institution to do this work “some sort of Sentencing Commission, which can remove some of the political sting from penal policy making and allow wider public involvement in the development of penal policy [...] This should engage the public through various techniques including wide consultation, focus groups and deliberative polling.”⁴⁰¹

265. Barbara Tombs of the Vera Institute, New York commented that illustrating the cost of custody as against the delivery of other public services had had a significant impact on public opinion about sentencing in the U.S.A.⁴⁰² We have seen how the implementation of the 2003 Act suffered through lack of understanding of, or lack of preparation for, its resource implications. Witnesses told us is that we must have a better understanding of the resources used in criminal justice because only then can we present them to the public in a way that is understandable. Lord Woolf said: “in my view if the public could appreciate that if it is desired to have more people in prison that could be done but it would mean one less hospital, one less new school and so many fewer teachers then some of the absurdities that now take place in the prison system might be avoided”.⁴⁰³ Rt Hon Lord Phillips of Worth Matravers, the current Lord Chief Justice, also suggested this was a key area for public debate: “It does seem to me that one ought to be asking the question: “How much are we as a society prepared to pay to punish people?” Because, if you are paying money for punishing them, you are not spending the money for other things, which might be schools

396 Ev 67

397 Esmée Fairbairn Foundation, Rethinking Crime & Punishment: The Report, December 2004, p. 24

398 Ev 31

399 Ev 41

400 Ev 91

401 Ev 69

402 Committee visit to North America in November 2007

403 Q 39

or hospitals or taking action to try to prevent them turning into criminals in the first place”.⁴⁰⁴

266. JUSTICE told us: “The current political climate offers challenges to reform of the sentencing framework, but...a combination of greater clarity in sentences; greater involvement of communities in the criminal justice process through community justice initiatives; better treatment of victims...and a focus on reparation to victims and communities including through restorative processes, will help to increase public confidence in the system and produce public support for these reforms”.⁴⁰⁵ Lord Woolf believed that the element that was missing to making all this happen was political will: “I believe that sometimes we lose sight of what would be a really effective sentencing policy and the results show it...it first requires the political will to do it and so far there is very little evidence that it exists”.⁴⁰⁶ This key area is one we hope to illuminate in our Justice Reinvestment inquiry, thereby contributing to the development of an informed public debate.

267. The failures of the Criminal Justice Act 2003 have been compounded by the environment in which it came into operation—one where proper information about sentencing is not available to the public. At a national level those who engage in public debate on sentencing policy risk being labelled ‘soft on crime’. However, we also recognise that the debate about sentencing and criminal justice policy is often a local one. Coverage of court processes in local media has declined; and, while engagement of sentencers in local projects is done well in some areas, it must be encouraged throughout England and Wales. We urge the Government, the political parties and the media to promote informed and meaningful debate about sentencing policy.

404 Q 202

405 Ev 72

406 Q5

Annex A—Sentencing Reforms since 2001

February 2001	Home Office. <i>Criminal Justice: The way ahead</i> . London: Home Office.
July 2001	Halliday, J. <i>Making Punishments Work: Report of a review of the sentencing framework for England and Wales (The Halliday Review)</i> . London: Home Office.
September 2001	Auld, R. <i>Review of the Criminal Courts of England and Wales</i> . London: The Stationery Office.
November 2003	Criminal Justice Act 2003: An Act to make provision about criminal justice (including the powers and duties of the police) and about dealing with offenders; to amend the law relating to jury service; to amend Chapter 1 of Part 1 of the Crime and Disorder Act 1998 and Part 5 of the Police Act 1997; to make provision about civil proceedings brought by offenders; and for connected purposes. [20th November 2003]
December 2003	Carter, P. <i>Managing Offenders, Reducing Crime: A new approach</i> . London: Home Office.
January 2004	Home Office. <i>Reducing Crime, Changing Lives</i> . London: Home Office
June 2004	National Offender Management Service created
July 2004	Home Office, <i>Confident Communities in a Secure Britain: The Home Office Strategic Plan 2004–08</i> . London: Home Office
	Office for Criminal Justice Reform, <i>Cutting Crime, Delivering Justice: A Strategic Plan for Criminal Justice 2004–08</i> , London: Stationery Office.
October 2005	Home Office. <i>Restructuring Probation to Reduce Re-offending</i> . London: Home Office.
April 2005	Implementation of Criminal Justice Act 2003
July 2006	Home Office, <i>Rebalancing the Criminal Justice System in Favour of the Law-abiding Majority: Cutting Crime, Reducing Re-offending and Protecting the Public</i> , London: Home Office

