



REDUCING REOFFENDING: THE “WHAT WORKS” DEBATE

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The remanding and sentencing of people alleged to have been involved in the riots in England in August 2011 caused the prison population to rise again, before falling back to pre-riot levels. It now stands at around 86,300 (below the record high of 88,179 on 2 December 2011). That surge in the prison population made the debate about prison and whether it “works” all the more urgent.

Evidently, while they are in prison, offenders cannot commit further offences in the community, but what happens when they are released? Are they less likely to reoffend? Does prison help offenders to “go straight”? If not, what might? Is prison, in fact, an expensive way of making bad people worse?

This paper examines the evidence for the effectiveness of prison and programmes in the community aimed at reducing reoffending and some of the claims and counter-claims for whether “prison works”.

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Research Paper 12/71

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Contents

	Summary	1
1	Introduction: What is prison for?	2
	1.1 The purposes of imprisonment	2
	1.2 Incapacitation	4
2	The problems besetting the National Offender Management Service	6
	2.1 The prison population	6
	2.2 What's driving the growth in the prison population?	7
	2.3 Questions about effectiveness and value for money	7
	2.4 Reductions in spending on prisons	9
3	Competing views of prison: has prison become a political football?	10
	3.1 The political significance of prisons: public attitudes	12
	3.2 Popular does not necessarily mean effective: the "boot camp" experience	13
	3.3 The 2010 general election	14
	3.4 Reducing the prison population: a matter of political will?	15
4	Rehabilitation and reducing reoffending: what works?	18
	4.1 Desistance	18
	4.2 "What works?"	19
	4.3 Cutting crime	20
5	How effective are prisons at rehabilitating offenders?	23
	5.1 Reoffending rates	23
	5.2 The factors underlying reoffending	24
	5.3 How do different prisons compare in their reoffending rates?	26
6	What works best – prison or a non-custodial sentence?	28
	6.1 Does more prison mean less crime? Comparisons with other sentences	29
	6.2 The criminogenic effect of prison	34
7	Can a short spell in prison help an offender to quit offending?	35
	7.1 Is there a viable alternative to short prison sentences?	37
	7.2 The place of community sentences in the criminal justice system	39
8	Community sentences: a soft option or a ratcheting-up of sentencing?	41
	8.1 Probation supervision: are short-sentence prisoners falling through the net?	42
9	How do prisons tackle offending behaviour?	44
	9.1 Mentoring and intensive support	44

9.2	Education and training in prison	45
9.3	Literacy and numeracy	48
9.4	Work in prison and on release	49
9.5	Drugs and alcohol: breaking the link with reoffending	53
9.6	Diverting mentally ill offenders from the criminal justice system	57
10	What will be the impact of cuts to Ministry of Justice spending?	59
10.1	Efficiency savings in the Prison Service	61
10.2	The effects of the cuts on staff numbers and working conditions	61
10.3	Overcrowding	62
11	Will a reduction in spending mean an increase in reoffending?	65
12	Justice reinvestment	68
13	Can a rehabilitation revolution break the cycle of reoffending?	72
13.1	Government plans to reform community sentences and the probation service	73
13.2	The role of social investors in rehabilitating ex-offenders	75
13.3	Payment by results	76

Summary

For decades, one of the preoccupations of criminologists, politicians and commentators has been whether, as it has been claimed, “prison works”.

This paper therefore examines the evidence for the effectiveness of prison and programmes in the community aimed at reducing reoffending and some of the claims and counter-claims for whether “prison works”. The main focus of this paper is the high prison population and austere financial climate in England and Wales, the challenges these present for the National Offender Management Service (NOMS) and particularly HM Prison Service, and the emerging evidence of “what works” in reducing reoffending. Some of the research, though, has been conducted outside the UK and so some of the evidence cited is international.

The purposes of imprisonment are often cited as incapacitation, punishment, retribution, deterrence and rehabilitation, but views differ as to the relative importance and priority of each. There is a broad consensus that, for the most serious offences, a custodial sentence is likely to be the most appropriate one. Prison also offers the public some respite, by taking offenders off the streets and so, in that sense, “prison works”. That much is fairly widely agreed.

Where the consensus breaks down is over the use of short prison sentences and the imprisonment of those convicted of less serious offences. Here, arguments rage over whether prison is the best option: does it help prisoners to “go straight” any better than a non-custodial sentence might? At a time of financial austerity, is the huge financial cost of prison justified by its results in rehabilitating offenders? Or is prison, in fact, an expensive way of making bad people worse? And what of the political dimension? Attitude surveys highlight public concern about crime and law and order and suggest that alternatives to prison do not inspire public confidence. Commentators have suggested that there has been political competition over sentencing, whilst the divisions between the main political parties over criminal justice policy have become blurred.

Amidst the welter of Ministry of Justice statistics for reoffending rates, there are figures to indicate that reoffending rates for offenders serving community orders are lower than for those sentenced to imprisonment. There are sizeable differences too between prisons in the reoffending rates of prisoners on release. Evidence drawn from the UK’s trial of two “bootcamps” for young offenders and American research into reoffending according to the prisoner’s security level suggests that harsher prison conditions do not reduce reoffending and may, indeed, even increase it. Also from the United States comes much of the research and commentary casting doubt on the value of mass incarceration. A study in the Netherlands of the effect of first-time imprisonment concluded that going to prison made it more (not less) likely that an offender would reoffend in the three years after release.

A recent study of offending by teenagers has suggested that youth crime may be driven more by a lack of moral and cognitive development than by opportunism, with implications for policing and the youth justice system. Another recent British study of acquisitive crime as recorded by the police concluded that longer sentences could prevent (for example) 4800 burglaries a year, although (it remarked) the justice system had other goals besides crime reduction.

The Government has promised a “rehabilitation revolution” which will, it claims, break the cycle of repeated offending. The new Lord Chancellor and Justice Secretary, Chris Grayling, has echoed the remarks of his predecessor, Kenneth Clarke, about the need to break the cycle of reoffending.

1 Introduction: What is prison for?

1.1 The purposes of imprisonment

Imprisonment is, of course, just one of the options available to sentencers. The *Criminal Justice Act 2003* lists the purposes of **sentencing** as:

- the punishment of offenders,
- the reduction of crime (including its reduction by deterrence),
- the reform and rehabilitation of offenders,
- the protection of the public, and
- the making of reparation by offenders to persons affected by their offences.¹

The purposes of **imprisonment** are often given as incapacitation, punishment, retribution, deterrence and rehabilitation, but how are these sometimes conflicting purposes reconciled?

How effective is the criminal justice system in achieving that rehabilitation? Is prison, in the words of the former Home Secretary Douglas (now Lord) Hurd, an expensive way of making bad people worse – a view quoted in the 1990 white paper on crime and justice² and echoed 20 years later in the ministerial foreword to the consultation (green) paper *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, which described the criminal justice system as “an expensive way of giving the public a break from offenders, before they return to commit more crimes”³. Does prison help to break the cycle of reoffending, merely interrupt it for a while or, worse still, make it more likely that offenders will return to crime? What more can be done?

The central question around which the “what works” debate revolves is whether there is anything that criminal justice services – notably, the prison and probation services – can do to prevent prisoners reoffending once they are released from prison: what can be done to reduce the number of repeat offenders? Are short sentences justified by the respite that they offer the law-abiding community, who do not have to suffer the offender's crimes while they are in prison (although some offenders may still find ways of continuing to offend from within prison or may commit other offences within the prison setting)? Or might other, non-custodial sentences offer a better long-term solution, by being more likely to stop further offending in the future?

In its analysis of the impact of prison sentences on reoffending, the [Social Exclusion Unit's report on reducing ex-prisoners' reoffending](#) summarised the various theoretical models of imprisonment:

5.3 But, in addition to a prison sentence being both a public mark of disapproval and a punishment, it must also have a role in reducing crime. Opinions vary as to how it can fulfil this role, but the following factors are viewed as contributory:

- providing a deterrent – using the sentence to dissuade the individual criminal, and potential criminal in the community, from committing crimes in the future;

¹ Section 142

² Home Office *Crime Justice and Protecting the Public*, Cm 965, 1990

³ Ministry of Justice, Cm 7972, December 2010

- incapacitating offenders – making sure that those convicted of offences are unable to commit further crimes against the wider community during their time in prison;
- resolving the factors, or drivers, that contribute to the committing of crimes – this can include tackling drug and alcohol addiction, addressing mental health problems or improving skills and employability; and
- changing a prisoner’s behaviour and responses to the drivers of crime – including the use of programmes which improve skills, such as thinking and problem-solving, necessary to make rehabilitation and a positive life outside prison a reality.⁴

The Scottish Government examined the future of Scotland’s criminal justice system in 2008. The Scottish Prisons Commission observed that the nation was at a crossroads and needed to use the best available evidence to

work harder and be smarter in challenging and changing offenders and at tackling the underlying social and cultural factors that so often drive their offending and reoffending.

There was a choice to be made between a future in which Scottish prisons held fewer prisoners (those presenting the greatest threat of harm) and were safe and secure, with a widely-used, demonstrably safe and respected system of community sentences, and an alternative future in which there were many more prisons (yet still overcrowded), with demoralised staff engaged in crisis management and the public distrustful and communities weakened. This, the Commission suggested, was the future to which the current path led, although it was not inevitable.⁵

The Commission also observed that (amongst other things) Scotland imprisoned more of its people than many other European countries, prisoners were drawn from the least well-off communities and, increasingly, prison was being used for those who were troubled and troubling, rather than dangerous. Prisons were more likely (the Commission remarked) to drive reoffending than to reduce it.⁶

Punishment, the Commission argued, needed to be rethought, with imprisonment being reserved for those offenders who posed a threat of serious harm and for whom no other form of punishment was suitable.

3.4 (...) It cannot be beyond our imagination to think of better ways of imposing punishment, of deterring offenders and others, of sending messages about right and wrong, of getting people to payback for their crimes, of repairing harm and of helping troubled people lead law-abiding lives. Some of these approaches can and should involve the offender having to give up something they value (their reputation, their money, their privacy, their free time, their freedom), some of them can and should involve the offender in paying back positively through facing up to what they have done, apologising, compensating the victim, doing unpaid work for the community, or working hard at tackling the problems behind their offending. In some cases, where both victim and offender are willing, restorative justice practices may have an important role to play.⁷

⁴ July 2002: page 37

⁵ Scottish Prisons Commission [Scotland’s Choice](#) July 2008: Foreword

⁶ Scottish Prisons Commission [Scotland’s Choice](#) July 2008: Executive Summary

⁷ Scottish Prisons Commission [Scotland’s Choice](#) July 2008: Page 26

In giving evidence to the House of Commons Justice Committee on the budget and structure of the Ministry of Justice, the then Lord Chancellor and Secretary of State for Justice, Kenneth Clarke, suggested that prison must offer some retribution. Beyond that, prison should rehabilitate offenders so as to reduce reoffending, but this would be made more difficult if prisons were overcrowded:

They are prisoners. But then you do your best to make sure that the majority of them are not criminals when they leave so that nobody has to put up with their criminal behaviour again. The more prisoners you put into overcrowded conditions, the more difficult it is to organise all the things we are talking about, to deal with drug rehabilitation and alcohol problems and to provide work and training.⁸

Some of these questions about the purpose of prison and its shortcomings were discussed at the Lord Speaker's [seminar on Parliament, policy and punishment](#) in February 2010, at which the opening speakers were Baroness Stern (Senior Research Fellow at the International Centre for Prison Studies, King's College London), Baroness Corston (author of the Corston Report on women offenders), Lord Dear (former Chief Constable and HM Inspector of Constabulary) and Lord Mayhew (former Home Office minister, Solicitor General and Attorney General).

1.2 Incapacitation

Much of the academic and political debate in recent decades has centred on prison's capacity to stop offenders from offending by the simple fact of their incarceration – so-called **incapacitation**. Is incapacitation enough in itself: is it the case, as the then Home Secretary Michael (now Lord) Howard told the Conservative party conference in 1993, that "prison works"? Or should the criminal justice system aim for rehabilitation, to ensure that prisoners do not return to criminal behaviour on their release?

The notion of incapacitation was first discussed more than two hundred years ago by Jeremy Bentham, who argued that prison was more effective than transportation (to which he was opposed) at incapacitation.⁹ The criminologists Franklin Zimring and Gordon Hawkins have argued that the concept of incapacitation was (except in the case of persistent and habitual offenders) largely ignored for the next century and a half but, in the USA in the 1970s and 1980s, became the main official justification for imprisonment. In large measure, this was because there was little evidence to support other rationales for imprisonment, but policy debates were "infected with impossible claims" and incapacitation was "impossibly open-ended as a general principle of criminal punishment". Research into incapacitation effects tended to show that increased incarceration rates offered diminishing marginal returns and effects on the individual did not necessarily lead to lower crime rates in the community, because of the effects of group criminality and the greater opportunities available to those offenders who were not incarcerated.¹⁰ Zimring and Hawkins analysed crime and incarceration rates in California, where the prison and jail population increased by 120,000 in the 1980s. Using projections of what crime rates reported to the police might have been if the prison and jail populations had not increased, they concluded that the evidence of

⁸ Justice Committee *The budget and structure of the Ministry of Justice* HC 97 – ii, 18 August 2012, 2012-13: Ev 97

⁹ Jeremy Bentham *Panopticon versus New South Wales: The Panopticon Penitentiary System and the Penal Colonisation System Compared* (1802), cited in Franklin E Zimring and Gordon Hawkins (1995) *Incapacitation: Penal Confinement and the Restraint of Crime*: pages 19-22

¹⁰ Franklin E Zimring and Gordon Hawkins (1995) *Incapacitation: Penal Confinement and the Restraint of Crime*: preface

incapacitation effects was strongest for burglary and also strong for larceny and rape, but much weaker for robbery, homicide and assault.¹¹

So, the notion that incapacitation on its own can provide a legal or moral justification for imprisonment is problematic. At best, incapacitation may be temporary, if (as just mentioned) there is little evidence for long-term incapacitation effects and many ex-prisoners return to crime on their release. Moreover, there is further evidence that casts doubt on the basic premise that offenders do not commit further crimes while inside prison. One recent case (as an example) concerned a prisoner serving a 16 year sentence for drug trafficking, who was convicted of conspiracy to import cocaine – a conspiracy masterminded from his cell at Lowdham Grange prison.¹²

Nonetheless, the notion of incapacitation, and the respite that it brings to the public, still attracts support in some quarters. An editorial in *The Telegraph*, for example, argued that “prison works precisely because offenders are not committing crimes while they are inside”:

Would it be better if fewer people were in jail? The answer must be yes – but only if there were fewer criminals who warranted it. Are there people in jail who should not be there? The answer, again, is yes. (...) But as Mr Clarke acknowledged in his statement to MPs, the Government’s first priority is public safety. Much of what he says about the importance of rehabilitation is well-meant and sensible. But in the end, prison works precisely because offenders are not committing crimes while they are inside.¹³

¹¹ Franklin E Zimring and Gordon Hawkins (1995) *Incapacitation: Penal Confinement and the Restraint of Crime*: pages 118-9

¹² “Drug baron plotted deal behind bars” *Malton Mercury* 22 February 2012

¹³ Telegraph View “[We must remember the purpose of prison](#)” *The Telegraph* 7 December 2010

Her Majesty's Prison Service serves the public by keeping in custody those committed by the courts. Our duty is to look after them with humanity and help them lead law-abiding and useful lives in custody and after release.

Our Vision

- To provide the very best prison services so that we are the provider of choice
- To work towards this vision by securing the following key objectives.

Objectives

To protect the public and provide what commissioners want to purchase by:

- Holding prisoners securely
- Reducing the risk of prisoners reoffending
- Providing safe and well-ordered establishments in which we treat prisoners humanely, decently and lawfully.

In securing these objectives we adhere to the following principles:

Our Principles

In carrying out our work we:

- Work in close partnership with our commissioners and others in the Criminal Justice System to achieve common objectives
- Obtain best value from the resources available using research to ensure effective correctional practice
- Promote diversity, equality of opportunity and combat unlawful discrimination, and
- Ensure our staff have the right leadership, organisation, support and preparation to carry out their work effectively.

2 The problems besetting the National Offender Management Service

As it seeks to meet the aims of its statement of purpose (in sidebar), the Prison Service has to contend with diverse problems and difficulties.

2.1 The prison population

The National Offender Management Service's (NOMS) [business plan for 2012-13](#) is available on the Ministry of Justice website.

A great deal of information about prisons in England and Wales is published by [HM Inspectorate of Prisons](#). The BBC News website has a [special report on prisons in the UK](#).

Scotland, England and Wales have, according to the International Centre for Prison Studies, almost the [highest rate of imprisonment](#) in Western Europe (exceeded only by Guernsey, Jersey and Gibraltar).¹⁴

The prison population in England and Wales has increased steadily over the past century and surpassed 80,000 for the first time in December 2006 and 85,000 in spring 2010. The prison population remained around this level until the sharp increase due to the remanding and sentencing of people alleged to have been involved in the riots in England in August 2011. The prison population reached a record high of 88,179 on 2 December 2011 before gradually returning to pre-riots levels, standing now at 86,268.¹⁵ This surge in the prison population made the debate about prison and whether it "works" all the more pressing.

Library standard note SN/SG/4334 analyses the [prison statistics for England and Wales](#) (with more limited analysis for Scotland).

¹⁴ *Europe - Prison Population Rates per 100,000 of the national population* [accessed 1 June 2012]

¹⁵ Ministry of Justice *Population bulletin weekly – 16 November 2012* (Figure includes immigration detainees held in NOMS-managed immigration removal centres)

2.2 What's driving the growth in the prison population?

Indisputably, there has been a welter of criminal justice legislation since 1994.

The Halliday Report in 2001 identified a number of factors determining the size of the prison population:

- the number of people committing crimes in society
- the seriousness of those crimes, as viewed by Parliament in framing the relevant laws, and sentencers within the powers and guidelines available to them
- the proportion of offenders that are caught, prosecuted and convicted
- the frequency with which they are caught and convicted when they persist
- the severity of punishments judged suitable by Parliament and sentencers for given levels of seriousness and persistence.¹⁶

Some commentators suggest that the criminal justice system — in, for example, the parole process — has become more risk-averse. An analysis published in 2006 of Parole Board and prison statistics for recalls to prison, for example, pointed to the “recent and extraordinary increase” in the number of people in England and Wales recalled to prison during the licence period of their sentence.¹⁷ In the *Probation Journal*, Marsh et al argued in 2009 that it was not crime rates that were pushing up the prison population:

Most serious commentators agree that the current rise in prison numbers is not being driven by increases in crime rates. Rather they are being driven by national and local policy decisions. These include an increase in sentencing severity (Carter, 2003) and the combination of more people serving time under licence for longer and the greater use of recall to custody for breach of licence conditions (Prison Reform Trust, 2007).¹⁸

Another factor underlying the growth in the prison population has been the number of prisoners serving indeterminate sentences for public protection (IPP). Research by King's College London and the Prison Reform Trust found that initial government predictions had been “a woeful underestimate”. Estimates of the increase in the prison population that IPPs might generate had risen from 900 to 3500 and the inspectorates of prisons and probation had described the situation as unsustainable:

If the reality bears out this alarming prediction of an average of 4.5 years spent in custody after tariff expiry, the repercussions for the prison population over time – not to mention the repercussions for the individuals involved - will be very great indeed. It was for this reason that the joint report of the inspectorates of Probation and Prisons described the present state of affairs as ‘unsustainable’ (CJJI, 2010).¹⁹

2.3 Questions about effectiveness and value for money

The continuing high rates of reoffending by former prisoners and the awareness of how much is spent on the criminal justice system have given new urgency to questions about the

¹⁶ Home Office *Making punishment work: Report of a review of the sentencing framework of England and Wales Chapter 9: Costs and benefits*, 2001: page 58

¹⁷ Nicola Padfield and Shadd Maruna “The revolving door at the prison gate: Exploring the dramatic increase in recalls to prison” *Criminology and Criminal Justice* 6(3), 2006

¹⁸ Kevin Marsh, Chris Fox and Rashmi Sarmah “Is custody and effective sentencing option for the UK? Evidence from a meta-analysis of existing studies” *Probation Journal* 2009, Vol 56(2), page 130

¹⁹ Jessica Jacobson and Mike Hough *Unjust Deserts: imprisonment for public protection* Prison Reform Trust, 2010: pages 18-9

effectiveness of prison (and other parts of the justice system) and whether it offers value for money. As the country deals with the recession, there have been calls for greater economic analysis of criminal justice policy.

Is prison good value for money or is it, by contrast, expensive and ineffective? Several substantial reports have in recent years examined these questions. Amongst these are

- [The Justice Committee's report on Justice Reinvestment](#)²⁰
- the report of the [Commission on English Prisons Today](#) (whose president was Cherie Booth QC)²¹
- the [Prison Reform Working Group](#) (chaired by Jonathan Aitken)²² and
- the [National Audit Office's](#) report on managing short-term prisoners.²³

Amongst the questions raised are:

- Could we get better value for money by "reinvesting" some of the money spent on prisons, either in other parts of the criminal justice system (such as community sentences) or on activities that prevent crime in the first place?
- Should we have smaller local prisons, which may work better by rehabilitating offenders closer to home, or larger prisons providing economies of scale?
- How can we make justice more responsive locally?
- Could restorative justice reduce the need for imprisonment?
- Should more be done to rehabilitate prisoners serving less than twelve months, 60% of whom are reconvicted within a year but who often have no access to work or courses?

Writing in the *Probation Journal* about the policies of the Labour administration (for example), Chris Fox and Kevin Albertson of Manchester Metropolitan University examined those issues — the policy debate on sentencing, the commitment to evidence-based policy, the growing role of economists in the civil service and the rise of the justice reinvestment movement — which (they argued) had begun to be influential in shaping criminal justice policy and would become more so. There was little if any evidence, they suggested, that society as a whole had benefitted from the sharp increase in the prison population or that that increase had made any substantial contribution to reductions in crime: the commitment to increasing prison capacity was untenable and it was time for a new approach, driven not only by moral and social concerns about actual and perceived levels of crime but also by informed economic analysis. There should be more robust studies of the effectiveness of the criminal justice system and especially prison. Although (the authors suggested) the justice reinvestment model looked promising, there had not yet been a convincing demonstration of it in the UK.²⁴

²⁰ Justice Committee *Cutting crime: the case for justice reinvestment* 14 January 2010 HC 94, 2009-10:

²¹ July 2009

²² Centre for Social Justice *Locked Up Potential: A strategy for reforming prisons and rehabilitating prisoners* March 2009

²³ NAO *Managing offenders on short custodial sentences* 10 March 2010

²⁴ Chris Fox and Kevin Albertson "Could economics solve the prison crisis?" *Probation Journal* September 2010: page 263ff

Writing after the riots of the summer of 2011, former prison governor and inspector John Podmore argued that incarceration was not working:

Dostoyevsky said: “the degree of civilisation in a society can be judged by entering its prisons”.²⁵ His words are often conflated with those of Churchill: “The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unflinching tests of the civilisation of any country”.²⁶

If they are right, then why do we as a nation have one of the highest incarceration rates, have more people serving life sentences and lock up more children, from an earlier age, than most of the rest of the world? And if we do this only to see three-quarters reoffend and end up back in prison, and if we regularly read about prison inspectors criticising the treatment of and conditions for those locked up for even longer periods, isn't it time to do something about it?