- November 2006 Home Office. *Making Sentencing Clearer: A consultation and report by the Home Secretary, Lord Chancellor and Attorney General*. London: Home Office.
- 9 May 2007 Creation of Ministry of Justice
- 2007 Carter, P. *Securing the future: Proposals for the efficient and sustainable use of custody in England and Wales*. London: Ministry of Justice.
- March 2008 Sentencing Commission Working Group *A Consultation Paper: A structured sentencing framework and Sentencing Commission*. London.
- 8 May 2008 Criminal Justice and Immigration Act 2008.
- July 2008 Sentencing Commission Working Group *Sentencing Guidelines in England and Wales: An Evolutionary Approach*, July 2008

Conclusions and recommendations

Background

1. Changes in sentencing policy and practice leading to longer sentences have been a significant contributor to the unexpected and unplanned increase in both prison and probation populations. We urge the Government to address sentencing policy in a more considered and systematic way and to reconsider the merits of this trend. This would also provide an opportunity to deal with the proliferation of a complex range of unimplemented, or ineffective provisions. (Paragraph 17)
2. The sentencing regime has been complicated by both the pace and the volume of constantly changing legislation. In addition to dealing with new or short-lived criminal offences, sentencers are faced with Acts intended to simplify and clarify sentencing regimes that are themselves swiftly amended. The Government should undertake much more effective policy appraisal in advance of legislation, rather than implement hasty legislation which has previously resulted in unplanned but predictable consequences. (Paragraph 20)
3. The Criminal Justice Act 2003 is a particular example of legislation which was not thought through and had inadequate provision for its implementation. (Paragraph 21)
4. Lord Carter's review was a missed opportunity for a fundamental consideration of problems with sentencing and provision of custodial and non-custodial facilities in England and Wales. We share the concerns expressed to us that Lord Carter's review was based on wholly inadequate consultation and a highly selective evidence base. (Paragraph 29)
5. The Government's focus on a huge public investment in building more prison places is a risky strategy. Building new prisons will not solve the fundamental and long-term issues that need to be addressed in order to manage the escalating prison population and move towards an effective sentencing strategy. Moreover, this approach was initiated without sufficient investigation into the costs and benefits and in spite of the Government's own statements that the provision of new places does not present a long-term solution to the current prison crisis. (Paragraph 33)
6. Lord Carter's recommendation for the consideration of potential longer-term mechanisms to provide structure to sentencing are welcome. Nevertheless, we are concerned that an ambitious timetable was set for the working group tasked with this consideration. The Government should not seek to implement major changes in this area without effective evaluation of the potential consequences and the resources required to make such changes effective. We will continue to monitor developments in this area. (Paragraph 38)

Imprisonment for Public Protection sentences and the pressure on the Parole Board

7. The primary objective of Imprisonment for Public Protection (IPP) is the prevention of future harm and offending by incarceration, rather than punitive imprisonment triggered by an actual offence, or rehabilitation. We believe that such preventive detention has to be a rare exception. The use of other, less draconian, measures can be used to manage the risk of individuals to re-offend. Preventative civil orders such as ASBOs, Serious Crime Prevention Orders or Violent Offender Orders, are a complement to Imprisonment for Public Protection sentences where the latter would be disproportionate. Yet, neither the criminal justice system nor civil orders can eradicate the risk of serious offending or re-offending by dangerous individuals. The same problem arises with measures under mental health legislation. Our society will never be a risk-free one; it would be wrong to create the expectation that it can be. (Paragraph 45)
8. Where continued imprisonment for public protection in the form of an IPP sentence is narrowly targeted at those offenders who pose a very serious risk to the public, and is established on the basis of conclusive evidence before a court, we believe it can be a necessary, effective and proportionate penal intervention. (Paragraph 46)
9. We stress that, as a matter of policy and common sense rather than law, it is wholly indefensible to incarcerate prisoners of any category beyond the expiry of their tariff or their eligibility for release on licence simply because of a lack of resources on the part of HM Prison Service or the Parole Board. (Paragraph 55)
10. Imprisonment for Public Protection sentences should only be imposed with a tariff of a length giving the Prison Service a realistic chance to offer the necessary interventions and programmes to allow the Imprisonment for Public Protection prisoner to reduce his or her risk factors and which give the Parole Board the time to carry out the relevant assessments and hearing to determine whether IPP prisoners should be released on licence. Where IPP sentences with tariffs as short as 28 days have been imposed, it is disturbing but unsurprising that large numbers of IPP prisoners have to remain in prison beyond expiry of their tariffs as there is insufficient time for proper completion of rehabilitative courses and programmes and for the Parole Board to carry out the relevant assessments. (Paragraph 56)
11. The removal of judicial discretion in relation to the imposition of Imprisonment for Public Protection sentences for certain second-time offenders was a retrograde step. (Paragraph 61)
12. The substantial number of Imprisonment for Public Protection sentences with short tariffs demonstrate that this type of sentence has not been targeted at those offenders who positively pose a grave risk to the public for fear of committing serious violent or sexual offences, but has been imposed on a much larger group of offenders whose offending behaviour does not merit a disposal as draconian as an IPP sentence. It is difficult to understand why an offender who might only receive a short determinate sentence should be given an Imprisonment for Public Protection sentence for having

a previous conviction for a comparatively minor offence and be considered as 'dangerous' and thus merit an indefinite custodial sentence. (Paragraph 62)

13. We welcome the changes made to the Imprisonment for Public Protection sentence provisions in the Criminal Justice Act 2003. Judges will now regain unfettered discretion in relation to the imposition of Imprisonment for Public Protection sentences so that this type of sentence can be targeted at those offenders posing a very real and serious risk to the public. However, we will be keeping a close eye on the impact of the changes to Imprisonment for Public Protection sentences as they by no means guarantee an effective and appropriate structure for risk based sentencing. (Paragraph 68)
14. The system of Imprisonment for Public Protection sentences presupposes a rigorous risk assessment prior to sentencing so as to put the sentencing judge in a position to make an informed and reliable decision on the risk to the public an offender poses. Robust pre-sentence assessment procedures need to be put in place to allow the reformed system of Imprisonment for Public Protection sentences to work in the way Parliament intends. We believe that, in order to be effective, Imprisonment for Public Protection sentences require the judge to be provided with a pre-sentence report including a comprehensive risk assessment. We believe that the Government needs to make adequate resource provision for these purposes. (Paragraph 72)
15. The Government failed to engage in adequate resource and capacity planning for the coming into effect of the Imprisonment for Public Protection sentence provisions in April 2005. Imprisonment for Public Protection sentences were the 'flagship' in the Government's crime reduction and public safety agenda in the Criminal Justice Act 2003, but this policy was not accompanied by the level of custodial resources required to make IPP sentences work. (Paragraph 75)
16. Although the Government has increased the financial resources of the Parole Board we doubt whether this investment will significantly and sustainably reduce the pressure on the Board caused by Imprisonment for Public Protection sentences. The availability of judicial members of Parole Board panels will remain an issue unresolved by an increase in the Board's budget. It needs to be solved as a matter of the greatest urgency as capacity shortages of Parole Board panels directly affect the liberty of the subject where decisions relating to release on licence are concerned. (Paragraph 77)
17. Realistic resource planning, both for the Prison Service and the Parole Board, cannot be done in the absence of centrally-held comprehensive tariff expiry and release eligibility data. Collating such data is not a matter of large and complicated databases and programmes like the ill-fated C-NOMIS. Collating these data has to be seen as a core management task for NOMS and the Prison Service. We recommend that such a database be created immediately and expect to be informed of the progress of the central collection of tariff and release eligibility data of all categories of prisoners. (Paragraph 80)
18. The Parole Board is charged with making judicial decisions about the sentence length for life and Imprisonment for Public Protection prisoners. It is absolutely vital

for the Board to be able to draw on the resources and personnel (including, crucially, members of the judiciary to sit on lifer or IPP panels) to carry out its judicial work. The Ministry of Justice should ensure the adequate functioning of the Parole Board as a court. We recommend that it take urgent action to discharge this duty. (Paragraph 83)