(...) If we were truly operating on payment by results then we would be in the process of closing down most of the prisons in this country.²⁷

2.4 Reductions in spending on prisons

According to HM Treasury data, approximately £4.1bn was spent on prisons in England and Wales in 2010/11. This includes expenditure by all central government departments, local authorities and public corporations. Unlike the data published by the Ministry of Justice, the HM Treasury measure is unaffected by the structural changes in responsibility for particular prison functions.²⁸

In his budget statement in June 2010, the Chancellor of the Exchequer, George Osborne, set out his plans to go beyond the previous Government's plans in reducing Whitehall's spending.²⁹

After the spending review in October 2010, the Ministry of Justice announced that between 2010/11 and 2014/15 it would be making reductions of 23% in its resource budget, 50% in its capital spending and 33% in its administration budget. One element of the reductions would be the deferral of plans for a new prison while the Ministry developed “a sustainable and cost effective prison capacity strategy”. The Ministry of Justice also suggested that sentencing reforms would stabilise and then reduce the prison population, so that by the end of the review period the prison population would be around 3,000 below its current level.³⁰

²⁵ In *The House of The Dead* (1862)

²⁶ In a speech to the House of Commons (HC Deb [20 July 1910 c1354](#))

²⁷ John Podmore *Out of sight, out of mind: Why Britain's prisons are falling* 2012: pages 1-2

²⁸ Public Expenditure Statistical Analyses, HM Treasury

²⁹ HC Deb [22 June 2010 cc170-2](#)

³⁰ Ministry of Justice *Spending Review 2010 – Ministry of Justice* 21 October 2010

3 Competing views of prison: has prison become a political football?

In the *Oxford Handbook of Criminology*, David Downes and Rod Morgan have argued that political parties (and especially Home Secretaries and their ministerial and Opposition teams), senior civil servants, pressure groups and the mass media have shaped the public debate about crime and disorder – a debate that, however emotive and passionate, is more recent than (for example) that on the economy.

After the second world war, ‘Butskellism’ limited political conflict and created a form of consensus around rebuilding the economy and constructing the welfare state, but this largely bipartisan approach to criminal justice issues finally broke down in the 1970s.³¹ Still more recently, party manifestos for the general elections of 1997, 2001 and 2005 (Downes and Morgan have observed) contained plenty of attacks on and defences of the Government’s record on law and order, and abundant undertakings of what would be delivered if elected. That said, the policies the main parties were promoting were not dissimilar, with common themes in 1997 of getting tough on persistent young offenders and, in 2005, of tackling antisocial behaviour. New Labour (they have suggested) had morphed into a party of the centre Right and embraced policies and principles more often associated with neo-liberalism – with its concerns for competition and consumer choice – than with social democracy. In its third term, Labour sought not only to add to its reforms but also to consolidate them and make them irreversible.³² Meanwhile, the Conservative party had moved away from the toughness of its 1979 law and order policies and had, by the late 1980s, adopted a more liberal approach, exemplified by the sizeable drop in the prison population between 1987-8 and 1991,³³ although all this ended with the rise in the crime rate (by about 50 per cent) between 1989 and 1992.

Many commentators have argued, too, that with the increased crime levels in the 1980s, high profile cases, such as the murder of James Bulger in 1993, also fuelled political competition over sentencing, leading to increasingly severe criminal sanctions. It was in 1993 that Tony Blair, as shadow Home Secretary, promised the Labour party conference that he would be “tough on crime and tough on the causes of crime”, while the then Conservative Home Secretary Michael Howard told the Conservative party conference that “prison works”. Other commentators, though, argue that such a view is simplistic and other factors besides electoral politics have led to the ratcheting-up of sentencing.

It is widely held, too, that the politicisation of debate about the criminal justice system in general and the use of imprisonment in particular has hindered the development of evidence-based policy-making: if it is taken for granted that offenders should go to prison (or that “prison works”) then there is less likely to be any serious consideration of the aims and purposes of imprisonment or whether it is the most appropriate sanction for any offender.

From the United States again, Professor Jonathan Simon (professor of law at the University of Berkeley, California) has argued that the move towards total incapacitation as the goal of the American justice system was the result of several converging trends: the delegitimation of penal welfarism, a sense of danger and of being a high crime society, penal populism and postmodernity. The tendency in the USA towards excessive punishment was (he has suggested) therefore caused by more than electoral politics alone:

Instead, it was the interaction between electoral politics, influencing legislatures, and institutional design problems, primarily the unchecked power of local prosecutors, that

³¹ David Downes and Rod Morgan “No turning back: The politics of law and order into the Millennium” in *Oxford Handbook of Criminology* 2007 (ed) Mike Maguire, Rod Morgan and Robert Reiner: page 201ff

³² David Downes and Rod Morgan “No turning back: The politics of law and order into the Millennium” in *Oxford Handbook of Criminology* 2007 (ed) Mike Maguire, Rod Morgan and Robert Reiner: pages 209-10

³³ From 50,000 to 42,500.

combined to produce incentives for over punishment. The correction was crucial for helping us understand why excessive punishment continues even in periods when electoral politics moves on to other issues (as it has mostly since the late 1990s).³⁴

In similar vein, Professor Loïc Wacquant (professor of sociology at the University of Berkeley, California) has argued that

the carceral boom in the United States results from the penalisation of poverty [and] the simultaneous revamping of the economic, welfare and justice missions of the state. Pro-market think tanks have played a driving role in fashioning and diffusing America's "punitive common sense" across the Atlantic ... [Prison] is promoted as a remedy for criminal insecurity and urban marginality, but it only serves to concentrate and intensify both, even as it makes them temporarily invisible.³⁵

In an article published in July 2010, Andrew Neilson, the assistant director of the Howard League for Penal Reform, speculated on the direction in which the new Government might take penal policy. He suggested that the Conservatives' policy had been in disarray since they had had to concede that their commitment to expanding prison capacity was undeliverable and that media reports of their interest in prison ships were – like the Labour Government's ending of early release – a gesture towards penal populism. The incoming Government might (he suggested) look to Canada for examples of how to make substantial reductions in spending on criminal justice without increasing crime rates. Further attempts at "marketising" criminal justice would, he argued, be "misconceived".³⁶

In its report *Cutting crime: the case for justice reinvestment*, the House of Commons Justice Committee set out to examine the potential for achieving "a more mature cross-party consensus on law and order policy, and more effective options for the future, than the current interaction of politics, media and public opinion appears to allow". It was imperative, the Committee argued, to "get away from a self-defeating over-politicisation of criminal justice policy and develop an environment conducive to identifying, prioritising and implementing "what works" based on the best available evidence".³⁷

It has also been argued that – just as party policies started to diverge with the collapse of the post-war consensus – so now the divisions between the main political parties over criminal justice policy are not as clear as they once were, with disagreement within parties and some agreement between members of different parties which might (arguably) be considered surprising. In an article in the *Daily Mail* in June 2010, former Home Secretary Jack Straw praised some aspects of Michael Howard's tough approach:

Michael Howard took over from Kenneth Clarke as Home Secretary in mid 1993 and set about a different and significantly tougher policy.

It wasn't all to my liking, but he deserves credit for turning the tide; as does the opposition leader at that time Tony Blair, who encapsulated the need for a balanced policy with his call to be 'tough on crime, tough on the causes of crime'.³⁸

³⁴ Jonathan Simon *Bill Stuntz and the Pathological Politics of Crime Control* on his [Governing through Crime blog](#), 21 March 2011

³⁵ Loïc Wacquant "The prison is an outlaw institution" *The Howard League of Criminal Justice Journal*, Vol 51, Number 1, February 2012: page 1

³⁶ Andrew Neilson "Ships Ahoy? What The New Coalition Government Might Do With Penal Policy" *The Howard League of Criminal Justice Journal* Vol 49 Number 3, July 2010: Page 282

³⁷ Justice Committee *Cutting crime: the case for justice reinvestment* 14 January 2010 HC 94, 2009-10: page 25

³⁸ Jack Straw "*Mr Clarke and the Lib Dems are wrong. Prison DOES work - and I helped prove it*" *Daily Mail* 30 June 2010

Lord Howard, a longstanding advocate of the view that “prison works”, was critical of the proposals within the Ministry of Justice’s consultation (green) paper *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders* (discussed in more depth later).³⁹ The Home Secretary, Theresa May, later appeared to give support to Lord Howard’s view, when she remarked:

I think we must all recognise that in looking at the wider issue of sentencing, prison works but it must be made to work better.

(...)

The key for members of the public is that they want criminals to be punished. They want them to be taken off the streets. They also want criminals who come out of prison to go straight.⁴⁰

This level of controversy, crossing party lines, prompted Professor Shadd Maruna (Director of the Institute of Criminology and Criminal Justice at Queen’s University Belfast) to suggest that this was an “Alice in Wonderland moment”:

Yet, there is reason for optimism as well. Political affiliations no longer seem to mean anything in regards to criminal justice policymaking in the UK. When Jack Straw writes a column in the *Daily Mail* attacking the Tories for ‘hand-wringing’ over justice issues and openly pines for Michael Howard’s tough talk, we have clearly entered an Alice in Wonderland moment in British criminal justice.⁴¹

In a recent speech to the Centre for Social Justice, the Prime Minister, David Cameron, referred to the “polarisation” of debate about crime and punishment:

In no other debate do the issues get polarised like this... with the crime debate, people seem to want it black or white, 'lock 'em up' or 'let 'em out', blame the criminal or blame society, 'be tough' or 'act soft'.

On long sentences for certain, serious offenders, he went on:

This is what victims and society deserve... And the society bit matters. Retribution is not a dirty word; it is important to society that revulsion against crime is properly recognised, and acted on by the state on our behalf.⁴²

3.1 The political significance of prisons: public attitudes

Criminal justice remains a politically important issue. In response to monthly Ipsos MORI surveys it is regularly seen as one of the most important issues facing Britain.⁴³

In March 2011, drawing on online and telephone polls, focus groups and interviews, Conservative peer Lord Ashcroft published the results of his own research into the attitudes of the general public, victims of crime and police officers towards crime and punishment. The main political parties had abandoned the view that “prison works” and so, he suggested, were out of touch with public opinion:

³⁹ Cm 7972, December 2010

⁴⁰ Richard Ford and Francis Gibb “May insists ‘prison works’ as Clarke scraps new jail” *The Times* 15 December 2010

⁴¹ Shadd Maruna *Parliamentary Brief Online: Bringing Prisoners Back Home* 23 July 2010 (available on the [jailhouselawyer’s](#) blog)

⁴² BBC News “David Cameron – We must make prisons work for offenders” 22 October 2012

⁴³ Ipsos MORI *The most important issues facing Britain today* 23 January 2012

The upshot is that no major party now appears to represent the approach to law and order that voters want. With no debate, and with no reference to the public, a consensus that reflected popular opinion has been discarded. This can only fuel people's cynicism about politicians and the political process.⁴⁴

There was, Lord Ashcroft argued, little support for community sentences and the research findings also suggested that the public lacked confidence in governments' and politicians' ability to make a difference:

The public felt that what they saw as the failure of successive governments to act on their concerns about crime and punishment were due to politicians being unaffected by crime in their own lives; the constraints of human rights law and the fear of being accused of political incorrectness; the criminal justice system being staffed by unrepresentatively liberal individuals; and lack of money. Police officers felt mistakes were made because governments paid more attention to theorists than to victims and practitioners.⁴⁵

3.2 Popular does not necessarily mean effective: the “boot camp” experience

The experience of the UK's trial of so-called “boot camps” for young offenders perhaps illustrates the point that what is attractive to the public or to politicians is not always effective and does not necessarily “work” when it comes to reducing reoffending.

In 1994, the Prison Service initiated two trials of boot camps at Thorn Cross Young Offenders' Institution and at the Colchester Military Corrective Training Centre. These were intended to provide an intensive regime for young offenders, with an emphasis on self-discipline, strict rules and hard work.⁴⁶ An evaluation of the so-called high intensity training (HIT) at Thorn Cross showed that, after a year, participants were less likely to be re-convicted than had been predicted (the improvement was estimated as 10 per cent) but, after two years, the HIT participants fared no better than predicted. At Colchester, an evaluation found no evidence of a reduction in reoffending, whether after one year or two.⁴⁷

Likewise, research in the USA — looking at differences in reoffending according to the prisoner's security level — has suggested that harsher prison conditions lead to significantly more crime when the prisoner is released, which in turn casts doubt on the deterrent effect of those harsh conditions:

[Moving] a prisoner over a cutoff that increases his assigned security level from minimum to low security roughly doubles his hazard rate of rearrest in a three-year follow-up window. (...) Our finding that harsher imprisonment conditions cause greater recidivism stands in contrast to prior evidence of a specific deterrence effect (Sherman and Berk, 1984), in which punishing a criminal more severely reduces that individual's subsequent probability of recidivism.⁴⁸

⁴⁴ Lord Ashcroft *Crime, Punishment & The People: Public opinion and the criminal justice debate*, March 2011: page 4

⁴⁵ Lord Ashcroft *Crime, Punishment & The People: Public opinion and the criminal justice debate*, March 2011: page 7

⁴⁶ David G Green, Emma Grove and Nadia A Martin *Crime and Civil Society: Can we become a more law-abiding people?* 2005: page 145ff

⁴⁷ David G Green, Emma Grove and Nadia A Martin *Crime and Civil Society: Can we become a more law-abiding people?* 2005: pages 150-3

⁴⁸ M Keith Chen and Jesse Shapiro *Does prison harden inmates? A Discontinuity-based approach* Cowles Foundation for Research in Economics, Yale University December 2006

3.3 The 2010 general election

In a speech to the Centre for Social Justice in July 2006, the leader of the Conservative party, David Cameron, set out his proposals for tackling the fear and suffering caused by crime and disorder. His aim, he said, was for a society which had got to grips with the causes of crime and had less need of criminal justice. Family breakdown, drugs, children in care and educational underachievement could be the seed bed of crime and so understanding the background and causes of crime did not mean excusing it, but would help to tackle it. He spoke of the need for tough sanctions:

And if the phrase "social justice" is to be meaningful, it has to be about justice, as well as compassion and kindness. It has to involve a sense of cause and consequence - of just rewards and just deserts.

One of the most important things we can teach our children is a sense of justice. Too many young people have no understanding of consequences - of the idea that actions have effects. This is bad enough for us - wider society, who have to suffer the crime and cost of delinquency. But it is truly disastrous for them - the children themselves

The Government and public sector would, he went on, have to let go:

To tackle youth crime and disorder for the long term, we will have to place real trust in the hands of the people and organisations that understand the challenges young people face, and can offer the quality of care and emotional support they need.

(...)

If we're serious about the social sector doing more, then government and the public sector has to learn to let go. To let the social sector and social entrepreneurs take wings and soar.⁴⁹

The Conservatives' March 2008 policy "green paper" *Prisons with a Purpose* later argued that the old politics was not working; the penal system was failing to deliver on incapacitation, punishment and deterrence or rehabilitation.⁵⁰ It attributed the failings of the prison system to under-performing prison regimes, the problem of drugs and, primarily, to overcrowding and described this as a 'crisis':

- Prisons are in crisis. The prison population has soared, jails have become seriously overcrowded, and re-offending rates have risen. Emergency measures have seen the early release of violent offenders, and community sentences command little public confidence.
- The current prison system isn't working. Building new prisons to accommodate all those sentenced by the courts and reduce overcrowding will be essential – but it is not an end in itself. Half of all crime is committed by previous offenders and one in five recorded crimes are committed by ex-prisoners. The right way to reduce the prison population is to break the cycle of re-offending and reduce crime.
- Our goals are to restore confidence in the criminal justice system, re-design prisons for the 21st century, and launch a rehabilitation revolution.

Prisons with a Purpose promised that community and custodial sentences would be based on the four pillars of punishment, rehabilitation, work for offenders and reparation for victims.

⁴⁹ "Cameron 'hoodie' speech in full" *BBC News* 10 July 2006

⁵⁰ Conservatives *Prisons with a purpose: Our sentencing and rehabilitation revolution to break the cycle of crime* Security Agenda: Policy green paper no 4, March 2008: pages 27 - 33

Prisons would be places of education, hard work, rehabilitation and restoration and community sentences would be made tougher. The savings that the “rehabilitation revolution” would create as fewer offenders were reconvicted and imprisoned would (the paper suggested) be recycled to fund more rehabilitation:

These savings will be re-invested to boost the money available for rehabilitation by up to £259 million a year by 2017, or £2,500 for every prisoner discharged.⁵¹

In the approach to the 2010 general election, the Conservative and Labour parties adopted a broadly similar approach to the use of imprisonment. In its [manifesto](#), the Conservative party rehearsed many of the themes of *Prisons with a Purpose* and pledged to ensure that there was enough capacity within prisons to accommodate the increased population generated by the end of early release.⁵² The [Labour party manifesto](#) too vowed to create more prison places, proposing a total of 96,000 by 2014.⁵³

The Liberal Democrats, on the other hand, took a different approach. In their [manifesto](#), they argued against over-reliance on imprisonment and suggested that replacing very short prison sentences with community sentences would enable them to cancel the building programme.⁵⁴

Commenting on the main parties’ manifestos, Simon Bastow of the London School of Economics’ Public Policy Group remarked that there was little clear vision of how reoffending was to be tackled:

Undoubtedly, improvements in management and conditions in prisons have taken place during the last fifteen years, and it is hard to find many people who would disagree with this point. But on the more strategic issues of reforming the system to really cut into reoffending, the future looks less clear cut. Lack of money, a rising prison population, and a scaling back in the level of ambition are likely to be the defining factors of the next five years of the prison system in England and Wales.⁵⁵

The coalition agreement published on 11 May 2010 said very little on criminal justice policy, other than that the Government would, in the context of relationships with the EU, preserve “the integrity of our criminal justice system.”⁵⁶

3.4 Reducing the prison population: a matter of political will?

From the earliest days of his appointment as Lord Chancellor and Secretary of State for Justice, comments by Kenneth Clarke indicated that he expected (and, indeed, wanted) to see a reduction in the size of the prison population. In a widely-reported [speech to the Centre for Crime and Justice Studies](#), he argued against the “Victorian” approach of “just banging up more and more people for longer without actively seeking to change them”. At the same time, he set out his views on a sentencing framework and called for a new approach to sentencing.⁵⁷ Reaction to that speech is reported in the Library standard note [Prison building: after Titan prisons, what next?](#)⁵⁸

⁵¹ Conservatives *Prisons with a purpose: Our sentencing and rehabilitation revolution to break the cycle of crime* Security Agenda: Policy green paper no 4, March 2008: pages 14-5

⁵² Page 57

⁵³ Page 5:5

⁵⁴ Page 74

⁵⁵ Simon Bastow *Politics and pragmatics in managing the prison population* 14 April 2010

⁵⁶ *Coalition agreement published* 12 May 2010

⁵⁷ Kenneth Clarke, Lord Chancellor and Secretary of State for Justice *The Government’s vision for criminal justice reform* 30 June 2010

⁵⁸ Library Standard Note SN/HA/5646 (16 July 2010)

In another speech soon after this, Kenneth Clarke again referred to the need for more effective rehabilitation and for prisoners to pay for their crime:

So we must put more emphasis on work and training, so that prisoners can literally make a payment for the costs of crime. We are intending to move to paying providers for the results they achieve by reducing the reoffending rate and reducing the commission of more offences against the public by those who have been sentenced by the court.⁵⁹

In his [speech to the Conservative party conference](#) in 2010, Kenneth Clarke remarked that prison needed to do more than keep criminals off the streets. Reoffending rates were, he argued, “absurd” and it was imperative to tackle them.⁶⁰

In reply to a Parliamentary Question from Lord Dubs in January 2012, justice minister Lord McNally denied that the Government had given up on attempts to reduce the size of the prison population, although it would not play “the numbers game”:

Simply making arbitrary decisions on prison numbers is pointless, but what we are doing is putting into place policies which, as I have said, particularly tackle what I think is one of the major problems in the upward trend in our prison population - that is, the unacceptable level of reoffending. That is why we are putting a lot of effort into policies on the rehabilitation of offenders.

Lord Woolf⁶¹ suggested that, by the time prisoners were released, enough should have been done to ensure they did not quickly return to crime. Lord McNally agreed:

Yes, people who have committed serious crimes should be put in prison but, unless you are going to keep them in prison for ever, you are going to release them at some stage. Therefore, the policy aim must be to put in place programmes of rehabilitation to avoid reoffending wherever possible. It was put to me on a prison visit that the best chance of avoiding reoffending is for prisoners to have the prospect of a job, a place to live and a relationship. Those are difficult things to put in place but that is, and will continue to be, the thrust of our policy.

Lord McNally agreed with Baroness Hamwee that there were too many women in prison and outlined the Government’s plans to find other ways of treating women offenders:

My Lords, there are about 4,000 women in our prisons at the moment, and anyone who takes a moment to study these matters will say that that is far too large a number. We are taking forward a range of measures to look at how women who have committed crimes outside the prison regime can be treated. (...) It is widely said that women need a different kind of treatment and I believe that to be the case. This is a serious problem and one that we are taking seriously in terms of initiatives on drugs, debt and treatment outside.⁶²

Most recently, giving evidence to the Justice Committee on the structure and budget of the Ministry of Justice, Kenneth Clarke argued that imprisoning so many offenders represented “appalling value for money”. He called for a pause, in which to reflect on how best to deal with offenders, and suggested that the focus had to be on what would produce the best results for the public. Newt Gingrich in the United States, he said, had similar views. Calls from the popular press to put more people in prison should not, he suggested, be heeded:

⁵⁹ Ministry of Justice *Criminal justice reform speech* 13 July 2010 (available on the [CrimLinks website](#))

⁶⁰ *Conservatives Speech: Ken Clarke: Making prisoners pay to support victims* 5 October 2010

⁶¹ Former Lord Chief Justice and chair of the inquiry into prison disturbances in 1990 (the “Woolf Report”).

⁶² HL Deb [12 January 2012 cc219-221](#)

If we are going to get the best value for money out of what we spend on punishing criminal offenders, it is best to spend it on the way that produces the best results for the public. The first result is public satisfaction that justice has been done and that someone has made retribution for whatever, sometimes quite serious, offence they have committed. (...) We have seen such a surge in the prison population in the last 15 years and such a surge in sentencing length that it would be very helpful if we could have a bit of a pause in order to address what we can do with the people we have. I put it cautiously because any suggestion that you might have as a main policy objective of reducing the number of prisoners in prison sets off great excitement in parts of the political world.⁶³

Some commentators have speculated, though, that political pressures will lead to the Government adopting a “tougher” stance to placate its critics — a view apparently endorsed in May 2012 by an unnamed Government source:

Sadly, as evidenced by the new-look antisocial behavioural orders announced last week, the government is now wobbling as it strives to shore up waning popularity. It is expected that Ken Clarke will be punished for speaking sense on crime, given more time to “chillax” after his replacement as justice secretary by a successor resorting to more familiar gesture politics of the past. “We need a veneer of toughness,” one government figure told me. “Although whatever you do, it is never enough.”⁶⁴

⁶³ *The budget and structure of the Ministry of Justice* HC 97 – ii, 18 August 2012, 2012-13: Ev 97

⁶⁴ Ian Birrell “Don’t mock ‘hug a hoodie’. It was, and still is, the right message” *Guardian Comment is free* 31 May 2012

4 Rehabilitation and reducing reoffending: what works?

As was remarked earlier, the question of whether “prison works” is a controversial one. Some argue that prison does work, because it takes offenders off the streets. Others, though, argue that it fails, either because it seems to do little to stop offenders returning to offending soon after release or because it is itself criminogenic, in that it locks offenders into a cycle of offending and punishment and brings further harm (such as the damage and disruption to family life and even the high rates of suicide and mortality amongst prisoners). Further questions then arise about what would be most effective in rehabilitating offenders and ending, rather than interrupting, their offending. Thus, the “what works” debate centres on whether there is anything which can be done to reduce the risks of an offender reoffending.

4.1 Desistance

Another area of criminological research has been that of **desistance** — abstaining from crime by those who had previously been repeatedly involved in offending.

Desistance research starts from different assumptions and theories from those of “what works” research (discussed at more length in the next section). “What works” studies tend to put the programme or intervention at the centre of the analysis and then examine whether offenders who have followed that programme or received that intervention have reoffended any more or less than a control group. The advantage of this approach (which might be termed the “medical model” of experimental and control group analysis) is that it is (on the surface at least) objective, rigorous and measurable.