19. Where the Parole Board operates as a court effectively determining the length of custodial sentences for a large number of prisoners it will need the requisite powers to discharge its functions appropriately and in a timely fashion. We recommend that the Parole Board be provided with powers to compel the attendance of witnesses and to make wasted costs orders. (Paragraph 85)

Short custodial sentences

20. A key element of the coherent sentencing strategy envisaged under the Criminal Justice Act 2003 was to deal with low level offenders by community punishments rather than short custodial sentences. It is clear that this strategy has not worked. (Paragraph 95)
21. The key to understanding why this change has not taken place is to examine who receives these sentences and why. Unfortunately, the data is extremely limited. It will never be possible for the Government and key stakeholders to develop appropriate punishments for people if we do not know who they are, what they have done and therefore what punishment might be appropriate. We urge the Government to review current data collection on sentencing practice, identify what areas have gaps relating to key policy objectives and set in place mechanisms to fill them as a matter of urgency. (Paragraph 96)
22. Short custodial sentences are very unlikely to contribute to an offender's rehabilitation; in fact, short custodial sentences may increase re-offending. (Paragraph 101)
23. Custodial sentences, even very short ones, are often seen as the ultimate punishment and an assumption is made that achieving the punishment aim of sentencing compensates for deficiencies in meeting other aims such as rehabilitation or reparation. We disagree with this approach to using custodial sentences. (Paragraph 102)
24. We are disappointed at the Government's apparent acceptance of the use of short custodial sentences for repeat offenders. There is no evidence that a short prison term will tackle recidivism. We recommend that the Government should instead produce a range of sentencing options, based on suitable evidence, after consulting sentencers, probation and other services, on what successfully removes offenders from a cycle of crime and repeat offending. (Paragraph 107)
25. We are concerned that, in the absence of identified effective mechanisms for dealing with repeat offenders, defendants may be receiving disproportionate sentences for current offences based on a legislative framework that requires penalties to be ratcheted up. The Government should, as a matter of urgency, assess the impact of

provisions requiring previous convictions to be treated as aggravating factors. (Paragraph 108)

26. We welcome the Ministry of Justice's statement of January 2008 announcing improved funding for intensive supervision alternatives to custody and for drug treatment. If non-custodial sentences are ever to be used appropriately then they must receive adequate funding to make them effective. However, making effective community sentences available requires more than funding for pilots or specific initiatives. The Government needs to set clear, long-term objectives and allocate resources to them. (Paragraph 111)
27. Eliminating short sentences from the statute book would be an unnecessary limitation to sentencers' discretion and would not deal with the real issues around providing an appropriate sentence structure for low level offenders. However, taking no action is also not an option. Judicial discretion seems to be already limited because of the lack of available alternatives. (Paragraph 116)
28. The 'Custody Plus' proposals had the potential to deal with one of the key criticisms of short custodial sentences, namely that they have no rehabilitative value. While we accept that to implement these proposals without the resources to operate them effectively would be likely to make the situation worse rather than better, we recommend that the Government considers how some of the key elements of the Custody Plus sentence, such as enhanced resettlement support, could be brought in within the current legislative framework. (Paragraph 117)
29. There is a contradiction in stating that prison should be reserved for serious and dangerous offenders while not providing the resources necessary to fund more appropriate options for other offenders who then end up back in prison. Unless this contradiction is resolved we fear that the twin aims of the Criminal Justice Act 2003 will not be realised. (Paragraph 118)

Non-custodial responses to offending

30. The intended switch from the use of short custodial sentences to community punishments in the form of Community Orders and Suspended Sentence Orders has not occurred. Instead, all evidence points to these sentences displacing fines. The 2003 Act, in common with other legislation, seems only to have added to an inexorable rise in sentences. We believe the aim should be to achieve a consensus as to what is the appropriate sentence in different circumstances. (Paragraph 129)
31. We welcome the Government's recognition of the 'uptariffing' problems caused by Community Orders and Suspended Sentence Orders and the attempts through the 2008 Act to control them. Nevertheless, the lesson of the 2003 Act is that legislation is not a useful mechanism to prevent 'uptariffing'. We urge the Government to bring forward proposals as to how to tackle the issue of 'uptariffing' through non-legislative mechanisms. We suggest that the Government explore public information, sentencing training and effective evaluation and development of local projects as part of these proposals. (Paragraph 130)

32. The delivery of robust community sentences has the potential to reduce re-offending and re-conviction rates. However, we are concerned that the full package of requirements that can be associated with Community Orders is not being used to its full effect and, as a result, Community Orders are not meeting the purposes of sentencing as envisaged in the 2003 Act. (Paragraph 135)
33. We recommend that the Government undertake an immediate audit of the use of the twelve potential requirements of Community Orders and of the success of specific requirements in delivering the purposes of sentencing. (Paragraph 136)
34. Effective community sentences require effective resources. There is no evidence base upon which to determine where resources are most needed for effective sentencing options. (Paragraph 145)
35. An urgent assessment is required to evaluate whether the additional resources devoted to Probation are at the correct level to support the increase in services that have to be provided as a result of the greater use of community sentences. (Paragraph 146)
36. The Probation Service does not know with any certainty how many Community Orders it has the potential capacity to deliver within its resources, nor has it determined the full cost of delivering Community Orders; we recommend that this data be collated as a matter of urgency. (Paragraph 147)
37. We are encouraged by evidence of successful local projects based upon joined-up provision of services at the local level, such as those in Staffordshire and Thames Valley. The local authority is a key partner in the effective delivery of these services for the criminal justice system but also for important areas such as mental health and drug treatment. (Paragraph 157)
38. We are convinced of the benefits of magistrates being closely involved in the systems that deliver and monitor community punishments. The Government should encourage magistrates to build on the projects that support their engagement in individual areas. However, the Government should also consider more systematic means in order to involve magistrates with the provision of community punishments. (Paragraph 158)
39. Local areas and individuals cannot operate in a vacuum. The Government needs to implement a sustained delivery and implementation strategy for increased use of community punishments. This is crucial for boosting public confidence in the robustness and efficacy of non-custodial sentences. (Paragraph 159)

Back-door sentencing

40. We welcome the Government's acknowledgement that the recall system set out in the 2003 Act is not appropriate, as evidenced by the changes to the system in the 2008 Act. The 28-day fixed recall system should deal with particular concerns about the strain placed on Parole Board resources by the need to review every recall decision. (Paragraph 170)

41. We remain concerned, however, that the system for recalling prisoners on breach of licence is unnecessarily rigid. Changes to the recall system do not extend the flexibility that people working with offenders need if they are to enable the highest levels of compliance. (Paragraph 171)
42. We urge the Government to reconsider the systems by which the Probation Service and the courts are required to deal with breaches of conditions or breach of licence. A more flexible system which enables these services to support compliance, rather than automatically punish what may be minor infringements, would contribute much more in the long run to public protection by preventing re-offending than sending people to prison. (Paragraph 175)

Vulnerable people

43. Categories of offenders such as women, young people and people in need of mental health or drug treatment have been identified as particularly vulnerable in prison. Clearly not all offenders in particular categories can be considered vulnerable or automatically unsuitable for custody and we recognise that there will be offenders who, because of the gravity of their crime and the dangers they pose, cannot be dealt with safely in the community. However, it is generally agreed that more emphasis must be placed on ensuring that those vulnerable people who do not fall into this group are not sentenced to custody for want of practical community alternatives. (Paragraph 178)
44. We support the views expressed by Baroness Corston, that there is a need for more alternative sanctions and disposals which are gender-specific and in which sentencers have confidence. We recommend the extension of a larger network of community centres. In particular, we support services set up explicitly to consider the needs of women with children and to develop specific measures to support women and their families. (Paragraph 192)
45. We recommend that NOMS conduct a full regional audit of the provision of services and examine the current scale and nature of provision in comparison to the scale and nature of need. Where gaps are identified these should be built as a matter of urgency into programmes commissioning women's services. (Paragraph 194)
46. The failure to invest in community provision for women is a central factor in driving the sustained increases in the number of women sentenced to custody. We welcome the Government's acceptance of most of the recommendations of the Corston Report, as well as the recent NOMS National Service Framework for Women Offenders and the Offender Management Guide to Working with Women Offenders. We are also encouraged that the Secretary of State for Justice emphasised his commitment to reducing the number of women in custody. However, we share the disappointment expressed to us by the Chief Inspector of Prisons and the Director of the Prison Reform Trust that sufficient resources have not been made available to deliver appropriate community provision for women and their regret that such provision for women has been overshadowed by the drive to expand prison places. (Paragraph 199)