Desistance studies, on the other hand, seek to identify the factors common to offenders’ success in quitting offending, to develop an understanding of how and why some people with long criminal offending careers are able to “go straight”. One attraction of this approach to government policy-makers may be that it does not always depend on the state to intervene directly, as many of the things that appear to have much bigger impacts on offenders’ lives and their chances of going straight — such as marriages and jobs — are not in the gift of government and cannot be randomly assigned between offenders.⁶⁵

A paper prepared by NOMS in partnership with Shadd Maruna pointed out that, although relatively few offenders made a deliberate decision to quit offending, there were nevertheless factors which could help offenders desist from crime.⁶⁶ These helpful factors could be external and social or internal and psychological and, although most studies of desistance had looked at high volume offending such as burglary and drug sales, these same factors could also apply to more serious crimes such as sexual offending and organised violence. The factors were

- Getting older and maturing
- Family and relationships
- Sobriety and recovery from addiction

⁶⁵ Another way in which the difference between the “what works” and desistance approaches may be conceptualised is that (by starting from general propositions about what reduces offending) the “what works” approach is a **deductive** one, whereas the desistance approach gathers examples of what helps to reduce offending and from these generates propositions in an **inductive** way.

⁶⁶ Moreover, quitting offending depends on much more than making a decision to quit; research evidence indicates that many offenders would like to “go straight”, want to “go straight” and are trying to “go straight”, but once an offender is embedded in criminal networks or in a cycle of offending, punishment, social stigma and opprobrium, resolve on its own — without the ways and means to back it up — may not be enough to enable them to break free.

- Employment
- Hope and motivation
- Something to give (concern and empathy)
- Having a place within a social group
- Not having a criminal identity
- Being believed in.

The paper went on to suggest that the probation service should look for ways to strengthen the supervisory relationship as, in a study of desistance carried out in Sheffield, most offenders had complained that they got little support from the probation service in their efforts to go straight.⁶⁷

The experiences of individual prisoners who have succeeded in “going straight” were examined in a [recent documentary](#) co-funded by the Economic and Social Research Council.⁶⁸ The evidence summary accompanying the documentary argued for a new approach reaching beyond the prison and addressing issues of social justice:

For too long, social workers and probation officers have been compelled to support a narrow form of rehabilitation; one focused on tackling the individual's problems and developing their capacities to live and to act differently. (...) ‘Psychological’ or ‘correctional’ rehabilitation can take a person part of the way towards a better life, but if the route is blocked, for example, by the practical effects of a criminal record or by the stickiness of the criminal label and the refusal of the community to accept that someone has changed, then desistance may be quickly derailed.⁶⁹

4.2 “What works?”

The term “what works” was first coined in 1974, when Robert Martinson argued that “education at its best, or ... psychotherapy at its best, cannot overcome, or even appreciably reduce, the powerful tendency for offenders to continue in criminal behaviour”.⁷⁰ Other commentators then and since have taken an equally pessimistic stance, noting that the research has yielded no clear evidence of any reliable means of reducing reoffending.

Writing in 1995, James McGuire and Philip Priestley noted that the controversy over how to deal with offenders had reached fever pitch; punitive measures had done little to stop the growth of crime and so the question of “what works” in deterring offenders from reoffending had become central to debate. Some of the research which bolstered the pessimistic view that “nothing works” (McGuire and Priestley argued) was in itself flawed.⁷¹

⁶⁷ Shadd Maruna/NOMS Rehabilitation Services Group [Understanding Desistance from Crime](#), June 2010

⁶⁸ *The Road from Crime: What can we learn from those former prisoners who have successfully “desisted” from criminal behaviour or “gone straight?”* August 2012

⁶⁹ Fergus McNeill, Stephen Farrall, Claire Lightowler and Shadd Maruna [How and why people stop offending: Discovering desistance](#) IRISS Insights No 15, August 2012

⁷⁰ Robert Martinson (1974) *What Works? – Questions And Answers About Prison Reform* The Public Interest 10, 22-54

⁷¹ James McGuire and Philip Priestley (1995) ‘Reviewing “What Works”: Past, Present and Future’ in McGuire (ed) *What Works: Reducing Reoffending*: page 3

The most promising approaches (those which appeared to have the greatest impact on reoffending) were, they remarked, those based on cognitive-behavioural techniques.⁷² Punitive measures had a net destructive effect, worsening rates of recidivism. The risk of imprisonment was unlikely to be an effective deterrent to crime, not least because few offenders expected to be apprehended, let alone imprisoned. Likewise, there was some doubt as to whether the imprisonment of others acted as a general deterrent. Although imprisoning one individual would prevent them from committing further crimes whilst incarcerated, it was less clear whether increasing the prison population – unless on a massive scale – would have significant impact on crime levels.⁷³

The National Probation Service published information for sentencers in 2003, pointing to “significant” emerging evidence that offending behaviour programmes, drugs programmes and basic literacy and numeracy could reduce reoffending.⁷⁴

4.3 Cutting crime

The “Maryland Report” was commissioned by the US Attorney General Janet Reno to evaluate the effectiveness of local and State crime prevention programmes.⁷⁵ The US National Institute of Justice published its own summary of the Maryland Report. It pointed out that scientific knowledge is by its nature provisional, and so no conclusion can be permanent and it would be foolhardy to make sweeping generalisations, but nonetheless the Maryland Report had found some interventions that seemed to work or at least to be promising. Equally, the available evidence also suggested that there were some interventions that did not work.⁷⁶

⁷² James McGuire and Philip Priestley (1995) ‘Reviewing “What Works”: Past, Present and Future’ in McGuire (ed) *What Works: Reducing Reoffending*: page 16

⁷³ James McGuire and Philip Priestley (1995) ‘Reviewing “What Works”: Past, Present and Future’ in McGuire (ed) *What Works: Reducing Reoffending*: pages 10 - 12

⁷⁴ National Probation Service *What Works: Reducing Reoffending: Important Information For Sentencers Issue 2* January 2003

⁷⁵ University of Maryland Department of Criminology and Criminal Justice “Preventing Crime: What Works, What Doesn’t and What’s Promising” (1997)

⁷⁶ National Institute of Justice, US Dept of Justice *Preventing Crime: What Works, What Doesn’t, What’s Promising* Research in Brief, July 1998: pages 2 - 4

The success or otherwise of interventions in the US

What works?

For infants: Frequent home visits by nurses and other professionals.

For preschoolers: Classes with weekly home visits by preschool teachers.

For delinquent and at-risk preadolescents: Family therapy and parent training.

For schools:

Organizational development for innovation.

Communication and reinforcement of clear, consistent norms.

Teaching of social competency skills.

Coaching of high-risk youth in “thinking skills.”

For older male ex-offenders: Vocational training.

For rental housing with drug dealing: Nuisance abatement action on landlords.

For high-crime hot spots: Extra police patrols

For high-risk repeat offenders:

Monitoring by specialized police units.

Incarceration.

For domestic abusers who are employed: On-scene arrests.

For convicted offenders: Rehabilitation programs with risk-focused treatments.

For drug-using offenders in prison: Therapeutic community treatment programs.

What doesn't work?

Gun “buyback” programs.

Community mobilization against crime in high-crime poverty areas.

Police counselling visits to homes of couples days after domestic violence incidents.

Counselling and peer counselling of students in schools.

Drug Abuse Resistance Education (D.A.R.E.).

Drug prevention classes focused on fear and other emotional appeals, including self-esteem.

School-based leisure-time enrichment programs.

Summer jobs or subsidized work programs for at-risk youth.

Short-term, non-residential training programs for at-risk youth.

Diversion from court to job training as a condition of case dismissal.

Neighbourhood watch programs organized with police.

Arrests of juveniles for minor offenses.

Arrests of unemployed suspects for domestic assault.

Increased arrests or raids on drug market locations.

Storefront police offices.

Police newsletters with local crime information.

Correctional boot camps using traditional military basic training.

“Scared Straight” programs whereby minor juvenile offenders visit adult prisons.

Shock probation, shock parole, and split sentences adding jail time to probation or parole.

Home detention with electronic monitoring.

Intensive supervision on parole or probation (ISP).

Rehabilitation programs using vague, unstructured counselling.

Residential programs for juvenile offenders using challenging experiences in rural settings.

Source: National Institute of Justice, US Dept of Justice Preventing Crime: What Works, What Doesn't, What's Promising Research in Brief, July 1998:

More recently, and looking more broadly at cutting crime (and not just at reducing reoffending), the Northern Ireland Office commissioned an international study of successful interventions. The report of that study, which sought to summarise and update the Maryland Report, was published in 2008 and identified sixteen successful interventions which were “worth trying”, based on a review of available research evidence:

- Infant home visitation with pre-school education
- Family therapy by clinical staff for families in stress
- Holistic, multi-faceted offender treatment involving meaningful relationships between client and treatment practitioner
- Therapeutic Communities and other mutual support efforts
- Aftercare/Resettlement Social Support
- Drug Courts and other addiction treatment interventions
- Community Restorative Justice
- Transition to work projects involving training and real opportunities for employment pre-and/or post-release from prison
- Proactively patrolling high-crime ‘hot spots’
- Proactive arrests for driving under the influence of drugs and alcohol
- Problem-Oriented and Community Policing
- CCTV in car parks and other contained areas
- Residential burglary prevention schemes
- Supporting and empowering schools (including the students themselves) to develop anti-crime strategies
- Anti-bullying campaigns and rituals in schools
- Social competency skills training in schools.⁷⁷

The authors, though, expressed some caution. They noted that (as with the Maryland Report) the report actually dealt with what *had* worked in other contexts (with no guarantee that these interventions could be replicated in the UK) and, besides, some things ought to be done regardless of whether they reduced crime, as crime reduction was not the only social good. Nor could the influence of (for example) the economy be overlooked; reductions in joblessness, better educational opportunities and improving the lives of families with small children could all contribute to lower crime rates. The essence of a successful intervention (the authors suggested) was that it would encourage offenders to choose to desist, rather than coercing them.⁷⁸

⁷⁷ Northern Ireland Office [Reducing Offending: A Critical Review of the International Research Evidence](#) NIO Research and Statistical Series: Report No. 18, November 2008: Executive Summary, page vii

⁷⁸ Northern Ireland Office [Reducing Offending: A Critical Review of the International Research Evidence](#) NIO Research and Statistical Series: Report No. 18, November 2008: Executive Summary, pages viii - ix

5 How effective are prisons at rehabilitating offenders?

So, if (as it has been argued) the effects on crime levels of sending more offenders to prison for longer are limited, what about prison's other functions? Are prisons effective in rehabilitating prisoners? Or are they (as was questioned earlier) themselves criminogenic, leading to more rather than less offending?

Before considering this question any further, it is worth remarking that the term rehabilitation may in itself be problematic. David Faulkner and Ros Burnett of the University of Oxford Centre for Criminology have argued that the word *rehabilitation* contains an implicit assumption that the prisoner can revert to a stable lifestyle which, in fact, they may never have experienced.⁷⁹ Later sections of this paper discuss (for example) many prisoners' poor literacy skills and lack of formal education.

In its 2009 report, *Locked Up Potential* (published by the Centre for Social Justice, chaired by Iain Duncan Smith), the Prison Reform Working Group chaired by Jonathan Aitken argued in favour of community prisons and the creation of community prison and rehabilitation trusts, to be the equivalent of NHS trusts.⁸⁰ New build prisons should (it recommended) have a capacity of about 600 prisoners.⁸¹ They should have a more positive culture than prisons currently and should promote rehabilitation. The report suggested how this might be achieved:

Many [prisoners] are a product of material and emotional deprivation; broken families; disjointed and failed education; a lack of motivation, opportunity, experience and achievement in work; failed and abusive relationships; and chronic physical and mental health problems. Frequently, they abuse drugs and/or alcohol as a coping mechanism and they turn to gang culture for protection and identity.

Rehabilitation involves breaking the powerful grip of this background and changing the way prisoners think and act (and the way they are pressured by peers to think and act). If we accept that this is the context which surrounds all prison activity, then we can understand that activities designed for prisoner rehabilitation are rather like periodic doses of medicine delivered in the hope that sufficient 'good effect' will be absorbed to inoculate against previous bad experiences and prevailing bad influences. In most cases the impact of them is insufficient and too easily reversed by influences at work when a prisoner returns to his wing or house block. By way of contrast, our recommended model creates opportunity to influence the total experience of prison life in the wings as well as in structured activities.⁸²

5.1 Reoffending rates

The Ministry of Justice routinely publishes statistics on proven reoffending in England and Wales. It calculates proven reoffending figures for offenders who were released from custody, received a non-custodial conviction at court, received a caution, reprimand, warning or tested positive for opiates or cocaine in a given twelve month period.

Proven reoffending is defined as any offence committed in a one year follow-up period and receiving a court conviction, caution, reprimand or warning in the one year follow-up.

⁷⁹ David Faulkner and Ros Burnett "Prisons: Security, rehabilitation and humanity" in *Where next for criminal justice?* (2012) pages 145 -164

⁸⁰ Centre for Social Justice *Locked Up Potential: A strategy for reforming prisons and rehabilitating prisoners* March 2009: page 62

⁸¹ Centre for Social Justice *Locked Up Potential: A strategy for reforming prisons and rehabilitating prisoners* March 2009: page 71

⁸² Centre for Social Justice *Locked Up Potential: A strategy for reforming prisons and rehabilitating prisoners* March 2009: Page 67

Following this one year period, a further six month waiting period is allowed for cases to progress through the courts.

Proven reoffending rates for offenders released from prison are summarised below:

- 47.5% of adult offenders released from prison during 2010 reoffended within one-year. This is a rise from 46.8% of those released in 2009 but a fall from a rate of 48.6% in 2000.
- 71% of juvenile offenders released from prison during 2010 reoffended within one-year. This is a rise from 70.6% of those released in 2009 but a fall from 76.8% in 2000.
- Due to changes in methodology, proven reoffending rates have only been published on a consistent basis from 2000 onwards.
- There is an inverse correlation between the length of custodial sentences and proven reoffending rate. Of those adult offenders released from prison in 2010 for sentences of less than one year, 57.6% were proven to have reoffended within one year. This compares to 37.2% of prisoners who served sentences of one year to less than four years, 29.7% serving sentences of four to ten years and 14.3% of those serving sentences of over ten years.
- Proven reoffending rates over different follow-up have also been published.⁸³ After one-year 46% of offenders released from prison in the 2000 cohort had reoffended. This rate increased to 78% after nine years.

When looking at the full cohort of offenders — that is, not just those released from prison — more detailed statistics are published:

- The proven reoffending rate for adults falls with increasing age. Of those offenders aged 21-29 28% reoffended within one year compared to 26% of those aged 30-39, 20% of those aged 40-49 and 12% of those offenders aged 50 or more.
- Offenders with a large number of previous offences have a higher rate of proven reoffending and this is true for both adults and juveniles. The proven reoffending rates range from 11% for offenders with no previous offences to 48% for offenders with 25 or more previous offences.
- Similarly, offenders with a large number of previous custodial sentences have a higher proven reoffending rate. The rates range from 18% (no previous) to 67% (11 or more previous)

5.2 The factors underlying reoffending

In a comment piece for the *Guardian* in December 2010, Zoë Williams argued that it was in some ways surprising that more ex-prisoners did not reoffend:

These are people who had already reached an accommodation with the moral implications of criminality; who were OK with the stigma of being on the wrong side of the law; who certainly didn't come out of prison any richer than they went in, or with more to lose. And yet 45% come out and eschew crime anyway. (...)

⁸³ Table 2.4b, [2012 Compendium of re-offending statistics and analysis](#), Ministry of Justice Statistics bulletin

Where prison does work, it is for these reasons: that it addresses and solves a prisoner's addiction problems, where they exist; that it endows the prisoner with skills, both cognitive and practical; and that it is near enough to a prisoner's family that there's a chance of returning to a stable life at the end of the sentence. So any justice secretary with any enthusiasm for reform would be looking to replicate these benefits in a non-custodial context.⁸⁴

The Cabinet Office Social Exclusion Unit's 2002 report on reducing reoffending by ex-prisoners argued that, although the evidence was not in every instance clear-cut, the issues underlying reoffending could be identified. They were often overlapping and required a "joined up" response:

5.6 There are several other relevant factors that can help reduce reoffending. Most obviously, these include having a job, a home and a stable family. Evidence shows that these areas are strongly associated with reducing the likelihood of reoffending. There is a considerable risk that a prison sentence can weaken these protective factors, and therefore lead to an increase in the likelihood of reoffending. Procedures that identify those at risk, provide advice at the point of sentence, and follow through with effective and sustained support to release can help to minimise the risk of reoffending. In some instances, they can also help to put in place protective factors for the first time.

The report described how issues such as education, mental and physical health, benefit, personal finance and debt problems might (for better or worse) have an effect on rehabilitation.⁸⁵

A more recent study of offending by teenagers has suggested that there is a fundamental difference between adults and young people in the causes of offending behaviour with, therefore, significant implications for policing and how the youth justice system responds to that offending.⁸⁶ This study of young people aged from 12 to 16 in Peterborough found that, whatever the role of opportunity or social factors in offending by adults, for a delinquent minority of prolific young offenders, it was a lack of sense of right and wrong that was the most important factor in their law-breaking:

Crime occurred when teenagers with little sense of right and wrong were in areas where people were unlikely to intervene – primarily city centres or run-down housing estates.

(...)

Professor Per-Olof Wikstrom, who led the [University of] Cambridge study, said: "Many young people are 'crime averse' and simply don't perceive crime as a possible course of action ... The idea that opportunity makes the thief – that young people will inevitably commit crime in certain environments – runs counter to our findings. ... We need to focus on developing policies that affect children and young people's moral education and cognitive nurturing – which aids the development of greater self-control."⁸⁷

Another recent study by the Transition to Adulthood Alliance, published by the Barrow Cadbury Trust, examined three pilot projects that had been testing an individualised and holistic approach to reducing reoffending by young adult offenders (that is, those aged 16 to

⁸⁴ Zoe Williams "Yes, prisons work. No, I am not a Michael Howard clone" *Guardian* 15 December 2010

⁸⁵ Cabinet Office *Reducing re-offending by ex-prisoners: Report by the Social Exclusion Unit 2002*: pages 38-9. The report is no longer on the Cabinet Office website but is available on the [Learning Journey](#) website. A summary of the report is available on the archive version of the Cabinet Office website: [Reducing re-offending by ex-prisoners: Summary of the Social Exclusion Unit report, 2002](#).

⁸⁶ Part of the [Peterborough Adolescent and Young Adult Development Study](#)

⁸⁷ Emily Dugan "The 16 year olds who have committed 86 crimes each" *Independent* 24 June 2012

24). It found that there were “ten points in the criminal justice process where a more rigorous and effective approach for young adults and young people ... can be delivered”.⁸⁸ Employment, accommodation and family support had a significant impact on resettlement into the community and enabling young adult offenders to quit crime; among the 34 young adults tracked through the study (who on average had begun offending at the age of 13 and had four previous convictions), there were three reconvictions and three breaches of a licence or community order.⁸⁹ Discussing the study, the vice-chair of the Transition to Adulthood Alliance remarked that:

Young adults aged 18 to 24 represent under one-tenth of the population, but make up one-third of those sent to prison each year and one-third of the probation caseload. The current approach of treating people in this transition phase in the same way we treat mature adults is not working.

(...)

The projects were designed on the understanding that young adults have variable maturity, and require a different approach to older adults. (...) the results are encouraging. Over a six-month period, employment rates trebled, the number not in education, employment or training halved, and family relations significantly improved.⁹⁰

5.3 How do different prisons compare in their reoffending rates?

In its [thematic review of prison performance](#), HM Inspectorate of Prisons examined which factors within the prison or its population were linked with the prison being assessed ‘well’ (i.e. either well or reasonably well) against each of the four healthy prison tests – safety, respect, purposeful activity and resettlement – and overall. The age of the prison and the size of its population, and the distance they were held from their homes, were all found to be significant:

The most significant predictors of how prisons performed were: the size of the population; the age of the prison; whether it was privately or publicly managed; the functional type; and the percentage of prisoners held more than 50 miles from home. These factors impacted differently on performance across the four tests.

(...)

Size was the most influential factor in how prisons performed against the tests of safety and respect, and overall. Prisons holding 400 or fewer prisoners were significantly more likely to perform well in these tests than larger prisons holding more than 800 prisoners. Smaller prisons were four times more likely to perform well overall than large prisons holding more than 800 prisoners, when the age of the prison was controlled for.

(...)

Functional type and age were the two factors that most affected performance against purposeful activity. The year that a prison was opened, used as an indicator of the age of much of its building, predicted performance against the tests of safety, purposeful

⁸⁸ Transition to Adulthood Alliance [Pathways from crime: effective approaches for young adults throughout the criminal justice process](#) May 2012: Executive summary

⁸⁹ Transition to Adulthood Alliance [Pathways from crime: effective approaches for young adults throughout the criminal justice process Stage 10: Enabling desistance from crime](#) May 2012

⁹⁰ Debbie Pippard “Changing tack on young adult offenders” *Criminal Law and Justice Weekly* Vol 176, 26 May 2012

activity and overall. Prisons built before 1938 were less likely to perform well against these tests. Most such prisons will be local prisons.

Distance from home was the key variable in performance against resettlement. This is of particular relevance to women and young offenders, where there are fewer prisons, and for training prisons, which may be at some distance from centres of population, particularly in the south of England.⁹¹

Proven reoffending data for offenders released from prison, by individual prison establishment level data is routinely published by the Ministry of Justice. The rates are produced on the basis of an individual's first disposal from each specified prison. If the individual offender is discharged from two different prisons in the year they will appear in both of the prison's reoffending rates.

Data for prisoners released during 2010 showed that among prisons which discharged 30 or more adult offenders, proven reoffending rates varied considerably. A large part of this variability reflects the mix of offenders who are held in different prisons and, therefore, comparisons between prisons should not be made using these raw reoffending rates. For example, a group of prisoners with a high number of previous offences is more likely to reoffend than a group with a low number of previous offences.

To account for the variation in the mix of prisoners released, a model has been developed to help explain if reoffending rates are affected by the specific prison they are discharged from or if the rate of reoffending reflects the mix of offenders.

- For offenders with a sentence of less than 12 months rates ranged from 16% to 79%
- Haverigg, Kirkham, Moorland Open and Sudbury had significantly lower proven reoffending rates than expected from the mix of prisoners while Ashfield, Feltham and Wetherby had significantly higher rates.
- For offenders with a sentence of 12 months or more rates ranged from 3% to 70%
- Four prisons had significantly lower proven reoffending rates than expected from the mix of prisoners released – Canterbury, Askham Grange, East Sutton Park and Kirklevington Grange – no prison had a significantly higher rate.

Information on the actual and predicted proven reoffending rates since 2007 for each prison establishment is available in the Ministry of Justice's [Proven reoffending quarterly publication](#).

⁹¹ HM Chief Inspector of Prisons *The Prison Characteristics That Predict Prisons Being Assessed As Performing 'Well': A Thematic Review* January 2009: pages 5 - 6

6 What works best – prison or a non-custodial sentence?

Recently, the debate (at least in some quarters) has shifted from whether prison works to whether it works better than the alternatives.

In its reply to the [Justice Committee's report on the role of the probation service](#), the Ministry of Justice suggested that the debate about the relative effectiveness of prison and community sentences was likely to continue.⁹²

[It] is clear from the debate on how re-offending can best be measured that there is no consensus on how outcomes following community sentences and those following custody should be compared. (...) A much wider discussion needs to take place – in which the Ministry will play a full part.⁹³

Even the Civitas study (discussed in more depth later), which made the case for longer sentences as a means of reducing crime, argued that this could not be the only goal of the criminal justice system:

[We] do not intend to suggest that crime reduction should be pursued while ignoring other policy goals.⁹⁴

In a 2007 report published by the Vera Institute of Justice in the USA,⁹⁵ Don Stemen remarked that, between 1970 and 2005, state and federal prison populations in the USA had risen by 628 per cent, so that on any given day there were more than 2.25 million people in American prisons and local jails. By the turn of the 21st century, nearly 3 per cent of Americans – 5.6 million people – had spent time in prison. Had this great policy experiment succeeded, he asked, in making the public safer?

Imprisonment (Stemen noted) had been responsible for only a quarter of the drop in crime between 1992 and 1997. Other factors – such as fewer young people in the population, smaller urban populations, decreases in crack cocaine markets, lower unemployment, higher wages, more education, more police and more arrests for public order offences – accounted for the rest. It was doubtful, he suggested, whether continuing to increase the incarceration rate could achieve the same effects, as the benefits of still more prison expansion were likely to be both smaller and more expensive to obtain. Stemen remarked too that, although recent research had shown a relationship between higher incarceration rates and lower crime rates, there was still inconsistency and disagreement about the strength (or even the existence) of that relationship. There was even some evidence to suggest that higher incarceration rates could increase crime, as social and family bonds guiding people away from crime broke down, social order was weakened and communities became poorer and more resentful. A “tipping point” could be reached.