47. We invite the Government to reconsider the recommendation to establish a Commission for Women Offenders which would provide a stronger driver to the implementation and resourcing of Corston's reforms. We are convinced that women's offending will only be reduced by urgent investment in a network of community provision designed for women offenders. In addition, we believe that the small local custodial units with 20-30 places suggested by Baroness Corston, should be genuinely tested through a pilot unit in an area where there is currently a gap in provision for women, such as Wales or the South West. This would allow for evaluation of whether the working groups concerns are well founded or can be dealt with. (Paragraph 200)
48. Health Authorities should not have a choice as to whether or not they fund diversion and liaison schemes with criminal justice agencies. Accordingly we recommend that there should be a statutory requirement to provide funding for these schemes. The Ministry of Justice should work with the Department of Health to promote knowledge and understanding of diversion and liaison schemes amongst NHS commissioners. (Paragraph 206)
49. Comprehensive court diversion and liaison schemes should be made available nationally as a matter of urgency. Whilst we welcome efforts to make NHS commissioners more aware of the benefits of such schemes, we believe that simple encouragement to fund them is insufficient. Strengthening guidance on diverting mentally disordered offenders will be similarly ineffectual while there continues to be a lack of suitable hospital and community provision to divert them into. Without additional funding the availability and effectiveness of such schemes is unlikely to improve. (Paragraph 208)
50. We consider sentencers would benefit from better guidance on their options with regard to persons requiring different levels of mental health support—including diversion schemes and mental health treatment requirements as part of a community sentence. We recommend that such guidance is provided as soon as possible. (Paragraph 210)
51. We recommend that NOMS work with the Department of Health to conduct an audit in each region as to how much community mental health provision is available to those outside prison in relation to needs. (Paragraph 215)
52. Addressing the crucial issue of the lack of community mental health provision for offenders will require co-operation between Primary Care Trusts, regional NOMS commissioners and Probation Trusts. The Government needs to take a lead role in supporting and structuring engagement between these organisations, and should not simply rely on commissioning to solve these problems. (Paragraph 218)
53. We agree with the Sainsbury Centre for Mental Health which recommended a review of the facilities available to prisoners for compulsory mental health treatment. This should consider the scope for timely transfers to treatment in facilities other than simply medium-secure accommodation. (Paragraph 222)
54. We recommend that the current review by Lord Bradley into the diversion of offenders with mental health problems from the criminal justice system and prison

conduct a needs-based review of mentally disordered offenders, including an examination of the need for various types of prison and other residential treatment and community based treatment. (Paragraph 224)

55. The Government should urgently proceed with assessing the potential impact of Mental Health Courts. We believe that the Bradley Review of the diversion of individuals with mental health problems from the criminal justice system and prison should examine and consider the costs and benefits of Mental Health Courts. (Paragraph 225)
56. We welcome the recent changes to responsibility for youth justice policy and sponsorship of the Youth Justice Board which became the joint responsibility of the Ministry of Justice and Department for Children, Schools and Families following machinery of government changes in June 2007. We urge the Government to address the welfare of young offenders as an explicit purpose of sentencing. (Paragraph 229)
57. We welcome the introduction of the conditional caution as an additional mechanism to keep low level cases out of the youth justice system. It is essential that an assessment of the resources required to support their use is made prior to their implementation, and that implementation is supported by clear guidelines on their intended use. (Paragraph 234)
58. There should be a stronger Crown Prosecution Service policy against prosecution in less serious cases when other more effective measures are available. The Department for Children, Schools and Families, the Ministry of Justice and the Youth Justice Board must work together to develop proposals to ensure that schools and children's care homes expand the use of Restorative Justice for minor incidents. (Paragraph 236)
59. We suggest clear guidelines should be introduced on the tiered approach to the use of the Youth Rehabilitation Order. We also have concerns regarding the cost implications of implementation and the capacity of Youth Offending Teams and partner agencies to deliver the range of requirements necessary to meet the needs of the courts. Lessons must be learnt from the implementation of the generic Community Order, where key requirements have not been used because of lack of resources to deliver them. (Paragraph 239)
60. We share the concerns of the Joint Committee on Human Rights that simply making Intensive Supervision and Surveillance part of the Youth Rehabilitation Order does not do enough to make custody a last resort. (Paragraph 242)
61. We are encouraged that the Government shares our view that there is excessive use of custody for young offenders. The Ministry of Justice should concentrate on finding mechanisms for driving down the numbers of young offenders in custody. However, current proposals do not go far enough. There is a need for clear guidance to ensure that the Intensive Supervision and Surveillance requirement is used as a last resort and for Youth Offending Teams and courts to ensure that they are realistic about breaching and re-sentencing young people on these orders who, by their very nature, are particularly vulnerable. It is essential that the Sentencing Guidelines