It was not enough (Stemen argued) for prison to be better than nothing; it had to be better than the next-best use of the money. So, rather than ask whether incarceration increased public safety, it was more important to ask whether it was the most effective means of doing so. The answer, he concluded, was “no”; effective public safety strategies “should move

⁹² Justice Committee *The role of the Probation Service* 27 July 2011, HC 519 2010-12: Introduction

⁹³ Ministry of Justice [Government Response to the Justice Committee's Report: The role of the Probation Service](#) October 2011, Cm 8176

⁹⁴ Siddhartha Bandyopadhyay [Acquisitive Crime: Imprisonment, Detection and Social Factors](#) Civitas, July 2012: page 7

⁹⁵ An independent, not-for-profit centre for justice policy and practice that aims to “[make] justice systems fairer and more effective through research and innovation”.

away from an exclusive focus on incarceration to embrace other factors associated with low crime rates in a more comprehensive policy framework for safeguarding citizens”.⁹⁶

6.1 Does more prison mean less crime? Comparisons with other sentences

The Halliday Report in 2001 cited Home Office modelling, suggesting that the increase in the prison population needed to achieve a reduction of crime of 1% was not as great as the 1993 study had suggested (25%), but nevertheless sizeable at 15 or 7%:

The most recent Home Office estimates ... suggest that the prison population would need to increase by around 15%, for a reduction in crime of 1%. If efforts were targeted at particular groups of offenders, for instance those with drug problems who commit more offences per year, per offender, a 1% reduction in crime would require a smaller (7%) increase in the prison population. These estimates take no account of the dynamics of crime outside prison: for example the “recruitment” which goes on to support criminal networks trading in stolen goods or illegal drugs, or to sustain less formal groups indulging in criminal lifestyles.⁹⁷

A meta-analysis of existing studies of the comparative effectiveness of prison and alternative sentences in reducing reoffending, published in the *Probation Journal* in 2009, concluded that

The hypothesis that prisons are an effective means of reducing reoffending in the UK [can be] generally rejected.

Having selected 15 studies of adults and five studies of juveniles for their methodology and transferability to the UK, the researchers then examined 41 estimates of the effect on adults’ reoffending rates of prison compared with alternatives and 15 estimates for juveniles. They found some alternative sentences to be more effective than prison in reducing reoffending. For adults, these were:

- Residential drug treatment
- Surveillance and surveillance with drug treatment
- Prison in combination with educational/vocational intervention, behavioural intervention, sex offender treatment or drug treatment

For juveniles, these were:

- Community supervision with reparation to victims and
- A community programme with aftercare and surveillance.

The study therefore concluded that “the analysis ... suggests that prison increases reoffending when compared to a range of alternative sentences”. However, these findings needed to be approached with some caution. Although the studies used in the meta-analysis had been selected because they employed an experimental or quasi-experimental method comparing a “treatment” and a control group, some of these studies nevertheless had methodological shortcomings. Many too were studies from the USA and so might not be so easily transferable to the UK context. Publication bias, too, might have exaggerated the

⁹⁶ Don Stemen *Reconsidering incarceration: New directions for reducing crime* Vera Institute for Justice, January 2007

⁹⁷ Home Office *Making punishment work: Report of a review of the sentencing framework of England and Wales* 2001, page 9

effect of the alternatives to prison, because smaller or non-existent effects in other studies would be less likely to be published.⁹⁸

An article in the *Guardian* examined the criminological evidence for whether prison does indeed work, citing UK research into the incapacitation effect:

It is common sense to agree with Howard that serious and persistent offenders who are locked up cannot commit crimes in society while they are behind prison walls, although they may well carry on offending while they are inside.

Criminologists call this the incapacitation effect. Roger Tarling, a former senior Home Office criminologist, in a 1993 study, *Analysing Offending*, that justice ministry officials say still stands, estimated that the incapacitation effect means that a 25% rise in the prison population is needed to cut the overall crime rate by 1%.

So how has the theory worked out in practice? Since that 1993 study the prison population in England and Wales has doubled from 42,000 to nearly 85,500 today and the crime rate has tumbled by 45%. Applying Tarling's theory, that means that about 4% of the 45% fall can be attributed to the increase in the prison population. That is the extent to which Howard is right and only to that extent. The other 41% can be put down to higher levels of employment, better home and car security, changes in policing and many other factors.⁹⁹

The debate about the relationship between sentence length and crime rates was reignited in July 2012, when the think tank Civitas published what claimed to be “the first econometric study of how both detection and sentencing together affect crime in England and Wales”, examining acquisitive crime as recorded by the police.¹⁰⁰ (It is worth remembering here that crime as recorded by the police may not be the same as crime as reported by victims through the British Crime Survey. Public perceptions or fear of crime may be different again).

According to the economic model of crime, offenders will be influenced both by their own estimate of how likely they are to be caught and by the severity of the punishment they are likely to receive. The study found

- A 1% increase in detection rate leads to falls of 0.38% in burglary, 0.81% in theft and handling and a 0.26% in fraud and forgery. This would suggest (the report argued) that policing is an effective tool against crime and potential offenders respond to incentives.¹⁰¹
- For sentences, a 1% increase in sentence decreases burglary by 0.08%, theft by 0.16% and fraud by 0.2%.¹⁰²
- If average sentences were to be increased by a month, this could prevent 4800 burglaries, 47 robberies and 4700 frauds annually,¹⁰³ although for robbery it would be

⁹⁸ Kevin Marsh, Chris Fox and Rashmi Sarmah “Is custody and effective sentencing option for the UK? Evidence from a meta-analysis of existing studies” *Probation Journal* 2009, Vol 56(2), page 129

⁹⁹ Alan Travis “Howard is right: ‘prison works’ - but this is no way to cut crime” *Guardian* 7 December 2010

¹⁰⁰ Siddhartha Bandyopadhyay *Acquisitive Crime: Imprisonment, Detection and Social Factors* Civitas, July 2012: Introduction

¹⁰¹ Siddhartha Bandyopadhyay *Acquisitive Crime: Imprisonment, Detection and Social Factors* Civitas, July 2012: page 3

¹⁰² Siddhartha Bandyopadhyay *Acquisitive Crime: Imprisonment, Detection and Social Factors* Civitas, July 2012: page 3

¹⁰³ Siddhartha Bandyopadhyay *Acquisitive Crime: Imprisonment, Detection and Social Factors* Civitas, July 2012: page 9

more efficient to target longer sentences at the serious and dangerous offenders and to find alternatives to custody for the rest.¹⁰⁴

- There is a turning point, before which increasing sentences will also increase crime but beyond which increasing sentences will decrease offending.¹⁰⁵

The data could not, though, distinguish between incapacitation and deterrence effects. Nor (the author conceded) did the study examine other goals and concerns of the criminal justice system besides crime reduction, such as perceptions of crime and public security, proportionality and rehabilitation.

Responding to the report, the Howard League for Penal Reform argued that social and economic factors could do more than increased use of imprisonment to reduce crime:

"The effect of prison on reducing crime has never been proven and this research falls short of doing so," [Andrew] Neilson [director of campaigns at the Howard League for Penal Reform] said. "There are numerous international examples of jurisdictions which have experienced both falls in crime and falls in prison numbers.

"Research by the last government supports claims made since by Kenneth Clarke that factors such as a benign economy and improved home security had greater roles to play in the fall in crime in England and Wales than an increase in the use of imprisonment."¹⁰⁶

The chief executive of the crime reduction charity NACRO (formerly the National Association for the Care and Resettlement of Offenders) suggested that what the Civitas study demonstrated was that longer prison sentences could delay a prisoner's return to reoffending, without tackling the causes of reoffending:

According to the Civitas research, increasing the average sentence for burglary by one month would reduce offending by about 0.5%. In our experience at Nacro, all that prison does in these cases is to delay the next offence from taking place. A slightly longer sentence just means a slightly longer delay in reoffending.

We already know from other research that short-term prison sentences don't reduce reoffending, particularly for serious repeat offenders. We also know that the length of custodial sentences has been increasing significantly over the past decade with no causal link to a reduction in reoffending.¹⁰⁷

The published reconviction rates by sentence type/length should not be compared to assess the effectiveness of sentences, as these do not control for the offender characteristics that are known to affect the types of sentences given and reoffending rates, such as age, previous offending history, gravity of the offence or anything else that may otherwise distort the comparison.

The Ministry of Justice conducted research which attempted to control for offender characteristics and therefore enable the comparison of the effectiveness of different

¹⁰⁴ Siddhartha Bandyopadhyay *Acquisitive Crime: Imprisonment, Detection and Social Factors* Civitas, July 2012: page 10

¹⁰⁵ Siddhartha Bandyopadhyay *Acquisitive Crime: Imprisonment, Detection and Social Factors* Civitas, July 2012: page 6

¹⁰⁶ Toby Helm and Jamie Doward "Longer prison terms really do cut crime, study shows" *Guardian* 7 July 2012

¹⁰⁷ Paul McDowell "Longer prison sentences are not the way to cut crime" *Guardian Comment is free* 16 July 2012

sentences.¹⁰⁸ This research matched offenders where each offender receiving one sentence was matched exactly to a different offender receiving the comparison sentence on all five of the following offender and offence characteristics:

- gender;
- age (in years);
- offence
- ethnicity
- number of previous offences

The research compared the one-year reoffending rates between adult offenders receiving different types of sentences with custodial sentences at courts in England and Wales for each year between 2005 and 2008. The headline results are summarised below and in the table:

- Offenders receiving Community Orders or Suspended Sentence Orders had lower reoffending rates than those given immediate custodial sentences of less than 12 months.
- Offenders given immediate custodial sentences of 1 year or more but less than 2 years had lower reoffending rates than those who received immediate custodial sentences of less than 12 months.
- Offenders given immediate custodial sentences of 2 years or more but less than 4 years had lower reoffending rates than those who receive immediate custodial sentences of 1 year or more but less than 2 years.

Due to the small number of matches it was not possible to provide similar analysis including offenders given immediate custodial sentences of more than 4 years.

¹⁰⁸ 2011 Compendium of reoffending statistics and analysis, Ministry of Justice

Proven re-offending rates of matched pairs of offenders in England and Wales

	2005	2006	2007	2008
Number of matched pairs	2,557	3,836	4,273	5,636
Immediate custody (less than 12 months)	50.4%	54.5%	57.2%	59.4%
Community orders	44.0%	48.6%	50.0%	51.1%
Difference (percentage points)	6.4	5.9	7.2	8.3
Number of matched pairs	365	1,680	2,110	2,667
Immediate custody (less than 12 months)	34.5%	42.6%	45.3%	47.4%
Suspended sentence orders	30.7%	38.0%	38.7%	38.6%
Difference (percentage points)	3.8	4.5	6.6	8.8
Number of matched pairs	497	433	466	632
Immediate custody (1 year or more but less than 2 years)	30.2%	32.8%	35.4%	40.0%
Immediate custody (less than 12 months)	40.4%	35.3%	42.1%	44.5%
Difference (percentage points)	-10.3	-2.5	-6.7	-4.4
Number of matched pairs	369	387	333	429
Immediate custody (2 years or more but less than 4 years)	31.7%	31.0%	32.7%	35.7%
Immediate custody (1 year or more but less than 2 years)	34.4%	35.7%	36.3%	42.9%
Difference (percentage points)	-2.7	-4.7	-3.6	-7.2

Source: Table 1, 2011 Compendium of re-offending statistics and analysis, Ministry of Justice

More detailed information is published providing a breakdown by gender, age, offence type and number of previous convictions/cautions.¹⁰⁹

For example, the following summarises the reoffending rates of offenders in the total 2005 – 2008 cohort who had no previous convictions or cautions:

- Offenders receiving Community Orders had lower reoffending rates than those given immediate custodial sentences of less than 12 months – 9.4% compared to 10.9%.
- Offenders receiving Suspended Sentence Orders had lower reoffending rates than those given immediate custodial sentences of less than 12 months – 7.2% compared to 9.6%.
- Offenders given immediate custodial sentences of 1 year or more but less than 2 years had higher reoffending rates than those who received immediate custodial sentences of less than 12 months – 8.5% compared to 7.5%. However these rates are based on a relatively small number of offenders so should be treated with caution.
- Offenders given immediate custodial sentences of 2 years or more but less than 4 years had lower reoffending rates than those who receive immediate custodial sentences of 1 year or more but less than 2 years – 6.4% compared to 9.4%. Again these rates are based on a relatively small number of offenders so should be treated with caution.

The Ministry of Justice's chief statistician made the following assessment of the figures in the 2011 publication's executive summary:

The findings are not conclusive on whether the deterrent effect of longer custodial sentences is effective at reducing re-offending. Despite higher re-offending rates, offenders receiving sentences of less than 12 months do not have access to offender

¹⁰⁹ See tables A2-A5 - 2011 Compendium of re-offending statistics and analysis, Ministry of Justice

management programmes and are not subject to supervision by the Probation Service upon release. This latter factor is also likely to explain some of the difference between community sentences/suspended sentence orders and short prison sentences. However, the true impact of offender management programmes and Probation supervision cannot be reliably established using current Ministry of Justice administrative data.

There are limitations to the Ministry of Justice's methodology, discussed in the report.

6.2 The criminogenic effect of prison

Another study, this time from the Netherlands, examining the effect of first-time imprisonment between the ages of 18 to 38 on conviction rates in the three years immediately after release, concluded that

first time imprisonment is associated with an increase in criminal activity in the 3 years following release. The effect of imprisonment is similar across offence types.¹¹⁰

In a study published in 2012, William Bales and Alex Piquero examined the effects of imprisonment and a non-custodial prison diversion programme on reoffending by more than 144,000 offenders over one, two or three years in Florida, USA. They noted that offenders sentenced to imprisonment differ in fundamental ways from those receiving non-custodial sentences. After using various statistical methods to ensure their findings were robust – and controlling for demographics (sex, age and race), criminal history and offence characteristics and applicable sentencing guidelines (which might have pointed towards imprisonment) – they concluded that

imprisonment had a criminogenic effect on reoffending compared to non-incarcerative sanctions.

The criminogenic effect of prison on reoffending (recidivism) was found even when the two groups were matched on all variables; offenders sentenced to prison were significantly more likely to reoffend than those on the community programme. Not only did prison have a criminogenic effect, making reoffending more likely, the prison diversion programme being studied also (possibly) had a deterrent and rehabilitative effect, although the apparent criminogenic effect became smaller once differences between the two groups of offenders were better controlled for.¹¹¹

¹¹⁰ Paul Nieuwbeerta, Daniel S Nagin and Arjan A J Blokland "Assessing the impact of first-time imprisonment on offenders' subsequent criminal career development: A matched samples comparison" *Journal of Quantitative Criminology* (2009) 25: 227-57

¹¹¹ William D Bales and Alex R Piquero "Assessing the impact of imprisonment on recidivism" *Journal of Experimental Criminology* March 2012, Volume 8, Issue 1, pages 71-101

7 Can a short spell in prison help an offender to quit offending?

It may seem obvious that, while in prison, an offender cannot commit offences in the community and so even a short prison sentence might give victims some respite from the effects of that offending. Again, this is the **incapacitation** argument (already discussed in section 1.2 of this paper *Incapacitation*, where it was pointed out that even the notion of incapacitation may be problematic if prisoners commit further offences within the prison).

What is often contested by politicians, criminologists and other commentators is whether a short prison sentence has any utility beyond incapacitation: can prisons help those serving short sentences to “go straight” or do they, at best, warehouse offenders until they are released back into the community? Do they even (as Douglas Hurd suggested) make bad people worse, by reinforcing a criminal identity and cementing criminal behaviour? And what of the so-called “harms of imprisonment”, such as the dislocation of family life and the high rates of suicide and mortality amongst prisoners?

The National Audit Office (NAO) published a [report on managing short-term prisoners](#) (those serving sentences of less than 12 months) in March 2010. The NAO observed that most short sentences were for three months or less, so most short-sentenced prisoners served less than six weeks. Only 18 to 21 year olds received statutory supervision on release.¹¹² The NAO’s key findings suggested that some basic standards were being met – all prisoners were being assessed on arrival for severe mental health problems and suicide risk, for example – but in other areas, performance was less good:

Prisons assess the immediate and longer-term needs of most short-sentenced prisoners, but there is wasteful repetition.

(...)

Induction procedures vary greatly between prisons and a significant minority of short-sentenced prisoners find them inadequate.

The provision of daytime activity for short-sentenced prisoners varies between prisons, but is generally inadequate to meet Her Majesty’s Inspectorate of Prisons’ standard for a healthy prison.¹¹³

The NAO concluded that, on the whole, the programmes and services available within prisons, aimed at reducing reoffending, were a good match for the typical needs of short-sentenced prisoners but – apart from drug services – prisons often did not match prisoners to the services on offer and, even where they did, often took a long time to do it. Most short-sentenced prisoners said they did not get the services they needed. Prisons did generally provide good, joined-up care for users of illegal drugs, although much less was done for prisoners whose offending was alcohol-related. Some prisons were better than others at linking short-sentenced prisoners to services in the community (and this was anyway made more complicated because prisoners from any prison could be returning to different local authority areas). Although it was clear that prisons did make a positive difference to some short-sentenced prisoners, there was little evaluation of that help and no evidence that it reduced reoffending.¹¹⁴

The issue of whether short prison sentences are effective in reducing reoffending was raised in questions to the then Lord Chancellor and Secretary of State for Justice, Jack Straw, in

¹¹² NAO *Managing Offenders On Short Custodial Sentences* HC 431, 10 March 2010: [Executive Summary](#), p 4

¹¹³ NAO *Managing Offenders On Short Custodial Sentences* HC 431, 10 March 2010: [Executive Summary](#), p 6

¹¹⁴ NAO *Managing Offenders On Short Custodial Sentences* HC 431, 10 March 2010: [Executive Summary](#), p 7

March 2010. He suggested that repeat offending by prisoners who had served short sentences could present an intractable problem:

Overall, the reoffending rate for all adult offenders went down by 15.9 per cent. between 2000 and 2008, and by a greater margin in respect of juvenile offenders. However, there is a problem, which I readily acknowledge, in respect of short-sentence prisoners, among whom the reoffending rate increased in the same period by 3.9 per cent. Those persistent offenders tend to be the most intractable to deal with, having failed on community punishments and failed to deal with their alcohol and drug abuse.

Diverting more of these offenders from crime and paying by results¹¹⁵ might, he suggested, be part of a better strategy for short sentence prisoners. Intensive alternatives to custody could reduce reoffending:

The emerging evidence from the evaluations in the six areas where intensive alternatives to custody are being piloted suggests that they are significantly reducing reoffending. (...) There is no doubt that if they are properly planned and executed they can effectively force offenders to face up to the reasons why they are offending, and can establish strong discipline on them in the community. If that works, it is all to the good.

For the Conservatives, David T C Davies asked whether the solution might be to keep offenders in prison for longer, to address their underlying problems. Jack Straw pointed out that the courts had been sending more people to prison and imposing longer sentences:

One of the main drivers of the 25,000 increase in the prison population since 1997 has been that the courts, quite correctly, have been sending more people to prison and for longer. (...) The people in prison need to be there, and what we must do is make more effective use of short sentences.¹¹⁶

In response to questions in November 2012, junior justice minister Jeremy Wright outlined the Government's plans to reduce repeat offending, especially by those who have served short sentences and are not supervised by the probation service:

We recognise that those sentenced to short custodial sentences have high reoffending rates and we are looking to see how best to deliver rehabilitation for this group.

(...)

The other issue, of course, is that those sentenced to very short terms—12 months or shorter—have very little assistance or intervention when their period of custodial imprisonment has ended. There is no period of licence, and we want to look at ways in which we can ensure that people in that group, who do offend at very high rates, receive the intervention they need to reduce their reoffending rates.¹¹⁷

Soon after this, Chris Grayling suggested that nearly all offenders leaving prison should have a mentor, who would meet them at the prison gate and be a "wise friend":

Whether you are the hardest of hard-liners on crime, or the most liberal observer, every single one of us has a vested interest in an enlightened approach to reducing reoffending. We can't just keep recycling people round and round the system.

¹¹⁵ Library Standard Note SN/HA/5758 (12 November 2010) discusses [the pilot of the Social Impact Bond at Peterborough prison](#).

¹¹⁶ HC Deb [23 March 2010 cc111-3](#)

¹¹⁷ HC Deb [13 November 2012 c166](#)

(...)

When someone leaves prison, I want them already to have a mentor in place to help them get their lives back together. I want them to be met at the prison gate, to have a place to live sorted out and above all someone who know where they are, what they are doing, and can be a wise friend to prevent them from reoffending.¹¹⁸

The Howard League for Penal Reform published its report *No winners: the reality of short term prison sentences* in June 2011.¹¹⁹ The research, conducted in collaboration with the Prison Governors' Association, examined the experience of prison sentences of less than 12 months from the perspective of male prisoners, prison staff and prison governors. Amongst the key points were:

- Many prisoners stated a preference for a short prison sentence over a community sentence on the basis that they are easier to complete. Some prisoners considered community sentences to have been more of a punishment because it had 'put them out more'.
- Prisoners expressed frustration at this [lack of courses] on the basis that they left prison the same as they were when they came in.¹²⁰
- The first timers were unanimous that this was their first and last prison sentence. It was evident that these men struggled with their imprisonment more than those who had been in prison before. Many prisoners reported having lost their jobs and/or housing as a result of their imprisonment. These men were often resentful and concerned about how to address this on their release. Most suggested that the first few weeks were the hardest, after which they found their imprisonment far easier to cope with.
- It was evident that the revolving door prisoners often had little to look forward to on their release from prison. It was apparent that for some men their quality of life was better in prison than it was in the community. The findings suggest that serving a number of short prison sentences may reduce the ability of prisoners to take responsibility for their repeat imprisonment and lead them to believe that reoffending and a return to prison are inevitable.
- Prisoner views about community sentences were incredibly mixed. Some did not consider them to be sufficient punishment, while others considered them to be 'tiring, boring and pointless'.¹²¹

7.1 Is there a viable alternative to short prison sentences?

Although remarks by Kenneth Clarke and others have suggested that they doubt the value of mass imprisonment, it is clear that the Ministry of Justice does not intend to abandon the use of short prison sentences altogether.

The Ministry of Justice has announced plans to reform community sentences, without removing short prison sentences from the range of sentencing options. In the foreword to *Breaking the Cycle*, ministers described how they would create an "intelligent sentencing framework":

¹¹⁸ "Prison gates mentor plan for released inmates" *BBC News* 20 November 2012

¹¹⁹ The report is available on the [website of the Howard League for Penal Reform](#), on registration.

¹²⁰ Summary: Page 1

¹²¹ Key findings: Pages 3-4.

The criminal justice system cannot remain an expensive way of giving the public a break from offenders, before they return to commit more crimes. We plan to transform the administration of punishment in this country to make it more robust and credible. Prisons will become places of hard work and industry, instead of enforced idleness. There will be greater use of strenuous, unpaid work as part of a community sentence alongside tagging and curfews, delivered swiftly after sentencing. When fines are a sensible sentence, we will place a greater focus on enforcement and collection. We will put a much stronger emphasis on compensation for victims of crime.

There would not, though, be an end to the use of short prison sentences:

For the avoidance of doubt, I would also like to set out what we are **not** doing. We will not end short sentences, which remain an important tool for magistrates, particularly for recidivist criminals who have not responded to community punishments or fines.¹²²

Breaking The Cycle pointed out that, for prisoners serving short sentences, the loss of their housing while in prison may contribute to their chaotic and unstable lifestyles.¹²³ Even so (it said again) short sentences should remain available to the courts:

195. Faced with similar problems, some countries have in essence abolished short sentences. However, we are clear that abolition is not the right approach. Courts do not send people to prison lightly, and only use a short sentence where they perceive that a viable alternative is not offered in the community. Some people will need to go to prison for a short time and it is important for magistrates to be able to use custody where necessary. Our focus must be on stopping offenders getting to that stage in the first place.¹²⁴

The consultation paper therefore promised a “rehabilitation revolution”. Kenneth Clarke argued that the reforms would stop the “revolving door” of repeated short prison sentences:¹²⁵

Some of my critics think you should put more and more people in prison for longer and longer and longer. I personally don't think that is the best way of protecting society. (...) We have to stop having this revolving door where people go in prison, serve their time and within less than a year half of them have committed more crime.¹²⁶

This commitment to retaining short prison sentences among sentencing options, though, is not new and predates the change of government in May 2010. Here too there seems to be some degree at least of political consensus, crossing party lines.

In announcing the previous Government's response to the Justice Committee's [report on justice reinvestment](#),¹²⁷ for example, the then justice minister, Maria Eagle, stated that prison

¹²² Ministry of Justice, *Breaking the cycle: Effective punishment, rehabilitation and sentencing of offenders*, Cm 7972, December 2010: page 2

¹²³ Ministry of Justice, *Breaking the cycle: Effective punishment, rehabilitation and sentencing of offenders*, Cm 7972, December 2010: page 34

¹²⁴ Ministry of Justice, *Breaking the cycle: Effective punishment, rehabilitation and sentencing of offenders*, Cm 7972, December 2010: page 57

¹²⁵ Some indication of the speed at which that door revolves was given in response to a PQ in May 2012, when Priti Patel asked about the 10 offenders with the most recorded convictions and on how many occasions those convictions had led to a prison sentence. Crispin Blunt's reply indicated that, for example, the most prolific offender on the Police National Computer record had 567 convictions, 181 of which led to an immediate sentence of imprisonment. Of course, that does not necessarily mean that the offender had been to prison on 181 separate occasions. (HC Deb [22 May 2012 cc626-9W](#))

¹²⁶ Alan Travis and Hélène Mulholland “[Prison system failing to tackle reoffending, says Ken Clarke](#)” *Guardian* 7 December 2010

¹²⁷ Justice Committee [Cutting Crime: the case for justice reinvestment](#) 14 January 2010, HC 94, 2009-10

sentences, long or short, would be the right option for the most dangerous serious and persistent offenders:

We are clear that prison remains the right option for these offenders and that a prison sentence, long or short, can be essential to demonstrating to law-abiding communities that offenders face the full range of punishments, including the deprivation of liberty behind bars.¹²⁸

7.2 The place of community sentences in the criminal justice system

The section of the Library Standard Note *Prison building: after Titan prisons, what next?* which addresses the question of whether the Prison Service can build its way out of a crisis quotes the views of Lord Ramsbotham, Lord Woolf and Phil Wheatley, the former head of NOMS, on the previous Government's strategy for prisons and criminal justice, the size of the prison population and the utility (or not) of short prison sentences.¹²⁹

Some advocates of the use of imprisonment argue that community sentences are a soft option, neither punitive enough nor effective in halting further offending. Writing around the time of the publication of *Breaking the Cycle*, Jonathan Aitken argued that "one of the biggest frustrations is that community sentences are perceived to be too soft compared with prison. The perception can be right, as Mr Blunt discovered." The then junior minister for prisons and probation, Crispin Blunt, had (he said) made incognito visits to two groups of young offenders serving community sentences. At one project, only four of the twelve offenders had shown up and, at the other, only five of ten had attended.¹³⁰

The place of community sentences within the criminal justice system was raised in the House of Commons in July 2010. Crispin Blunt argued that community sentences should be tougher and more effective in rehabilitating offenders and protecting the public:

We believe that making community sentences tougher in delivering punishment - especially looking at the operation of community payback - and more effective in delivering rehabilitation, restoration and the protection of the public, will help to show that people can have increasing confidence in such sentences. Achieving those objectives will be an important element of our assessment of sentencing policy.

He declined, though, to say which offences currently attracting short prison sentences should instead be dealt with by community penalties, suggesting that such proposals would appear in the forthcoming sentencing review, and ruled out any increase in the probation budget.¹³¹

The question of short prison sentences was raised again. Short sentences were even less effective for women offenders, Crispin Blunt argued, than they were for men:

Short sentences for men have proved pretty ineffective, and I think that short sentences for women are even more ineffective and deleterious. We support the conclusions of the Corston report, we are conducting an analysis of the effectiveness of different sentences as part of the current sentencing review, we are committed to reducing the number of women in prison, and a network of women-only community provision is being developed to support robust community sentences.

¹²⁸ HC Deb [16 March 2010 cc56-7WS](#)

¹²⁹ Library Standard Note SN/HA/5646 (16 July 2010)

¹³⁰ Jonathan Aitken "The Tories are tiptoeing to a prison revolution" *The Times* 7 December 2010

¹³¹ HC Deb [20 July 2010 c155](#)

Perhaps at this point I should throw a bouquet to my predecessor, the hon. Member for Garston and Halewood (Maria Eagle), in recognition of her work in this regard. We propose to build on it.¹³²

In its initial submission to the Ministry of Justice sentencing review, the Prison Reform Trust described the review as timely and expressed the hope that it might “address, on the one hand, the revolving door of short, largely ineffective, prison sentences and, on the other, the increase in mandatory penalties, and the introduction of indeterminacy and risk-based measures, which has led to gross inflation in sentencing.”¹³³

The Intensive Alternatives to Custody (IAC) pilot programme ran from 2008-09 to 2010-11. IAC orders combined intensive probation supervision with demanding requirements and interventions. An initial evaluation by the Ministry of Justice suggested (with some caveats) that IAC orders could be more cost-effective than short prison sentences:

When IACs are compared against short custodial sentences, given the differential costs between these two disposals, IACs are likely to be more cost effective (in terms of the costs of each sentence and the expected costs of future offending), provided that they do at least as well as short custodial sentences in rehabilitating offenders and provided that offenders given an IAC order are those who would otherwise have got a short-term custodial sentence.¹³⁴

Stakeholders reported various benefits of IAC orders when compared with suspended sentence orders; they offered better opportunities to monitor risk and to deal flexibly with breaches and were more suitable for offenders with a high number of needs.¹³⁵ Sentencers, probation staff and partners considered the IAC order to be a viable alternative to custody, with a positive impact on offenders and the potential to impact on reoffending. Many of the persistent offenders who had received IAC orders said that the order and stability which they offered had enabled them to move away from a criminal lifestyle.¹³⁶ However, it was too soon to say whether the IAC orders had affected reoffending; too few offenders had received the orders for there to be any reliable comparison between reoffending by those receiving IAC orders and similar offenders receiving short custodial sentences,¹³⁷ although the Ministry of Justice later undertook such an evaluation.¹³⁸

The Ministry of Justice intends to build on the experience of IAC when developing a “robust and intensive punitive community disposal, for offenders who deserve a significant level of punishment, but who are better dealt with in the community”.¹³⁹

¹³² HC Deb [20 July 2010 cc163-4](#)

¹³³ Juliet Lyon *Sentencing Review: Initial Comment From The Prison Reform Trust* 30 July 2010

¹³⁴ Sarah Hansbury *Evaluation of the Intensive Alternatives to Custody pilots* Ministry of Justice Research Summary 3/11 July 2011: Key points

¹³⁵ Sarah Hansbury *Evaluation of the Intensive Alternatives to Custody pilots* Ministry of Justice Research Summary 3/11 July 2011: page 3

¹³⁶ Sarah Hansbury *Evaluation of the Intensive Alternatives to Custody pilots* Ministry of Justice Research Summary 3/11 July 2011: page 5

¹³⁷ Sarah Hansbury *Evaluation of the Intensive Alternatives to Custody pilots* Ministry of Justice Research Summary 3/11 July 2011: page 7

¹³⁸ HC Deb [18 June 2012 c672W](#)

¹³⁹ HC Deb [30 April 2012 c1154W](#)

8 Community sentences: a soft option or a ratcheting-up of sentencing?

The arguments about community sentences, though, range more widely than whether they are sufficiently tough or punitive. Further controversy and debate surrounds whether they can replace (or, in recent experience, have replaced) short prison sentences or whether, in practice, they have tended to be used by sentencers in place of other non-custodial options such as fines and so may have contributed to the ratcheting-up of sentencing.

In its 2008 *report on effective sentencing*, the Justice Committee pointed to

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 reoffending and in rehabilitation.¹⁴⁰

The Committee examined the use of community sentences and suspended sentence orders (which had been in force since 1 April 2005). It noted that the number of community sentences imposed by the courts had increased by more than 50% between 1995 and 2005, so that in 2005 they comprised 14% of the 1.5 million sentences handed out. This, though, appeared to be a ratcheting-up of the scale of sentencing (so-called “uptariffing”), as the offenders given such sentences tended to be those who might previously have been fined or discharged, rather than those who would have received a short custodial sentence.¹⁴¹

Research by the Centre for Crime and Justice Studies published in July 2011 questioned whether community sentences could control or reduce prison numbers.¹⁴² The report argued that the availability of community sentences may have contributed to sentencing inflation and cast doubt on the ability of community sentences alone to control the growth of the prison population:

At best community sentences have slowed the growth of short term prison sentences. It seems unlikely that community sentences will, on their own, offer a coherent means of controlling or managing a prison population almost double that of thirty years ago.¹⁴³

In considering why community sentences have not delivered the changes that some had hoped — it spoke of “failure” — the report identified several factors:

In practice community sentence reform has been shown to have serious limitations as a mechanism to reduce the use of custody:

- Sentences introduced as explicit alternatives to custody have failed to act as like-for-like replacements for prison sentences
- Community sentences do not appear to have leveraged a sustained reversal in the numbers sentenced to short-term custody
- Reforms have produced tougher community sentences without the desired reduction in the use of custody and with unintended uptariffing consequences

¹⁴⁰ Justice Committee *Towards effective sentencing* 22 July 2008 HC 184, 2007-08, page 5

¹⁴¹ Justice Committee *Towards effective sentencing* 22 July 2008 HC 184, 2007-08, page 42

¹⁴² Helen Mills *Community sentences: A solution to penal excess?* Centre for Crime and Justice Studies, July 2011

¹⁴³ Centre for Crime and Justice Studies *Community sentences' role in containing prison growth questioned by new report* Press release, 1 August 2011

- Efforts to reform community sentences in this period appear, at best, to have been a mechanism for maintaining the size of the short-term custodial population by putting a hold on possible future growth.

There were, though, grounds for optimism (the report suggested) although it would take more than tweaking community sentences to tackle the huge increase in the use of custody.¹⁴⁴

The initial evaluation of the Intensive Alternatives to Custody (IAC) pilots, on the other hand, suggested (again with some caveats) that there had been comparatively little ratcheting-up in sentencing there:

The evidence currently available suggests up-tariffing by sentencers was relatively low, i.e. the IAC sentences were not inappropriately targeted at offenders who might not have been at risk of receiving a custodial sentence. However, this should be explored fully before we can conclude whether there are cost savings from the use of IAC orders.¹⁴⁵

8.1 Probation supervision: are short-sentence prisoners falling through the net?

Critics of the current sentencing regime sometimes point out that prisoners sentenced to less than 12 months in custody are not normally supervised by the probation service on their release and so lack supervision and support.

In discussing rehabilitation, *Breaking the Cycle* pointed to the evidence that the relationship between probation officer and offender could be a significant one:

Evidence indicates that the relationship between an offender and the person managing them is an important factor in successful rehabilitation. The supervising officer will assess the offender and oversee a plan to make sure they receive the interventions that will have the greatest impact on changing their behaviour and improving public safety. The offender's motivation to change is critical and lapses are quite typical as the offender begins to change their life and starts to desist from offending.¹⁴⁶

There was no proposal to extend the statutory supervision of ex-prisoners to include all those who had served sentences of less than 12 months. *Breaking The Cycle* did, though, contain other proposals that might have some effect on those released from short prison sentences. The consultation paper advocated making more use of integrated offender management, which entails closer cooperation between agencies to tackle troublesome offending, including offending by those not subject to statutory supervision. Integrated offender management could (it suggested) be particularly effective with prolific offenders, citing an example of the successful support and supervision of a prisoner who had received a short sentence:

An adult offender had been responsible for a large amount of crime in a local community. He had been sentenced nearly 60 times for more than 280 offences. The crimes he committed were generally house burglaries and vehicle crime, committed to fund his drug addiction. These caused significant damage to the victims of his crimes and the wider community. He had served around 11 years in custody at various young offender institutions and adult prisons.

¹⁴⁴ Helen Mills *Community sentences: A solution to penal excess?* Centre for Crime and Justice Studies, August 2011: pages 21-3

¹⁴⁵ Sarah Hansbury *Evaluation of the Intensive Alternatives to Custody pilots* Ministry of Justice Research Summary 3/11 July 2011: Key points

¹⁴⁶ Ministry of Justice, *Breaking the cycle: Effective punishment, rehabilitation and sentencing of offenders*, Cm 7972, December 2010: page 24

When he was sentenced to 17 weeks imprisonment for vehicle crime he was brought under the new Integrated Offender Management approach. This meant he was required to confront the damage he had caused to the victims of his latest crime. On release he was subject to close monitoring by police and engaged with drug treatment. He is no longer taking illegal drugs and has started to turn his life around.¹⁴⁷

The payment by results approach might, the paper suggested, be applied to rehabilitation of prisoners serving sentences of less than 12 months.¹⁴⁸

¹⁴⁷ Ministry of Justice, *Breaking the cycle: Effective punishment, rehabilitation and sentencing of offenders*, Cm 7972, December 2010: pages 25-7

¹⁴⁸ Ministry of Justice, *Breaking the cycle: Effective punishment, rehabilitation and sentencing of offenders*, Cm 7972, December 2010: pages 40-2

9 How do prisons tackle offending behaviour?

There have been many initiatives within prisons and young offenders' institutions aimed at (or linked to) reducing reoffending. The question of how effective those initiatives have been — and how well policy aims have translated into practice — lies at the heart of the debate.

In a thematic review in 2001 of resettlement, HM Inspectorates of Prisons and Probation found that (amongst other things) three-quarters of initial sentence plans contained targets to address offending behaviour, risk and other needs but only about a third had done this satisfactorily or well. Trust between prison and probation staff and liaison between staff within the prison and between the prison and home probation service and voluntary organisations were all lacking. The work of probation staff was hampered by prisoners being located far from home. Too many offenders were leaving prison without their offending behaviour having been addressed.¹⁴⁹

In examining the reintegration of ex-prisoners into the community, the inspectorates remarked too that, although work was being done to improve the housing of ex-prisoners, many local authorities were reluctant to accept potentially problematic tenants unless they were assessed as vulnerable. Although prisons provided courses leading to qualifications, few offenders planned to pursue education or training on release. The report concluded:

2.14 Although good examples were found in individual prisons and probation areas of work to address social integration issues, there was a lack of consistency in provision and coordination of effort nationally to harness the potential of prison and probation staff, voluntary and other organisations. It was difficult to assess the impact of initiatives on the resettlement of offenders.

The inspectorates recommended that the Home Office (which at that time was responsible for prisons and criminal justice policy) should produce and implement a resettlement strategy to deliver the National Correctional Policy Framework in both the prison and probation services and that the Prison Service should produce and implement a national What Works resettlement strategy. It offered other recommendations on sentencing, public protection and risk assessment.¹⁵⁰

9.1 Mentoring and intensive support

The BBC News website describes the Heron unit at Feltham young offenders' institution, where young offenders receive intensive support and reoffending rates are far below the Feltham average:

The 30-bed Heron Unit has dealt with 120 young men in its first year. Inmates have to demonstrate a genuine willingness to change their lives. But in return, they get specialist help from extra staff, including "resettlement brokers". These experts work with the offender on the inside - and then maintain that contact after release.

The brokers' job is to ensure that the former offender gets into college and housing or receives whatever other solutions they need to chaotic lives. It's partly mentoring - but a lot of no-nonsense monitoring and pressure to reform.

¹⁴⁹ HM Inspectorates of Prisons and Probation *Through the Prison Gate: A Joint Thematic Review by HM Inspectorates of Prisons and Probation* 2001: pages 17-8

¹⁵⁰ HM Inspectorates of Prisons and Probation *Through the Prison Gate: A Joint Thematic Review by HM Inspectorates of Prisons and Probation* 2001: pages 23-5

Almost eight out of 10 young offenders leaving Feltham go on to reoffend within two years. In its first year, Heron's reoffending rate has been 14%, with a further nine young men removed from the scheme while still inside.¹⁵¹

9.2 Education and training in prison

The importance of education and training for prisoners (many of whom have truanted from or been excluded from school and have poor skills and few qualifications) has long been recognised, but dealing with these problems has not proved easy.

Rule 32 of the [Prison Rules](#) is couched in terms of prisoners being encouraged to take part in education:

(1) Every prisoner able to profit from the education facilities provided at a prison shall be encouraged to do so.¹⁵²

Rule 38 of the [Young Offender Institution Rules](#) makes the equivalent provision for young offenders, including those of compulsory school age:

(1) Provision shall be made at a young offender institution for the education of inmates by means of programmes of class teaching or private study within the normal working week and, so far as practicable, programmes of evening and weekend educational classes or private study. The educational activities shall, so far as practicable, be such as will foster personal responsibility and an inmate's interests and skills and help him to prepare for his return to the community.¹⁵³

Prison Service Order 4205 on education in prisons (issued in 2000 and no longer available on the Ministry of Justice website) states that education in prisons should reduce reoffending by equipping prisoners with skills – including (where needed) basic literacy and numeracy skills – to make them more employable:

1.1 The purpose of education within prison is to address the offending behaviour of inmates, by improving employability and thus reduce the likelihood of re-offending upon release by:

- ensuring that all sentenced prisoners are offered the Basic Skills Agency (BSA) screening test on reception, as part of the induction process. *In addition, those prisoners being held on remand, who are able to participate in education classes, must have been offered the BSA screening test before attending education classes;*
- providing a core curriculum of basic and key skills to ensure that all inmates who have literacy and numeracy skills below level 2 competence are able to achieve nationally accredited qualifications, which will contribute to the Governments National Learning Targets for Education and Training (NTETS);
- establishing a Progress File for every prisoner in full or part-time education which includes an individual action plan and specific targets (the Progress File will replace the National Record of Achievement); and

¹⁵¹ Dominic Casciani “[Analysis: Cutting prison numbers](#)” *BBC News website* 7 December 2010

¹⁵² *The Prison Rules 1999* SI 1999/728 (as amended, consolidated in January 2010), available on the website of the prisoner newspaper *Inside Time*.

¹⁵³ *Young Offenders Institution Rules 2000* SI 2000/3371 (as amended, consolidated in January 2010), available on the website of the prisoner newspaper *Inside Time*.

- maximising the number of inmates who have access to education by ensuring that delivery is predominantly part time and is delivered flexibly to multiple sites.

The Education and Skills Committee reported on prison education in 2005, several years after the then Department for Education and Skills had taken over responsibility for prison education. The Committee asserted the value of prison education as the “right thing to do” and described its relationship to cutting reoffending, but suggested that progress had been slow and strategic direction was lacking:

Despite the creation of the Offender Learning and Skills Unit within the DfES, there is little sense of ownership of prison education, no obvious high profile champion within the DfES, and no drive or energy in moving things forward. The introduction of the National Offender Management Service has added to the confusion over responsibilities. In spite, or because of, all of these players, there is no strategic direction and it is not clear where decisions about policy are made. Prison education must rise up the Government’s agenda. Purpose and commitment must come from Government leadership.¹⁵⁴

The Committee noted the difference in educational attainment between the prison population and general population but argued for a broader-based curriculum going beyond basic skills:

234. A broader curriculum was also seen as essential in terms of delivering the soft skills prisoners will need to gain employment. Anne Owers, Chief Inspector of Prisons said:

‘What we need is to make people employable so that they can hold down employment, and that is about the whole area of self-esteem. It is not about being able to hang on to a job for a day or a week. It is about being able to engage fully and properly in the job market which people have never properly done before.’

(...)

237. An over-emphasis on basic skills driven by Key Performance Targets has narrowed the curriculum too far. Whilst aiming to meet the basic skills needs of prisoners the Government must endeavour to broaden out the prison education curriculum and increase flexibility of provision to meet the much wider range of educational needs that exists within the prison system.¹⁵⁵

The Committee remarked that many prisoners had had bad experiences of education. Prison education was lagging behind the rest of the sector in still relying on “talk and chalk” rather than embedding skills in more applied learning. The Committee argued for a joined-up approach to education, training, and work.¹⁵⁶

The Committee went on to identify those things which stood in the way of effective prison education. These included:

- **Mobility/churn:** As prisoners were moved from prison to prison to cope with overcrowding pressures, assessments of their needs would be disrupted and they might lose their place on or have to abandon any courses.¹⁵⁷

¹⁵⁴ Education and Skills Committee *Prison Education*, 31 March 2005, HC 825 2004-05: page 10

¹⁵⁵ Education and Skills Committee *Prison Education*, 31 March 2005, HC 825 2004-05: pages 61-2

¹⁵⁶ Education and Skills Committee *Prison Education*, 31 March 2005, HC 825 2004-05: pages 63-4

¹⁵⁷ Education and Skills Committee *Prison Education*, 31 March 2005, HC 825 2004-05: page 79

- **Short sentences:** Although a short sentence ought not (the Committee argued) to be a barrier to learning and prisoners ought to be able to complete courses after release, the curriculum did not cater well for those on short sentences.¹⁵⁸
- **Physical space:** Limited classroom and workshop space or lack of space for quiet study could hamper prisoners' learning.¹⁵⁹
- **Conflict with other regime areas:** Education could be hindered by other demands within the prison.¹⁶⁰
- **Prison staff (attitudes, training, high turnover and shortages):** Not all staff were supportive of prisoners' education and some were dismissive. Some of the evidence from the Prison Officers' Association testified (the Committee argued) to how far the Prison Service was from a "learning ethic" amongst prison officers.¹⁶¹ Prison officers were not adequately trained¹⁶² and were working under considerable pressures.¹⁶³ High turnover could lead to staffing shortages and so prisoners might not be unlocked to go to education or training; prisoners would not get to classes if prison officers were not available to escort them there.¹⁶⁴

Not all of these issues, the Committee observed, were within the purview of the DfES.

Things looked no better in 2010, when Ofsted observed that standards of education within prisons and young offender institutions appeared to be slipping:

279. Five out of the 27 prisons and young offender institutions inspected were judged to be inadequate for learning and skills this year compared with two last year. In addition, no prisons have been judged outstanding for the overall effectiveness of their learning and skills, whereas last year saw the first prison achieve this overall judgement. This profile of inspection judgements is a serious concern.¹⁶⁵

The review of offender learning *Making Prisons Work: Skills for Rehabilitation* was published in May 2011.¹⁶⁶ In making a statement to the House of Commons, the minister for further education, skills and lifelong learning, John Hayes, said that the Government would be taking a new approach, both in prisons and for offenders in the community:

Some of the previous reforms to the skills system inside prisons have brought about improvements: certainly, we have increased prisoner participation in learning and skills. However, we are still failing to ensure prisoners continue their progress on release in terms of further learning or employment. To address this, we will place a much greater focus on developing the vocational skills demanded by employers in the areas to which prisoners are to be released, making offender learning an authentic part of the wider skills system. That sharpened focus will also enable us to support the drive towards prisons increasingly becoming places of meaningful work. As responsibility is

¹⁵⁸ Education and Skills Committee *Prison Education*, 31 March 2005, HC 825 2004-05: pages 74-5

¹⁵⁹ Education and Skills Committee *Prison Education*, 31 March 2005, HC 825 2004-05: page 76

¹⁶⁰ Education and Skills Committee *Prison Education*, 31 March 2005, HC 825 2004-05: page 77

¹⁶¹ Education and Skills Committee *Prison Education*, 31 March 2005, HC 825 2004-05: pages 77-8

¹⁶² Education and Skills Committee *Prison Education*, 31 March 2005, HC 825 2004-05: pages 80-2

¹⁶³ Education and Skills Committee *Prison Education*, 31 March 2005, HC 825 2004-05: pages 79-80

¹⁶⁴ Education and Skills Committee *Prison Education*, 31 March 2005, HC 825 2004-05: pages 78-9

¹⁶⁵ Ofsted *The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2009/10*: page 94

¹⁶⁶ Department for Business, Innovation and Skills and Ministry of Justice

devolved to those closest to the effects of their decisions, accountability will be assured through measurement of outcomes.