Council produce guidelines for the new Youth Rehabilitation Order before implementation. We also have concerns about the funding and the availability of programmes to meet the needs of the court in sentencing young people to this requirement. It is imperative that funding is prioritised to ensure that young people do not end up in custody for want of a place on an Intensive Supervision and Surveillance Programme. (Paragraph 244)

62. We have concerns about resources and the capacity of Youth Offending Teams to implement the intensive fostering requirement for young people whose offending is linked to their home environment. We recommend that this element of the 2008 Act is not implemented until the Youth Justice Board is confident that Youth Offending Teams have sufficient resources to do so. (Paragraph 245)
63. We are concerned that the Youth Justice Board has been unable to reduce or stabilise the youth custodial population and that continued growth is reversing earlier progress in improving the juvenile estate. The efficacy of the use of very short custodial sentences for young people should be reviewed as a matter of urgency. We agree with HM Inspector of Prisons that, where young people have to be held in custody, it is imperative that vulnerable young people are held in establishments close to their families. (Paragraph 249)
64. There is an urgent need to examine the needs of vulnerable young people in the youth justice system and the appropriateness of secure accommodation for those who need to be held in custody. Better alternatives to secure accommodation for vulnerable young people who do not represent a danger to the public should be found. (Paragraph 254)

Conclusion

65. Throughout our inquiry we saw that failures in anticipating resource needs and providing appropriate resources for the implementation of policies stood in the way of results. (Paragraph 258)
66. The experience of the 2003 Act also points towards the importance of not assuming that legislation is the only mechanism to achieve policy aims—it is only one tool and, in many cases, not the most appropriate tool. For example, the deficiencies in the 2003 Act illustrate the limited efficacy of legislation in bringing about cultural change such as a shift from the use of short custodial to community sentences. (Paragraph 259)
67. The failures of the Criminal Justice Act 2003 have been compounded by the environment in which it came into operation—one where proper information about sentencing is not available to the public. At a national level those who engage in public debate on sentencing policy risk being labelled ‘soft on crime’. However, we also recognise that the debate about sentencing and criminal justice policy is often a local one. Coverage of court processes in local media has declined; and, while engagement of sentencers in local projects is done well in some areas, it must be encouraged throughout England and Wales. We urge the Government, the political

parties and the media to promote informed and meaningful debate about sentencing policy. (Paragraph 267)

Formal Minutes

Tuesday 8 July 2008

Members present:

Sir Alan Beith, in the Chair

Mr David Heath
Mrs Siân James
Alun Michael
Jessica Morden
Julie Morgan

Dr Nick Palmer
Linda Riordan
Mr Virendra Sharma
Mr Andrew Turner
Andrew Tyrie

Draft Report (*Towards Effective Sentencing*), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 267 read and agreed to.

Annex and Summary agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Tuesday 15 July at 4.00 pm.]

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Lucie Russell , Smart Justice, Roger Hill , Director of Probation, and Sue Raikes , Chief Executive, Thames Valley Partnership	Ev 27
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Rt Hon Lord Phillips of Worth Matravers , Lord Chief Justice, and Rt Hon Sir Igor Judge , President, Queen’s Bench Division and Head of Criminal Justice	Ev 40
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