(...)

For offenders in the community, supervised by the probation service, we will place a new collaborative emphasis on the skills system in helping offenders gain the competences that will help them into work.¹⁶⁷

9.3 Literacy and numeracy

The Prison Reform Trust's [Bromley Briefing for June 2012](#) offered some stark statistics for (amongst other things) the number of prisoners with poor literacy and job skills. It pointed too to some of the deficiencies in prison education noted by Ofsted and others:

- 48% of prisoners are at, or below, the level expected of an 11 year old in reading, 65% in numeracy and 82% in writing. Nearly half those in prison have no qualifications at all.
- Half of all prisoners do not have the skills required by 96% of jobs and only one in five are able to complete a job application form.
- In 2008-09 an average of £1,631 per prisoner per year was spent on education in custody. This is less than half the average cost of secondary school education at £2,590 per student per year, which many prisoners have missed.
- Ofsted's latest annual report on education in England states its serious concern at the worsening performance of learning and skills provision in prisons.
- The National Audit Office has found that only around a fifth of prisoners with serious literacy or numeracy needs enrol on a course that would help them.
- In 2007-08 the Inspectorate found that only half the prisoners in training prisons felt that their education would help them on release, and even fewer (42%) felt that they had gained useful vocational skills.
- Just 36% of people leaving prison go into education, training or employment.¹⁶⁸

The [Shannon Trust](#) promotes the [Toe to Toe Reading Plan](#), in which prisoners who can read teach those who cannot:

The Toe by Toe Reading Plan works because it:

- facilitates one-to-one learning opportunities for prisoners;
- engages the most difficult prisoners to reach;
- costs the establishment very little money and staff time;
- gives prisoners (both mentors and learners) responsibility for their own learning;
- complements other learning opportunities in prisons and secure establishments;
- has a committed team of representatives who are passionate about changing lives for the better;

¹⁶⁷ HC Deb [18 May 2011 cc15-6WS](#)

¹⁶⁸ Page 64

- attracts charitable donors who are extremely supportive of our work.

9.4 Work in prison and on release

The Prison Reform Trust has highlighted the association between ex-prisoners' difficulties with employment and accommodation and subsequent reoffending: prisoners who had problems with both employment and accommodation on release had a reoffending rate of 74% during the year after custody, compared to 43% for those with no problems.¹⁶⁹

The Ministry of Justice website provides information about [working prisons](#). The *Prisoners Information Book* (produced jointly by the Prison Reform Trust and the Ministry of Justice) describes the work that prisoners are likely to be offered:

Work

Work should be one of the main things you do during your day when you are in prison. Work should be a big part of helping you to get skills and qualifications so that you can get a job when you leave prison.

Soon after you get to prison, you will have an assessment to see what type of work will be best for you.

Work in prison is usually through industrial workshops and/or agriculture (farming) and horticultural (gardening) units. You will make goods and run services that are needed in prison and for sale in the community.

Work in these units should give you skills and experience in trades like

- textiles
- engineering
- woodwork
- printing
- data entry
- plastic moulding
- computer aided design
- ground maintenance.

You will be paid for your work in prison. You will also be paid if you are willing to work but there is no work suitable for you in your prison. This pay is usually half of what you get if you are working.

Community work

Working for the local community near the prison is called working out. It is a chance for you to build up your self confidence before you leave prison. It will also help you to understand more about being responsible for your community and the people who live and work with you. Working out will include working

- on environmental projects

¹⁶⁹ Prison Reform Trust *Bromley Briefings Prison Factfile* December 2010: page 5

- with older people
- with people with disabilities
- on sports activities.

Job clubs

Some prisons run their own job clubs to help you to get a job when you leave. Job clubs will help you with things like preparing for interviews and how to search for jobs.

Ask the prison staff if there is a job club in your prison.

Most prisons have staff that are trained to give you advice and support with employment.¹⁷⁰

One example of “real work” for prisoners was the *Barbed* project at Coldingley prison. *Barbed* was a graphic design social enterprise established in 2005 by the Howard League for Penal Reform, as part of its campaign for real work in prisons. Its products included magazines, pamphlets, flyers, promotional material and business cards. All *Barbed* employees were employed on the same contract as other Howard League staff. To simulate payment for utilities, transport, food, rent or mortgage, prisoners contributed 30% of their wages into a separate fund which made charitable contributions. The project ended in 2008, according to the Howard League “because prison ethos and prison rules made securing the profitability of the business ultimately impossible”.¹⁷¹ Further information can be found in [Prison work and social enterprise: the story of Barbed](#) (2008).¹⁷²

The history of employment for prisoners is, though, chequered. A report by the Home Affairs Committee in 2005 concluded that prison industries were “peripheral” to the Prison Service’s rehabilitation strategy:

153. We agree with the Prison Industries Review that it is “indefensible” that the Prison Service cannot find enough work or purposeful activity for prisoners. There continues to be an unacceptable disparity in the provision of work opportunities for prisoners across the prison estate. Whilst a maximum of just over 30% of prisoners may be involved in some form of prison work activity, only a third of those have placed in prison workshops, the type of work activity which most closely reflects “real working life”. This suggests that involving prisoners in work schemes remains a low priority in the Government’s current rehabilitation agenda.¹⁷³

In its response to that report, the previous Government argued that the changes which had fairly recently been made with the passing of the *Criminal Justice Act 2003* and the creation of NOMS would lead to the necessary improvements, although finding employment for prisoners was only one aspect of reducing reoffending:

To put it at its simplest, finding an offender a job and a place to live on release is not likely to prevent reoffending if the offender leaves prison with anger management, literacy, debt, health and drugs problems still unresolved. And the inverse is also true. It is necessary to take a comprehensive approach to the needs of the individual

¹⁷⁰ 2008 edition: page 124

¹⁷¹ Howard League for Penal Reform, *Barbed: What Happened Next?*, 2010

¹⁷² Available by download from the Howard League website.

¹⁷³ Home Affairs Committee, *Rehabilitation of Prisoners*, 7 January 2005, HC 193-I 2004-05: page 53

offender, and to use resources in an efficient and balanced way, to address all matters bearing on reoffending.¹⁷⁴

The Government later published a consultation paper promising to equip offenders with the skills to enable them to become productive members of society:

We want to build a modern correctional system, focused on rehabilitation, working in partnership with employers and those able to provide high-quality training. Key proposals include a stronger focus on jobs, with more relevant skills training, led by employer needs; a new 'employability contract' for offenders, with incentives for participation; and a 'campus' model for learning to ensure continuity of education from prisons into the community.¹⁷⁵

The emerging findings from a one-off data-sharing exercise between the Ministry of Justice, Department of Work and Pensions and HM Revenue and Customs were published in November 2011. Amongst the key findings on prisoners' employment status both before and after prison were:

Employment

- 33 per cent of all offenders sentenced or cautioned in England and Wales in the year ending November 2010 were in P45 employment at some point in the month before sentence.¹⁷⁶
- Two years after being released from prison in 2008, 15 per cent of offenders were in P45 employment. During the two year period overall, 29 per cent of offenders started P45 employment at some point.

Benefits claims

- Two years after being released from prison in 2008, 47 per cent of offenders were on out-of-work benefits. During the two year period overall, 75 per cent of offenders made a new claim to an out-of-work benefit at some point. On average, offenders leaving prison in 2008 spent 48 per cent of the next two years on out-of-work benefits.
- Offenders discharged from custody who claimed JSA [Jobseeker's Allowance] within thirteen weeks of release spent 57 per cent of the next three years on out-of-work benefits, compared with 42 per cent for the average JSA claimant.¹⁷⁷

The Diamond Initiative, operating in Croydon, Hackney, Lambeth, Lewisham, Newham and Southwark, was a scheme in which police officers, probation officers and social workers helped offenders to find jobs and training and to overcome addictions, enabling them to resettle into their communities and start a new life. The scheme worked with anyone sentenced to less than 12 months in prison, sentenced to Community Payback or referred by

¹⁷⁴ [Government Reply to Home Affairs Committee's report on Rehabilitation of Prisoners](#) Cm 6486, March 2005

¹⁷⁵ Home Office, Department for Education and Skills, Department for Work and Pensions [Reducing Reoffending Through Skills and Employment](#), Cm 6702, December 2005: Foreword

¹⁷⁶ P45 employment would normally exclude employment paid at levels below tax thresholds, self-employment or cash-in-hand informal economy work, but was used in the exercise as a proxy for employment.

¹⁷⁷ Ministry of Justice and Department of Work and Pensions [Offending, employment and benefits – emerging findings from the data linkage project](#) 24 November 2011: Executive Summary, pages 3 - 4

an offender case manager. The then Deputy Commissioner of the Metropolitan Police, Tim Godwin, praised the scheme, describing it as an “iron fist in a velvet glove”.¹⁷⁸

An [evaluation of the Diamond Initiative](#) was published in April 2011. It pointed out that deprived urban areas suffered disproportionately high levels of crime and had among their residents a higher than average proportion of registered offenders. The scheme had offered short sentence prisoners help which they would otherwise not have received.¹⁷⁹ Nonetheless, the evidence suggested that the Diamond Initiative had not had the hoped-for impact:

Even though there was a compelling case for a Justice Reinvestment model of offender management in London and many of the ingredients of successful schemes were built into Diamond (e.g. multi-agency working, co-location): the headline finding of the report is that there was no evidence of reduced reoffending. Comparing the Diamond cohort to a statistically matched control group of *similar people in similar areas*, revealed no differences in offending behaviour (basic reoffending, survival, amount or seriousness of offending) in the 12 months subsequent to prison release. As a finding this holds important implications for the Diamond Initiative. It should be stated that these results do not demonstrate that Diamond has failed as an approach, rather that careful consideration as to why the results are not as expected is required.¹⁸⁰

Much of the recent debate around work for prisoners before, during and after their time in prison concerns the role of the private sector in providing training and work opportunities.

A list of companies and others providing training and employment in prisons and in the community was provided in February 2010.¹⁸¹ In his [speech to the Conservative party conference](#) on 5 October 2010, Kenneth Clarke said that prisoners should be expected to work hard, in readiness for life outside prison. Private sector organisations could play a part in this, by running businesses within prisons, and could be paid by results:

So we will make it easier for Prison Governors to bring more private companies into jails to create well-run businesses employing prisoners in 9 to 5 jobs. There are already some excellent examples to build on. Timpsons, who train up prisoners to work in their national network of shops.

The National Grid and Cisco Systems also go into prisons to offer training and the prospect of a job and a life away from crime at the end of the sentence. I hope to see many, many more companies like these stepping in and offering their expertise to organise productive industries in many of our prisons.¹⁸²

[Breaking the Cycle](#) envisaged that prisons would become “places of hard work and industry” through three main changes. The Ministry of Justice proposed to

- ensure that more prisoners are subject to a structured and disciplined environment where they are expected to work a full working week;

¹⁷⁸ Vikram Dodd “[Police chief backs scheme that aids ex-prisoners and cuts reoffending](#)” *Guardian* 12 July 2010. More information about the [Diamond Initiative](#) is available on the London Criminal Justice Board website.

¹⁷⁹ London Criminal Justice Partnership *An evaluation of the Diamond Initiative: year two findings*, April 2011: Foreword

¹⁸⁰ London Criminal Justice Partnership *An evaluation of the Diamond Initiative: year two findings*, April 2011: Page 58

¹⁸¹ HC Deb 1 February 2010 c118W

¹⁸² Conservatives *Speech: Ken Clarke: Making prisoners pay to support victims* 5 October 2010

- use the expertise and innovation of the private, voluntary and community sectors to help develop the working prison; and
- implement the Prisoners' Earnings Act in respect of payments to victims funds, and explore other ways to make deductions from prisoners' wages for uses including reparation to victims and communities.

Prisoners should not, the consultation paper went on, mark time in prison but should have challenging and meaningful work:

52. Some adult prisoners do work. In public sector prisons, for example, 9,000 prisoners are employed in prison workshops, with many more doing essential jobs to help prisons run smoothly. However, we want to see more prisons using the discipline and routine of regular working hours to instil an ethos of hard work into prisoners. Prison should be a place where work itself is central to the regime, where offenders learn vocational skills in environments organised to replicate, as far as practical and appropriate, real working conditions.

53. To achieve this transformation we are developing a new type of prison – the working prison. We anticipate that in a working prison:

- prisoners will work a full working week of up to 40 hours;
- the regime and core day will be focused around enabling work, within the requirements of ensuring a safe, decent and secure regime; and
- education will be geared primarily to providing skills to perform work effectively and as far as possible giving prisoners skills which will increase their ability to get a job on release.

(...)

55. In some cases, the prison might provide the work. In others, the prisons may have contracts with a diverse range of external providers. We want to make it easier for the private, voluntary and community sectors to use their expertise and innovation to develop the working prison. This includes building on the excellent role of companies such as DHL and Cisco in providing work and training in prisons.¹⁸³

Crispin Blunt reiterated in January 2011 that the Government intended to expand the role of the private sector in providing jobs for prisoners.¹⁸⁴

9.5 Drugs and alcohol: breaking the link with reoffending

The website of Drugscope (which describes itself as the UK's leading independent centre of expertise on drugs and the national membership organisation for the drug field) has a [page on drugs in prison](#), with links to NOMS's drugs strategy, the Blakey report on disrupting the supply of illicit drugs in prisons and other research.

The Transform Drugs Policy Foundation also has a [factsheet on prisons](#).

The Policy Exchange report *Coming Clean: Combating drug misuse in prisons* was published in June 2010.¹⁸⁵ The limitations of the Prison Service's approach to substance misuse amongst prisoners were discussed at page 16 onwards. In a [piece on the Guardian website](#),

¹⁸³ Ministry of Justice, Cm 7972, December 2010: pages 14-5

¹⁸⁴ HC Deb [24 January 2011 c46W](#)

¹⁸⁵ Max Chambers *Coming Clean: Combating drug misuse in prisons* Policy Exchange June 2010

the author of the Policy Exchange report argued that use of illegal drugs in prison could be very much higher than official figures (derived from mandatory drug tests) would suggest:

It is common knowledge that [mandatory drug testing] is open to abuse, encourages harder drug use (heroin and cocaine leave your system quicker) and, above all, it has ceased to be any kind of accurate measure. Instead, MDT rates are a key target within the performance management regime. This incentivises prisons to cover up the problem rather than confront it. This is exacerbated by the worrying overuse of methadone and other opiate substitutes, which allows prisoners who are being maintained to use heroin on top, because any positive test is overturned on appeal.

By accident or design, the Prison Service has created a perfect storm, with no idea how much drug use there is and no incentive to stop it. If we're ever going to get a grip on this problem, the Prison Service must stop relying so heavily on MDT because it paints such a positive picture, and instead come clean about the true levels of drug abuse in our prisons.¹⁸⁶

How to end many prisoners' dependency on drugs and alcohol and so address their offending was raised in questions to Jack Straw in March 2010. More effort was, Jack Straw said, being made to address offenders' drug and alcohol problems, with a greater role for voluntary and other non-statutory organisations:

We have increased by 15 times the amount of money spent on drug abuse and better education about drugs in prison, and as the hon. Gentleman might know, we are making much more use of voluntary organisations. Obviously, they have to enter into proper contracts with the state.

One controversial aspect of drug treatment in prison has been the prescription of methadone.¹⁸⁷ The then shadow Lord Chancellor and Secretary of State for Justice, Dominic Grieve, and Jack Straw disagreed over its use:

Mr. Dominic Grieve: (...) Does the Secretary of State accept that maintaining offenders on methadone is a counsel of failure, and will he give courts the power to impose abstinence-based drug rehabilitation orders to help offenders-with short sentences and long-to give up drugs once and for all?

Mr. Straw: (...) The prescription of methadone has to be a medical matter. Simply taking people off any kind of drug on which they are dependent when they are not ready for that will not resolve anything. However, we do have drug abstinence programmes in place.¹⁸⁸

Crispin Blunt returned to the question of maintenance or abstinence in July 2010. Answering a Parliamentary Question about drug treatment in prisons, he said that drug treatment was weighted too heavily towards maintenance and more needed to be done to get drug misusers off drugs for good, including (once again) payment by results:

This Government recognise that drug treatment is essential if we are to tackle the social and health costs caused by drugs. However, more needs to be done to help drug misusers to recover from their addiction and get into steady housing and employment. We believe the balance of treatment currently has tipped too far towards maintaining drug users' addictions.

¹⁸⁶ Max Chambers "The truth about drugs in prisons" *The Guardian: Comment Is Free* 19 March 2011

¹⁸⁷ In his [blog on prisons' drug policy](#), Mark Easton of the BBC examines the arguments surrounding the use of methadone in prisons (*A substitute for prison drugs policy?* 8 December 2009).

¹⁸⁸ HC Deb [23 March 2010 cc112-3](#).

A comprehensive framework of drug treatment is in place in prisons to address the drug needs of all offenders. This comprises clinical services, psychosocial interventions, case management and through care services.¹⁸⁹

In December 2010, Crispin Blunt described the programmes already available to prisoners with alcohol or drug problems, but again said that more needed to be done:

Drug treatment is in place to help prisoners with addiction, comprising clinical services, psychosocial interventions, case management and through care services, Alcohol treatment and rehabilitation services for those with an alcohol dependency are in the main also provided within the wider drug treatment framework. The key interventions available in prison for those dependent on alcohol are clinical detoxification and Alcoholics Anonymous/peer support.

The Government believe more needs to be done to offer offenders the opportunity to get off drugs and alcohol for good and into a position where they can stop offending and make a proper contribution to society. To achieve this we will run pilots to pay contractors by results to rehabilitate offenders with drug problems, launch prison drugs recovery wing pathfinders in a number of prisons. These plans will be outlined in more detail in a Green Paper on the rehabilitation and sentencing of offenders, which will be published shortly.¹⁹⁰

Breaking the Cycle set out (amongst many other things) how the Government intended to help prisoners get off drugs for good:

We must ensure that more drug misusing offenders fully recover from their addiction and that they do not take drugs while they are in prison. To achieve this we are proposing to:

- reduce the availability of illicit drugs in prison and increase the number of drug free environments;
- introduce pilots for drug recovery wings in prisons;
- work with the Department of Health and other government departments to support the design and running of pilots to pay providers by the results they deliver in getting offenders to recover from their drug dependency;
- test options for intensive community based treatment; and
- learning the lessons from the approach to managing women offenders and apply them more broadly.¹⁹¹

Use of new technologies would be one part of that and prisons would work in closer partnership with other agencies:

91. While the proportion of samples testing positive under the prisons random mandatory drug testing programme has declined, nearly one in thirteen drug tests are still positive. Prisons and their law enforcement partners must work together closely to share intelligence and tackle staff corruption. We will investigate new technologies to tackle drugs and mobile phones in prisons. We are committed to creating drug free environments in prison and we will therefore increase the number of drug free wings, where increased security measures prevent access to drugs.

¹⁸⁹ HC Deb 6 July 2010 c176W

¹⁹⁰ HC Deb 6 December 2010 cc122-3W

¹⁹¹ Cm 7972, December 2010: page 27

92. Doing more to tackle the supply of drugs is one half of the equation. The other is to reshape drug treatment in prisons so that there is an increased emphasis on recovery and becoming drug free. This means working in partnership with health services which are now responsible for funding and commissioning drug treatment in prisons. In doing so we will look at the evidence collected by the Prison Drug Treatment Strategy Review Group, chaired by Professor Lord Patel of Bradford, on how to raise the ambition for drug treatment and interventions in prisons.¹⁹²

Within six months, though, it was reported that plans had been modified and the approach based on abstinence had been replaced with one based on recovery:

The plans for "drug-free wings" in prisons have been renamed as "drug-recovery wings", although they would need to be "abstinence-focused". The justice secretary, Kenneth Clarke, underlined that point last week when he told Tory critics demanding a "drug-free" approach in prisons that simply making problem drug users go "cold turkey" was clinically dangerous. Clarke said he didn't oppose the use of methadone as long as the objective was to get the user off drugs completely.

(...)

The [new policy] document marks a step away from the language of "harm reduction" that has dominated the past 10 years, but it stops far short of the abstinence-based policy demanded by some rightwing Tory thinktanks.

(...)

Six pilot schemes will explore how a payments-by-results system could work. The precise benchmark as to what constitutes recovery – either reducing drug use or total abstinence – has yet to be spelled out. Former addicts would also be promoted as "drug recovery champions", to act as mentors to problem drug users.¹⁹³

A paper by RAPt (the Rehabilitation for Addicted Prisoners Trust) in 2011 pointed to the effectiveness of intensive intervention in preventing reoffending by drug-addicted prisoners:

Most prisoners have a substance misuse problem, and most of these prisoners re-offend on release, including those who have received treatment. However, a study shows that less than half of the people who complete the RAPt programme re-offend. The proven extent of the success of the programme which is only available in a small number of prisons and the comparative lack of success of other interventions, suggests that there is significant potential for expansion of intensive abstinence-based treatment programmes in prisons, as part of a recovery-orientated approach, and that this is likely to be the only way that a 'revolution' can be achieved.

(..)

The study found that 73% of the control group, who received only low intensity treatments, reoffended during the period of the study. In contrast, fewer than half (44%) of the sample of drug addicted prisoners who accessed RAPt's 12-Step intensive rehab and were released within the same period re-offended – a 29% reduction in the number of ex-prisoners re-offending.

In addition, those in the control group who re-offended committed twice as many offences on average as those from the RAPt group who re-offended, demonstrating

¹⁹² Cm 7972, December 2010: page 28

¹⁹³ Alan Travis "[Coalition shelves plans for 'abstinence-based' drug strategy](#)" *Guardian* 8 December 2010

even greater impact on offending. The overall reduction in the amount of recorded crime was therefore a staggering 65%.¹⁹⁴

Drug recovery wings in five prisons — Bristol, Brixton, High Down, Holme House and Manchester — were launched in June 2011. According to the Ministry of Justice, these would “place a strong emphasis on connecting offenders with a wide range of community services to help them to live drug-free lives on release - such as finding a home, a job and rebuilding relationships with their families.”¹⁹⁵ More recently, a response to a Parliamentary Question in March 2012 set out the current provision of drug-free wings:

The National Offender Management Service is committed to expand the provision of drug free wings and to assess the potential benefits which may be realised.

There are currently six prisons involved in a pilot study for drug free wings. They are at an early stage in developing the shape of their wings and have yet to decide on their capacity.

There are a number of prisons not in the pilot study that have developed their own framework for drug free wings but information on capacity is not held centrally.

Current programmes and providers of drug rehabilitation in prison were also listed.¹⁹⁶

Substance misuse services in English prisons are being recommissioned, in line with the 2010 Government Drug Strategy and the Patel report.¹⁹⁷

9.6 Diverting mentally ill offenders from the criminal justice system

Another longstanding issue which has received renewed attention following the spending review is that of diverting offenders with mental health problems away from the criminal justice system.

In response to a question from Lord Corbett in November 2010, junior health minister Earl Howe affirmed the Government’s commitment to earlier diversion of offenders with mental health problems.¹⁹⁸ In a Westminster Hall debate in October 2010, Crispin Blunt suggested that liaison between the Ministry of Justice and Department of Health was becoming closer:

I am very pleased to be able to report that the Ministry of Justice is getting great commitment and interest from the Ministers and the senior officials in the Department [of Health]. I am extremely hopeful that we will be able to build significantly on the position that we inherit.¹⁹⁹

In *Breaking the Cycle*, the Ministry of Justice set out its strategy for diverting offenders with mental health needs away from the criminal justice system:

We want to ensure that our valuable resources are targeted on the people who are committed to changing their lives and being rehabilitated. In some cases, the criminal justice system is not the best place for them. This is particularly the case for offenders with mental health problems. We propose to:

¹⁹⁴ RApT Drug and Alcohol Recovery, February 2011

¹⁹⁵ Ministry of Justice *Government launches drug recovery wings to help cut reoffending* 22 June 2011

¹⁹⁶ HC Deb 20 March 2012 c678W

¹⁹⁷ HL Deb 28 May 2012 c127WA. Further information about the recommissioning is in the National Treatment Agency for Substance Misuse’s *Prisons Commissioning Status Summary - April 2012*

¹⁹⁸ HL Deb 4 November 2010 c445WA

¹⁹⁹ HC Deb 21 October 2010 c366WH

- work with the Department of Health and the Home Office to pilot and roll out liaison and diversion services nationally by 2014 for mentally ill offenders; and
- increase the treatment capacity for offenders who present a high risk of harm where this is linked to severe personality disorders.

The consultation paper endorsed Lord Bradley's approach and offered a timetable.²⁰⁰

Lord Bradley's report on improving mental health outcomes for offenders proposed rolling out a national liaison and diversion service by 2014. We believe this is the right approach and is in line with the reforms set out in the Department of Health White Paper *Equity and Excellence*. This includes an aim to improve access to services particularly for those with long term conditions, including mental health problems. The Department of Health, Ministry of Justice and Home Office, working with the National Health Service which has funding and commissioning responsibility, will identify a number of pilot projects that will help shape best practice, quantify the benefits and develop appropriate quality standards. This will include young people. We will aim to complete this work by 2012 and subject to an assessment of the success of the projects, roll out a national implementation programme.²⁰¹

Services for offenders with severe personality disorder would, the consultation paper proposed, be further developed and reshaped:

We estimate that by organising these services differently we would be able to increase treatment capacity by 2014 from 300 places up to 570, mostly in prisons. In addition, we will aim to provide additional psychological support for up to a further 800 places (in prisons and the community) for those making progress, and strengthening oversight for those released from custody. The implementation plan for these changes will be subject to a separate consultation by the Department of Health and the Ministry of Justice.²⁰²

²⁰⁰ Lord Bradley's [review of people with mental health problems or learning disabilities in the criminal justice system](#) was published by the Department of Health in 2009

²⁰¹ Ministry of Justice, Cm 7972, December 2010: page 36

²⁰² Ministry of Justice, Cm 7972, December 2010: page 37

10 What will be the impact of cuts to Ministry of Justice spending?

Many commentators have expressed concern that budgetary pressures and the impact of the cuts announced in the 2010 Spending Review may undermine efforts to reduce reoffending.

An article in the *Independent* in June 2010 examined ways in which government departments, including the Ministry of Justice, might cut their budgets by 25 per cent.²⁰³ In a speech in July 2010 to the Lord Mayor's annual judges' dinner, the Lord Chancellor and Secretary of State for Justice at the time, Kenneth Clarke, argued that cuts to the Prison Service could not be ruled out as they had been for the NHS, but a cut in expenditure did not necessarily mean a reduction in services.²⁰⁴ In his [speech to the Conservative party conference](#) in October 2010, Kenneth Clarke suggested that cutting every area of the budget would be foolish; instead, there should be radical reform and improvement.²⁰⁵

An analysis by BBC News, following the announcement of the outcome of the spending review, set out the reforms that the Ministry of Justice was likely to make as it adapted to the new spending limits:

The [Ministry of Justice] said that "dangerous and serious" offenders would still go to jail - but that a range of new rehabilitation tactics would be introduced to cut the number of other low-level criminals who would need to be behind bars.

These include more sentences in the community and performance-related contracts with private and voluntary bodies charged with rehabilitating criminals. The ministry has also pledged to rethink how prisons deal with drug addicts and the mentally ill. Plans for a privately-run 1,500 place prison have also been shelved. Most of the measures will be subject to changes to be outlined in a Green Paper on rehabilitation and sentencing.

If the ministry succeeds in cutting the numbers in jail by 2015, it would be the first fall in the population for two decades.

PLAN TO CUT PRISON POPULATION

- Halve sentence for those who admit crime at police station
- Pay more foreign national prisoners to leave
- Faster risk assessments to release some indeterminate sentence prisoners
- Stop remanding criminals unlikely to be jailed after trial

Justice Secretary Ken Clarke said: "We need to create a justice system that punishes the guilty, reduces reoffending, protects our liberties, and helps those most in need.

"Over the period of this spending settlement the Ministry of Justice will be transformed into a lean, transparent, and affordable department."²⁰⁶

In May 2011, Crispin Blunt confirmed that public sector prisons would, collectively, be expected to make efficiency savings of 10 per cent:

²⁰³ "How Do You Cut The State by a Quarter?" *Independent* 24 June 2010

²⁰⁴ Ministry of Justice *Criminal justice reform speech* 13 July 2010 (available on the [CrimLinks website](#))

²⁰⁵ *Conservatives Speech: Ken Clarke: Making prisoners pay to support victims* 5 October 2010

²⁰⁶ Dominic Casciani "Spending Review: Cuts 'mean 3,000 fewer inmates'" *BBC News UK* 20 October 2010

As part of the plans to deliver the savings required in the current spending review, public sector prisons will be required to deliver real terms efficiency savings of 10% by 2014-15. The intention is not to realise the 10% savings equally across all of the public sector prisons, but to ensure that local factors are taken into account in efficiency plans.²⁰⁷

There was some argument, too, about whether the Government's wish to reduce the size of the prison population was driven by financial need or by concern about cutting crime and reoffending. Kevin Brennan challenged the Prime Minister, David Cameron, on this issue in June 2010:

Kevin Brennan: Is the reason that the Prime Minister wants to put fewer criminals in jail to do with cutting crime or cutting budgets?

The Prime Minister: What the Government want to do is clear up the complete mess of the criminal justice system left by the Labour party. Each prison place today costs £45,000, yet 40% of prisoners are back in prison within a year, more than half of them are on drugs, and around 10% of them are foreign national prisoners, who should not be here in the first place.²⁰⁸

During an appearance before the House of Commons Public Accounts Committee in January 2012, Sir Suma Chakrabarti (at that time permanent secretary at the Ministry of Justice) was asked about pressures following the spending review. He said that the Ministry could meet the costs of the rising prison population, as they were currently projected:

The prison population, as you have seen, has gone up by 600 in the past two weeks, which is the fastest ever rise - certainly in the four years since I have been there - after the Christmas dip. If that rate of rise continues, we will have to revisit all the figures, but at the moment, based on last October's fieldwork, the line is correct, and we have the funds to meet this. It is well worth hanging on to those, because one of the biggest risks we face is what happens to the prison population.²⁰⁹

The Ministry of Justice announced in July 2012 that Wellingborough prison in Northamptonshire was to close, saving £10 million a year and (with new prisons opening at Oakwood and Thameside) reducing capacity by 588 places. Kenneth Clarke argued that "outdated and expensive" prisons had to close, but there would be enough places for everyone sent to prison:

Closing outdated and expensive prisons is an important step in our strategy to deliver a fit for purpose modern custodial estate that can provide high quality, cost effective and secure regimes that protect the public and reform prisoners. Closing this one prison alone will save millions of pounds for the taxpayer.

(...)

Decisions on the future size of the prison estate will be driven by population demand and prisons will only close when capacity allows. We will always ensure that there are sufficient places for those offenders sentenced to custody by the courts, including a margin to manage fluctuations in the prison population. Decisions to close future capacity will only be taken if they do not put this ability at risk.²¹⁰

²⁰⁷ HC Deb 3 May 2011 c628W

²⁰⁸ HC Deb 30 June 2010 cc852-3

²⁰⁹ Public Accounts Committee *Ministry Of Justice Financial Management* HC 1778 2020-12 20 March 2012: Ev15

²¹⁰ Ministry of Justice *News: Closure of HMP Wellingborough* 17 July 2012

10.1 Efficiency savings in the Prison Service

The pressure to reduce public spending – including that on the criminal justice system – is not, though, new. A programme of efficiency savings has been under way for some time, predating the change in government in May 2010.

In November 2008, Jack Straw identified the cashable savings which the Prison Service had made in the previous five financial years:

HM Prison Service delivered cash savings of £16 million during 2006-07. This was achieved through the merger of administrative functions at a new shared service centre in Newport South Wales, improvement in the level of professional expertise in procurement activities and also consolidating national procurement contracts. Additionally, the Prison Service delivered improvements in energy efficiency and waste management and produced savings from headquarters.

During 2007-08 HM Prison Service delivered cashable efficiencies of £52 million against a target for the year of £50 million. The cashable efficiencies delivered by HM Prison Service each year for the past five financial years are:

	<i>£ million</i>
2007-08	52
2006-07	16
2005-06	30
2004-05	34
2003-04	38

Source: HC Deb [12 November 2008 c1157W](#)

10.2 The effects of the cuts on staff numbers and working conditions

There was widespread media coverage in August 2010 of a leaked letter in which the Ministry of Justice's director of finance had (it seemed) told colleagues that savings on the scale envisaged would require redundancies:

Ms Beasley [the finance director] warned that “efficiencies alone will not be enough . . . Over £4bn of the department's current budget is spent on staff costs and we cannot streamline the organisation to work effectively and efficiently without considering staff numbers.”

Mark Serwotka, the PCS general secretary, said: “This is the first indication of the true scale of the cuts being imposed on departments by this coalition government, and it paints a devastating picture. It is clear that the civil service will simply not be able to cope.”²¹¹

A letter from Michael Spurr, NOMS' chief executive, circulated by the National Association of Probation Officers, indicated that during the “unprecedented times” of the spending review period there would be a 10% reduction in operational costs, with 10,000 fewer staff in prisons and at headquarters.²¹²

In his speech to the Prison Officers' Association conference in May 2010, the national chairman, Colin Moses, argued that budget cuts would make prisons more dangerous:

²¹¹ James Boxell “Justice ministry staff warned of £2bn cut” *FT.com* 10 August 2010

²¹² Michael Spurr *Spending Review 2010*, 20 October 2010

The budget cuts proposed in England and Wales by NOMS are severe and are having a major impact on our lives. [...] The mantra that we must run prisons cheaper is a coded language that we must run our prisons in a more perilous, dangerous fashion.²¹³

In May 2011, shadow Lord Chancellor and Secretary of State for Justice, Sadiq Khan, argued that the 20 per cent reduction in the justice budget would mean resources and skills being lost just when they were most required:

The hon. Gentleman is right to talk about the importance of dealing with some of the real problems of those who commit offences and are found guilty, and I am all in favour of aggressive intervention within prison—and outside it for non-violent offenders. The problem is that the Justice Secretary, by accepting the 20% cut to his budget, is taking away some of the resources and skills that are required, especially with possibly 14,000 probation and prison staff losing their jobs. That expertise, skill and experience is being lost, arguably, when it is most required.²¹⁴

[EDM 985 of 2010-12 on violence on the prison estate](#) — tabled by Elfyn Llwyd on 10 November 2010 and attracting 36 signatures — expressed concern that

the cuts to the Criminal Justice System announced in the Comprehensive Spending Review are unsustainable as they will undoubtedly affect the levels of frontline prison officers, making the public sector prison service unsafe and dangerous for prison officers and those in their care.

10.3 Overcrowding

Many of the concerns expressed about the rise in the prison population and the impact of spending cuts are to do with prison overcrowding: with more prisoners and less money, will prisons be able to continue to provide programmes and activities aimed at reducing reoffending? Or will rehabilitative work be squeezed out as prisons struggle simply to contain the prison population? Again, these concerns are not new.

In 2004, the House of Commons Home Affairs Committee inquired into the rehabilitation of offenders as law-abiding and useful members of society, focussing on getting ex-prisoners into work and ensuring they had a home. The Committee pointed to the damaging effects of overcrowding and lack of work or other purposeful activity for prisoners:

Overcrowding is having a hugely damaging impact on the delivery of rehabilitative regimes across the prison estate, both in terms of quality and quantity of appropriate interventions.²¹⁵

The Committee observed that the Government had in place a “reasonably coherent and sensible framework for sentencing, prison regimes and resettlement” but implementation and achievement had been patchy. What was needed was a rehabilitative strategy to reintegrate offenders into society by giving them the opportunity and assistance they needed to reform. Overcrowding was not an excuse for poor management.²¹⁶

In February 2010, the outgoing HM Chief Inspector of Prisons, Dame Anne Owers, argued in her final annual report that prison regimes were becoming impoverished as resources dwindled. Prisons were therefore, she suggested, aiming lower:

²¹³ POA 71st Annual Conference 11 – 14 May 2010 Verbatim Report: page 11

²¹⁴ HC Deb [23 May 2011 c665](#)

²¹⁵ Home Affairs Committee [Rehabilitation of Prisoners](#) 7 January 2005 HC193 2004-05: Summary

²¹⁶ Home Affairs Committee [Rehabilitation of Prisoners](#) 7 January 2005 HC193 2004-05: Pages 108-10

Population pressure affects the whole system – stretching resources and managerial energy, keeping in use buildings that ought to be condemned, doubling up prisoners in cramped cells, and leading to unnecessary and destabilising prisoner moves. All of this compromises successful rehabilitation. [...] As the population expands, resources are under increased threat. The cuts already announced for next year come on top of already sliced budgets, with the possibility of even more cuts later. The hidden and incremental pressures this produces should not be underestimated, even though they are at present being contained. As I said last year, there are two risks: of increased instability in inherently fragile environments, and of reducing prisons' capacity to rehabilitate those they hold.

(...)

The new benchmarking process for key regime activities is at least honest – clarifying what can actually be delivered within limited resources. But it is also an exercise in regression to the mean. Prisons doing excellent work are being told to aim for the bronze standard; prisons with full employment are told that this will not be affordable; innovative work, outside formal and mandated interventions, is under threat.²¹⁷

She went on to comment on how prisons had measured up against the four healthy prison tests – safety, respect, purposeful activity and resettlement. On activity and resettlement, she observed:

Overall, 71% of prisons were assessed positively on activity, but this concealed huge variations. All women's prisons, all open, resettlement and dispersal prisons and all but one of the juvenile establishments were performing well or reasonably well. Fewer than two-thirds of training prisons had positive assessments, in spite of their role, though this was an improvement on last year. Four were performing well, and two poorly. Local prisons performed worse than those inspected last year, with only a third (three prisons out of nine) having a positive assessment. Young adult establishments also did worse than those inspected last year, with only two of the six closed prisons inspected performing well or sufficiently well – even though this is a population much in need of activity and training.

Resettlement assessments remained predominantly positive, at 75% and, as last year, the proportion was even higher in local prisons. The performance of training prisons was by some distance the weakest of any prison type, with just over a half doing well or reasonably well against this key indicator. Given the number of prisoners released every year from these prisons, this is of some concern. By contrast, all but one of the nine local prisons inspected had a positive assessment in this area. Women's prisons did much better than those inspected last year, with all but one performing positively on resettlement. It was disappointing that one open prison, Ford, was not performing sufficiently well in this, its core area of work.²¹⁸

In May 2012, giving evidence to the Justice Committee's inquiry into the work of the Ministry of Justice, Kenneth Clarke agreed with Jeremy Corbyn that overcrowding was unfortunate and could contribute to reoffending

Q476 Jeremy Corbyn: (...) The reason I raise that [question about overcrowding and impoverished prison regimes] is that when we had this delegation to Denmark and Norway ... it was extremely interesting. We asked a question of one of the Norwegian prison governors. We said, "What do you do about prison overcrowding?" ... He said that they do not have prison overcrowding. They do not put more than one prisoner to

²¹⁷ [HM Chief Inspector of Prisons for England and Wales Annual Report 2008–09](#) 23 February 2010: pages 7- 8

²¹⁸ [HM Chief Inspector of Prisons for England and Wales Annual Report 2008–09](#) 23 February 2010: page 14

a cell ever and they have a much lower rate of reoffending. There are lots of reasons for reoffending, but we have this very unfortunate situation with grossly overcrowded Victorian prisons. Is it surprising that people reoffend?

Mr Clarke: Personally, I agree with most of the things you have said. ... It is just that we have to get from where we are to where we need to be. The prison population is much higher now, which does have this effect - as you say, must have - that more people have experience of prison than used to. There are not enough of them yet to bend public opinion significantly, but most Members of Parliament who go to prison seem to come out as very committed prison reformers.²¹⁹

²¹⁹ Justice Committee *The budget and structure of the Ministry of Justice* HC 97 – ii, 18 August 2012, 2012-13: Ev 97

11 Will a reduction in spending mean an increase in reoffending?

There has long been speculation that reoffending rates will rise as budgetary pressures increase within prisons and the regimes there deteriorate, because of growing prisoner numbers and lack of resources.

In February 2007, the *Times* described the “incredulity” of prison governors at the prospect of a £80m (or 4%) reduction in spending:

Charles Bushell, the general secretary of the Prison Governors' Association, said: “(...) Any fat has gone, some of the meat has gone and we are now little more than skin and bones.”²²⁰

Similarly, at around the time that the previous Government dropped its plans for Titan prisons — discussed in the Library standard note [Prison building: after Titan prisons, what next?](#)²²¹ — it was suggested that the plans were being abandoned because the Ministry of Justice needed to find substantial cash savings:

Ministers denied claims that the £1.2bn flagship policy was being cut because of a squeeze on spending announced in Wednesday's Budget. They said the retreat followed opposition in areas where the prisons were planned, and fears raised by reform groups about the effectiveness of warehouse-sized jails.

(...)

Dominic Grieve, the shadow Justice Secretary and MP for Beaconsfield, said the prison service faced a financial “black hole”, adding: “It is hard to take seriously ministers' claims that this decision is nothing to do with the fact that another Labour government has simply run out of money.”

In the same article, the Ministry of Justice was quoted as saying that savings could be made without cuts to front line services, while NACRO, the Prison Reform Trust and the Criminal Justice Alliance argued that plans for expanding the prison estate should be shelved.²²²

The NOMS Annual Report for 2008-09 noted in its summary that, in its first year as an executive agency of the Ministry of Justice, NOMS had had to work on a reduced budget as it contributed to the Government-wide drive to “save money and work smarter”. In January 2009, it had announced that it had met an efficiency savings target of £81 million and in 2009–10 would contribute £171 million in savings towards the £1 billion Performance and Efficiency Programme savings being made across the Ministry of Justice.²²³ The full report described at more length how the savings had been achieved and went on to suggest that improving efficiency and effectiveness would remain a “challenge”, necessitating “significant” change, although the precise nature of those changes was not spelt out.²²⁴

In March 2010, the Ministry of Justice set out how, as part of the measures to reduce the deficit, it would make savings — this time of £343 million — although in that statement no specific mention was made of cuts to the prison budget.²²⁵

²²⁰ Richard Ford “Prison Service told to make £240m cuts” *Times* 9 February 2007 (behind paywall)

²²¹ Library Standard Note SN/HA/5646 (16 July 2010)

²²² Nigel Morris “[Straw denies £300m hole in prisons budget](#)” *Independent* 25 April 2009

²²³ NOMS annual report and accounts: summary 08-09: Timeline (page 4) and page 3

²²⁴ Ministry of Justice NOMS Annual Report and Accounts 08-09: pages 14 and 28

²²⁵ [Budget 2010: Ministry of Justice](#)

In the House of Lords in October 2010, Opposition spokesman for Justice, Lord Bach, questioned how reoffending could be reduced while jobs were being lost from the prison and probation services. Replying, Lord McNally (Minister of State at the Ministry of Justice) said that the Government would examine alternatives to prison:

My Lords, first, the job figures cover a five-year period, and in some cases the reductions will be absorbed by natural wastage. Some of the excessive language that has just been used ignores the fact that the Administration will genuinely look at alternatives to prison. (...) I believe that there are alternatives and I hope that the Green Paper will give scope for an intelligent and non-hysterical debate about these factors.²²⁶

Since then, ministers have again questioned the assertion that a reduction in funding necessarily means a reduction in programmes and activities for prisoners. In reply to a question from Jenny Chapman in February 2011, the then minister for policing and criminal justice, Nick Herbert, argued that the relationship between funding and activities like time out of cell was not a simple one:

I am afraid that prisoners were also spending too much time in their cells and not pursuing purposeful activity under the previous Government, when there were increases in spending, year on year. So this problem is not simply linked to spending. We are determined that prisons should be places of work and purposeful activity, so that we can focus on reducing reoffending.²²⁷

Similarly, Crispin Blunt argued that the previous Government had wasted money:

The budget [for offender learning] will remain very much the same as that which we inherited, because we realise that that strategy is a priority. Unfortunately, a significant amount of the money spent under the previous Administration went to waste. If the hon. Lady reads the reports from independent monitoring boards, she will see repeated complaints about the quality of offender learning in prisons under the previous Administration. We will put that right.²²⁸

Harry Fletcher of the National Association of Probation Officers, amongst others, has argued that the cuts will put public safety at risk and lead to more reoffending.²²⁹ The Justice Committee drew attention to some of these pressures in its report on justice reinvestment:

THE CAPACITY OF PRISONS

72. Several witnesses, including Napo and Sarah Pearce, a Durham magistrate, commented on the detrimental effects that prison over-crowding and reduced resources can have on the effectiveness of prison, in terms of rehabilitation and the prevention of reoffending. The impact that efficiency savings are having on a prison system which is becoming increasingly overcrowded is most strikingly apparent in the loss of half a day in prison regimes.²³⁰ Paul Tidball, chair of the Prison Governors' Association, warned that the commitment to expand the capacity of the prison estate, whilst spending less on existing prisons, risks undermining the effectiveness of the latter. He has since raised concerns that efficiency savings impact on public sector prisons only as a result of the Government's contractual obligations to private prisons.

²²⁶ HL Deb [27 October 2010 c1197](#)

²²⁷ HC Deb [15 February 2011 c802](#)

²²⁸ HC Deb [15 February 2011 c798](#)

²²⁹ Rosa Prince "Ministry of Justice job cuts put the public at risk, union warns" *The Telegraph* 10 August 2010

²³⁰ All Friday afternoon activities in public sector prisons (including education, offending behaviour programmes and work) were cancelled from April 2008.

73. Ellie Roy, the former chief executive of the Youth Justice Board, explained to us that, as a result of inflation and the rising costs of utilities and food, the costs of custody will keep rising even if the numbers stay the same.

(...)

74. For this reason Paul Tidball argued that, in order to maintain existing levels of effectiveness, the number of prison places would have to be reduced. The Local Government Association and Clinks, which supports voluntary organisations that work with offenders and their families, argued that the prison population must be reduced to enable constructive prison regimes to be run effectively. We discuss the running costs of new prison capacity later in this chapter.²³¹

In similar vein, Cynthia McDougall (Co-Director of the Centre for Criminal Justice, Economics and Psychology at the University of York) had described to the Committee how the combination of rising prisoner numbers and budget pressures might affect prison regimes:

We have a finite amount of money for prisons and a finite amount of money for probation, and although sentences are not restricted by how much money there is, nevertheless, if there are too many prisoners for the spaces in prison, the prison has to cope, and it does cope, but it copes by being overcrowded, by having people sharing cells who should not be sharing cells, it has situations where it cannot run programmes in the same way as they did, perhaps because of the overcrowding you have disturbances in the prison, you have not got quite the level of decency that you would want, and you might also have suicides because of that [...] In probation you have got a similar situation.²³²

²³¹ Justice Committee *Cutting Crime: The Case for Justice Reinvestment* 1 December 2009, HC 94, 2009-10: pages 48-9

²³² Justice Committee *Cutting Crime: The Case for Justice Reinvestment* 1 December 2009, HC 94, 2009-10: page 47

12 Justice reinvestment

The justice reinvestment approach has received increasing attention over the last decade or so. Broadly speaking, the goal of justice reinvestment is to make better use of the money spent on criminal justice, to cut crime and regenerate those communities most affected by it. Reducing the prison population is not, therefore, an end in itself, but might be a by-product of justice reinvestment, where other means of tackling crime and its causes are demonstrated to be more effective than imprisonment.

These arguments were first articulated in a paper for the Open Society Institute (founded by George Soros), in which Susan Tucker and Eric Cadora argued that high rates of incarceration could actually be detrimental to public safety:

There is no logic to spending a million dollars a year to incarcerate people from one block in Brooklyn — over half for non-violent drug offenses — and return them, on average, in less than three years stigmatized, unskilled, and untrained to the same unchanged block. This unquestioned national dependence on mass incarceration reflects a fundamentalist approach to imprisonment that actually sacrifices public safety.

Justice reinvestment was not only about rethinking and redirecting public funds (they went on); there had to be devolved accountability and responsibility too. Prison fundamentalism in the USA had, they argued, failed; both the prison and parole/probation systems were failed investments and the effects of cyclical imprisonment of repeat offenders and parole violators were destabilising both for the offenders and for communities. The difficult financial climate was forcing state officials to search for better options, replacing unproductive spending with long term investment.²³³

Writing in 2011, Shadd Maruna observed that the idea of justice reinvestment was a thing of beauty — perhaps because symmetry and balance are inherently appealing — and had spread rapidly, even though it was still in its infancy. Think tanks and foundations had promulgated the idea and it had caught on as rapidly as community policing, broken windows theory, “what works” and other “super-trends” had done in their day. Unusual Left-Right political coalitions, media coverage and popular support had all played a part.

Maruna also pointed to two lessons from past experience that might be applied to the justice reinvestment approach. Firstly, the need to accentuate the positive: advocates of justice reinvestment had highlighted the waste of mass incarceration, but the question of how to replace that with positive development in the community needed to be addressed. Secondly: the risk of being co-opted by powerful interest groups. Justice reinvestment was likely to appeal to fiscal conservatives who sought to cut state jobs and challenge unions and the central role given to private sector companies might feed penal expansion. Like restorative justice, justice reinvestment should, Maruna went on, be seen as “a different way of ‘doing justice’” (even though it lacked any real theory of justice) and should beware of promising more than it could deliver.²³⁴

In its [report on justice reinvestment](#) in 2010, the Justice Committee offered a description of the justice reinvestment approach:

10. At its simplest ‘justice reinvestment’ refers to the persuasive proposition that it is far better — and probably much cheaper — to focus resources on preventing criminality

²³³ Susan B Tucker and Eric Cadora “[Justice Reinvestment](#)”, Open Society Institute: Occasional Papers, November 2003, Vol 3 No3: pages 2-3

²³⁴ Shadd Maruna “Lessons for justice reinvestment from restorative justice and the justice model experience: Some tips for an 8 year-old prodigy” *Criminology and Public Policy* 2011, Vol 10, Issue 3

than solely on catching, convicting and incarcerating criminals. The approach, in effect, looks to implement effectively the ‘getting tough on the causes of crime’ half of the Labour Party’s original statement of purpose on criminal justice before the 1997 election. Justice reinvestment seeks to reverse what many have argued to be a grave and expensive failure of social policy which leads to prison becoming a stand-in health and welfare system for people with problems — often bundles of problems related to legacies of low literacy, unmet mental health needs and/or drug and alcohol dependencies — that society in general, and their local services in particular, have failed to deal with. It also challenges policymakers to think carefully about the consequences of some criminal justice measures that are considered to be ‘tough on crime’, for example, by encouraging criminal justice agencies to seek to enhance offenders’ compliance with community orders rather than to focus on the enforcement of breaches.²³⁵

The Committee argued the need to strike a balance between punishment and reform. There was an assumption, the Committee suggested, that the paramount purpose of sentencing was punishment, yet if more priority were given to reform, rehabilitation and reparation to victims, sentencing could do much more to reduce reoffending:

19. The starting point — not just for sentencing, but for the work of the police, prison, probation service and the contribution of third sector organisations — must be to analyse how and why criminal activity takes place, the factors that influence the seriousness of offending and “what works” in reducing both the frequency and the seriousness of offending.

The Committee argued too for greater emphasis on the role of the criminal justice system in reducing reoffending:

Resources must be shifted into targeting the reduction of reoffending on a much broader scale, taking a whole systems approach, which applies the best available research evidence to determine the most appropriate allocation of resources both between prisons and probation and outwith the criminal justice system.²³⁶

Sentencers (the Committee continued) needed to understand what works, and what is cost-effective, in reducing reoffending; the Government and the Sentencing Council had a role to play here.²³⁷ The prison population could safely be capped at its current level and then in time reduced by about a third. As things stood, the balance of expenditure was very much weighted towards prisons, which received more than three quarters of the NOMS budget.²³⁸

In announcing the Government’s response to the report, the then justice minister, Maria Eagle, confirmed that the Government was committed to investing in what works to reduce reoffending. She drew attention to the increasing use of community sentences. Prison should, she said, be used in a measured and responsible way on behalf of the wider community:

Nevertheless, we recognise that for a significant number of offenders community sentences can be more effective: in 2008, the number of people sentenced to community sentences was 190,171 compared to 99,525 for immediate custody. More can be done as part of a wider approach that includes tough community sentences for

²³⁵ Justice Committee *Cutting crime: the case for justice reinvestment* 14 January 2010 HC 94, 2009-10: p 26

²³⁶ Justice Committee *Cutting crime: the case for justice reinvestment* 14 January 2010 HC 94, 2009-10: pp 11-2

²³⁷ Justice Committee *Cutting crime: the case for justice reinvestment* 14 January 2010 HC 94, 2009-10: p 22

²³⁸ Justice Committee *Cutting Crime: the case for justice reinvestment* 14 January 2010 HC 94, 2009-10: p 45

lower-risk offenders and diversion away from the criminal justice system where other alternatives would be more effective, in particular access to mental health services.

Innovations such as intensive alternatives to custody, integrated offender management, and the prolific and other priority offenders programme, are clear examples of how partners can work together to focus resources where they can make the greatest impact.²³⁹

The Justice Committee's report was mentioned in the House of Lords in February 2010, during a debate on the Howard League for Penal Reform's report of its [Commission on English Prisons Today](#).²⁴⁰ The Commission had also argued for justice reinvestment. The main planks of its proposals were:

- A significant reduction in the prison population, with the closure of prisons
- The replacement of short prison sentences with community-based options
- The dismantling of the National Offender Management Service (NOMS), including the break-up of the centrally-managed prison service
- Local strategic partnerships should be formed, led by local authorities and bringing together representatives from the criminal justice, health and education sectors. Local prison and probation budgets should be fully devolved for justice reinvestment initiatives.²⁴¹

In responding to the debate, the then minister, Lord Bach, gave a (perhaps cautious) welcome to the commission's proposals, but reiterated that there would always be a need for prison for the most serious offenders. He referred to the expansion of the prison estate, the withdrawal of the End of Custody Licence scheme and to treatment programmes within prisons and in the community:

Within this broader approach to the promotion of community sentences, we are doing some important focused work on seven intensive alternatives to custody pilot projects currently under way around the country. They are targeted at offenders who would otherwise receive short custodial sentences. Nearly 1,000 offenders have started intensive orders in the pilot areas. The projects have developed innovative partnerships with the police and the third and private sectors to give offenders opportunities to turn their lives around or face swift and tough sanctions. The projects, which are being evaluated, have engaged with the courts to build sentencer confidence in intensive community orders as a robust, demanding and effective alternative to short-term custody.²⁴²

The Justice Committee's report was then debated in Westminster Hall in October 2010, on the day of the announcement of the outcome of the spending review. In replying to the debate, Crispin Blunt elaborated on the Government's plans for prison places and recent trends in the number of offenders being sent to prison. He also remarked that the growth in the prison population appeared to be slowing down, perhaps because the "political arms race" had ended:

²³⁹ HC Deb [16 March 2010 cc56-7WS](#)

²⁴⁰ HL Deb [22 February 2010 c GC203ff](#)

²⁴¹ *Do Better, Do Less: The Report Of The Commission On English Prisons Today 2009*: Executive summary, page 6 and pages 49 - 51

²⁴² HL Deb [22 February 2010 ccGC214-6](#)

However, given the other changes that we shall now have to examine in prison capacity, we are looking at closures of other prisons to arrive at a position whereby we can accommodate, in our estimate, about 82,000 prisoners at the end of this Parliament.

We need to remember that we inherited in May a position in which it was anticipated that there would be 96,000 prisoners by the end of the Parliament. There have been some changes to the number of people now being sent to prison. We are trying to identify why the trend has not been rising as steeply as one would have expected through the summer and autumn months. That may have something to do with the change of climate that has come with the end of the political arms race on this issue.²⁴³

Crispin Blunt confirmed the Government's commitment to rehabilitation:

Most important, we know that we need to place successful rehabilitation at the heart of the criminal justice system, so that we can prevent people becoming the victims of tomorrow.²⁴⁴

²⁴³ [HC Deb 21 October 2010 c362WH](#)

²⁴⁴ [HC Deb 21 October 2010: c366WH](#)

13 Can a rehabilitation revolution break the cycle of reoffending?

[Breaking the Cycle](#) presented more statistics for reoffending rates and the cost of offending by those released from short prison sentences. It pointed too to the particular problems of a hard core of prolific offenders who had served many short prison sentences:

10. A relatively small number of highly prolific offenders are responsible for a disproportionate amount of crime. Recent evidence suggests there is a group of around 16,000 active offenders at any one time, who each have over 75 previous convictions. On average they have been to prison 14 times, usually for less than 12 months, with nine community sentences and 10 fines. These criminals cause immense damage to the lives of law-abiding citizens who live near them. We will not let this continue.

The paper quoted evidence that reoffending in 2007 by offenders starting community orders was 7% lower than for similar offenders serving short prison sentences, but (it argued) community sentences would not inspire public confidence if they were not properly enforced.²⁴⁵

A contrasting view came from a comment piece in the *Daily Telegraph*, arguing that the Ministry of Justice's approach was a gamble:

Would it be better if fewer people were in jail? The answer must be yes – but only if there were fewer criminals who warranted it. Are there people in jail who should not be there? The answer, again, is yes. The mentally ill should be in secure institutions, which no longer exist, or should be looked after in the community, which too often does not want to know. There are women in jail who are unlikely to pose a risk to the public if placed on community sentences. More than one in 10 inmates is a foreign national who should be sent home. Indefinite sentences have had unintended consequences and should be reformed. But as Mr Clarke acknowledged in his statement to MPs, the Government's first priority is public safety. Much of what he says about the importance of rehabilitation is well-meant and sensible. But in the end, prison works precisely because offenders are not committing crimes while they are inside.²⁴⁶

Kenneth Clarke returned to this theme during the second reading debate on the *Legal Aid, Sentencing and Punishment of Offenders Bill*, when he argued that rehabilitation should be at the core of the Government's reforms:

After punishment and reparation comes rehabilitation to reduce reoffending, which is at the core of our process of reform. Sentences must be punitive and reformatory. The Bill will help to ensure that more offenders with drugs, alcohol or mental health problems are addressed and receive treatment at the earliest opportunity.²⁴⁷

The *Legal Aid, Sentencing and Punishment of Offenders Bill* had its first reading in the House of Commons on 21 June 2011, as Bill 205 of 2010-12, and had its second reading on 29 June 2011. The Government also published [Explanatory Notes](#).

[Library Research Paper 11/53](#), prepared for second reading of the Bill, discusses the background to the Bill and some of the controversy it provoked.²⁴⁸ [Library Research Paper](#)

²⁴⁵ Ministry of Justice, *Breaking the cycle: Effective punishment, rehabilitation and sentencing of offenders*, Cm 7972, December 2010: page 6

²⁴⁶ Telegraph View "We must remember the purpose of prison" *The Telegraph* 7 December 2010

²⁴⁷ HC Deb 29 June 2011 c990

²⁴⁸ *Legal Aid, Sentencing and Punishment of Offenders Bill*, House of Commons Library research paper 11/53, 4 July 2011

11/70 (the Committee Stage Report) complements that paper.²⁴⁹ [House of Lords Library Note LLN 2011/035](#), prepared for the Bill's second reading in the Lords on 21 November 2011, summarises the report stage and third reading debate in the House of Commons²⁵⁰ and [Library standard note SN/HA/6293](#) discusses the Lords amendments.²⁵¹ The Bill received Royal Assent on 1 May 2012 and is now the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*.

More recently, the incoming Justice Secretary, Chris Grayling, has said that he supports the "rehabilitation revolution":

He said it was a "great failing" that so many prisoners - particularly first-time offenders - went on to reoffend after release.

"We haven't done a good job in turning their lives around and lo and behold they reoffend again."

He talked of "the imperative of rehabilitation... that's what I intend to really focus on delivering".²⁵²

He has also stated his commitment to "evidence-informed commissioning" of rehabilitation work for offenders in the community.²⁵³

13.1 Government plans to reform community sentences and the probation service

The Ministry of Justice launched a [consultation on effective probation services](#) in March 2012.²⁵⁴ Responding to a question in May 2012, Crispin Blunt said that improving offender management lay at the heart of the review:

With the proposed reorganisation of probation we will be getting much greater offender management, with a focus by the probation service on reducing reoffending among those receiving community sentences. The outcome of our proposals will therefore be a very much improved offender management picture right across the country.²⁵⁵

The ministerial foreword to the consultation paper pointed to the "grave weaknesses" in the criminal justice system:

Almost half of all adult offenders reoffend within a year of leaving custody. That figure rises to three quarters for those sentenced to youth custody. Reoffending by offenders sentenced to less than 12 months in prison is estimated to cost the economy up to £10 billion annually. Most seriously of all, left unchecked, these rates of repeat crime mean thousands of people are unnecessarily becoming victims.

The Government was already working (Kenneth Clarke said) to reform prison, to make it a place of meaningful work and training, and to tackle addiction and mental ill-health, but sentences in the community and their supervision by the probation service also needed to be reformed, to become more credible. The Ministry of Justice's plans (he went on) would

²⁴⁹ *Legal Aid, Sentencing and Punishment of Offenders Bill*, House of Commons Library research paper 11/70, 20 October 2011

²⁵⁰ *Legal Aid, Sentencing and Punishment of Offenders Bill (HL Bill 109 of 2010–12) - Lords Library Note LLN 2011/035*, 15 November 2011

²⁵¹ The Legal Aid, Sentencing and Punishment of Offenders Bill: Lords amendments, 11 April 2012

²⁵² Brian Wheeler *Tory conference: Chris Grayling hails 'old lags' scheme* BBC News 8 October 2012

²⁵³ HC Deb [13 November 2012 c159](#)

²⁵⁴ Ministry of Justice *Punishment and reform: Effective probation services* Consultation paper CP7/2012, CM 8333, March 2012

²⁵⁵ HC Deb [15 May 2012 cc 399-400](#)

create a modern and innovative probation service, but community sentences would not be an alternative to short prison sentences:

The Government's goal is to reform sentences in the community and probation services so that they are able to both punish and reform offenders much more effectively. Community sentences are not an alternative to short prison sentences. They must be made more effective punishments in their own right, if they are to enjoy greater public confidence and reduce the chances of an offender committing new crimes against new victims. A modernised probation service, freed to focus relentlessly on the goal of reduced reoffending, will be able to unlock better ways of delivering those sentences.²⁵⁶

The punitive element of community sentences was, Kenneth Clarke argued, the corollary of prison's reformatory agenda and was intended to help offenders "go straight". The Probation Service itself would be reformed:

Whilst there has undoubtedly been a real shift in emphasis from centralised to localised delivery of services and there are many examples of innovation across probation, we want to see a step change which draws fully on the innovation, expertise and local knowledge of all sectors - public, voluntary and private - in a way which embraces competition and is genuinely open to new ways of doing things better.

Under my plans, we have already begun encouraging better use of front-line professional skills and judgement with the introduction of less prescriptive National Standards for probation staff and light touch performance management. Now I propose to look again at the structure and organisation of the service, keeping the safety of the public uppermost in mind.

The main planks of the Ministry of Justice's proposals are that:

- every community order handed down by the courts should include a "clear punitive element"
- there should be a robust and intensive punitive community disposal, for courts to use for offenders who merit a significant level of punishment, and
- financial penalties should be used "more creatively" alongside community orders, set at the right level and effectively enforced.²⁵⁷

The Ministry of Justice's plans would:

- further extend the principles of competition to more of community-based offender management, speeding up the implementation of the *Offender Management Act 2007*
- look for ways of bringing in the expertise of the voluntary and private sectors, building on existing policies to pay community sentence providers by results and
- give Probation Trusts a stronger role as commissioners of competed probation services, with a purchaser-provider split.²⁵⁸

²⁵⁶ Ministry of Justice *Punishment and reform: Effective probation services* Consultation paper CP7/2012, CM 8333, March 2012: Ministerial foreword

²⁵⁷ Ministry of Justice *Punishment and reform: Effective probation services* Consultation paper CP7/2012, CM 8333, March 2012: Ministerial foreword

The consultation paper speculated that local authorities or Police and Crime Commissioners might in time assume some of the Secretary of State's responsibilities for probation services:

74 We believe that for the time being the Secretary of State should remain accountable for ensuring the provision of probation services, but there may be potential over time for other public bodies, such as local authorities or, with a broadened statutory role, Police and Crime Commissioners to take responsibility for probation services.²⁵⁹

13.2 The role of social investors in rehabilitating ex-offenders

The previous Government began some pilot projects, assessing the impact of social impact bonds (SIBs) as a way of supporting early intervention and preventative action. A SIB uses finance from investors (including charities) to finance a programme and the Government then pays those investors according to the outcomes. One such project, aimed at cutting reoffending, is based at Peterborough prison. The Library standard note on [social impact bonds – the pilot at Peterborough prison](#) discusses what has been described as the world's first Social Impact Bond (or SIB) to finance rehabilitation work with short-term prisoners.²⁶⁰

The [Social Finance](#) website provides more information on the bonds, including a summary of the Peterborough bond:

During the Peterborough Prison pilot, experienced social sector organisations, such as St Giles Trust, will provide intensive support to 3,000 short-term prisoners over a six year period, both inside prison and after release, to help them resettle into the community. If this initiative reduces reoffending by 7.5%, or more, investors will receive from Government a share of the long term savings. If the SiB delivers a drop in reoffending beyond the threshold, investors will receive an increasing return the greater the success at achieving the social outcome, up to a maximum of 13%.²⁶¹

Liam Byrne, the then chief secretary to the Treasury, described in April 2010 how the previous Government hoped to expand the use of SIBs:

The Budget announced its support for the first social impact bond (SIB) pilots to help investment in long-term initiatives and support preventative action. The pilots are at different stages of development. The MOJ pilot will aim to reduce reoffending rates in HMP Peterborough and the pilot will last for six years. CLG are working with Leeds city council and NHS Leeds to enable them to use a SIB approach to reduce health and social care costs among older people. Given this work is at an early stage, the timeframe has not been set. Similarly Bradford metropolitan district council are considering applying this model as part of their involvement in the Government's Total Place programme. Again, no timeframe has yet been set.²⁶²

(...)

The Government will explore further application of this model through the Total Place programme and more widely. The DCSF, for example, have recently pledged to explore the potential of SIBs to lever in additional resources to support early intervention approaches with children and young people.²⁶³

²⁵⁸ Ministry of Justice *Punishment and reform: Effective probation services* Consultation paper CP7/2012, CM 8333, March 2012: Ministerial foreword

²⁵⁹ Ministry of Justice *Punishment and reform: Effective probation services* Consultation paper CP7/2012, CM 8333, March 2012: page 28

²⁶⁰ SN/HA/5758, 12 November 2010

²⁶¹ Social Finance [Social Finance launches first Social Impact Bond](#): undated, accessed 22 December 2011

²⁶² HC Deb 7 April 2010 cc1448-9W

²⁶³ HC Deb 7 April 2010 c1378W

In his [speech to the Conservative party conference](#) on 5 October 2010, Kenneth Clarke referred to the Peterborough project. The Government intended, he said, to start more such projects:

I visited the Peterborough project and I've seen how it can work. I'm an enthusiast. So I can tell you today that we will be starting up a range of similar schemes in England and Wales in the New Year. We will look at bids from serious groups who want to take whatever approach they believe in - from boot camps to more therapeutic options. And the taxpayer will pay for - what works and what cuts crime.²⁶⁴

[Breaking the Cycle](#) again confirmed the Government's commitment to involving more social investors:

139. We have already launched the Social Impact Bond in Peterborough prison focused on those offenders serving less than 12 months in custody. Social investors are paying up front for intensive services and mentoring delivered by the voluntary and community sector. We will pay solely on the results they deliver.

140. We have already received a wide range of imaginative proposals for payment by results schemes from providers in the public, private, voluntary and community sectors. We remain interested in exploring further innovative approaches, including from socially minded investors, to deliver payment by results and we will continue to welcome further proposals as part of the consultation process.²⁶⁵

13.3 Payment by results

The Library standard note on [social impact bonds – the pilot at Peterborough prison](#) describes how social impact bonds will use finance from investors (including charities) to finance a programme in a particular area, to address a defined need. Investors will then receive payment from the government according to the outcomes, or results.

The [NOMS Annual Report for 2010-11](#) set out the steps being taken to implement the goals in [Breaking the Cycle](#):

The Government's Green Paper 'Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders' introduces a number of initiatives that will be implemented by NOMS once the legislation and policy have been developed. There has been much preparatory work carried out during 2010–2011 in anticipation of the legislative changes.

²⁶⁴ Conservatives *Speech: Ken Clarke: Making prisoners pay to support victims* 5 October 2010

²⁶⁵ Ministry of Justice, Cm 7972, December 2010: pages 41-2

August 2010– March 2011

Contributed to the legislation required and policy arising from the Green Paper – Breaking the Cycle

August 2010

Launch of the Peterborough payment by results pilot

September 2010 onwards

Input to the design of the Financial Incentive Model Pilots in six London Boroughs and Greater Manchester through the Transforming Justice Programme

December 2010

Initial preparation for Drug Recovery Wing pilots

February 2011

Established the Payment by Results Steering Group

31 March 2011

Agreed the Doncaster payment by results pilot

October 2010

Preparation for developing the Working Prisons concept

Source: NOMS *Annual Report and Accounts for 2010-11* : Page 11

The Government has often expressed support for the concept of payment by results (PbR) in the criminal justice system. During a Westminster Hall debate on cutting crime and justice reinvestment, Crispin Blunt remarked that the Government hoped to widen the SIB model:

The other point that I want to make to the hon. Gentleman is that the public sector is not the only source of money. I commend to him the social investment model that has begun at Peterborough; it is a model that we will wish to widen. If we can get external investors to invest, so that savings can be made – that is much at the centre of the principle of the justice reinvestment report - it frankly does not matter where that extra capacity comes from.²⁶⁶

The argument against payment by results was made by shadow minister for justice, Robert Flello, who suggested that this scheme might mean that some voluntary organisations would lose their funding:

My hon. Friend the Member for Stoke-on-Trent Central (Tristram Hunt) spoke about the excellent work done with women offenders by Brighter Futures. I know of the valuable work that is also done by the Saltbox chaplaincy project, which has cut reoffending rates to just 12% even among prolific offenders. However, these fantastic providers, along with many others in the third sector, are at risk of having to cease their effective work because of this Government's ill-thought-through change to the payment-by-results scheme, which is still in consultation.

Crispin Blunt argued that schemes would need to gain the support of local commissioners, although the Ministry of Justice would sustain proven schemes:

As I said, we have identified funding to sustain those projects that have demonstrated effective performance, but, as the hon. Gentleman will be well aware, the Department is not in a position to sustain funding on the current level. A total of £10 million was put aside to set these schemes up, whereupon they were then meant to move to local commissioning. There will be continuing support for the schemes from the Ministry of Justice, but we will be looking to them to win the support of local commissioners. They also have access to the Government's £100 million transition fund, which is precisely designed to bridge that gap, as well as potential access to the big society bank.²⁶⁷

²⁶⁶ HC Deb 21 October 2010 cc364-5WH

²⁶⁷ HC Deb 11 January 2011 cc140-1

Launching the report of the review of offender learning — *Making Prisons Work: Skills for Rehabilitation* (discussed earlier) — John Hayes, minister for further education, skills and lifelong learning, reaffirmed the Government's commitment to payment by results:

We will reflect the Government's focus on payment by results by introducing outcome incentive payments: providers' payments will be based, in part, on their success in helping get people into jobs. Our new emphasis on decentralised control and accountability means we will change the distribution of resources between prisons, supporting our determination to put in place the right skills offer for the offender while they are within the justice system. That will be framed by a significant change from the current system, introducing a focus on clusters of prisons between which prisoners tend to move and with wide implications for the way people work together.²⁶⁸

Two [pilot PbR projects in the West Midlands & Wales and Staffordshire probation services](#) were announced in January 2012.²⁶⁹ More recent work on PbR was summarised by the then junior minister, Crispin Blunt in March 2012:

Two payment by results pilots aimed at reducing reoffending by prisoners are underway, involving offenders released from HMP Peterborough and HMP Doncaster. Ministry of Justice officials are working with the governors of HMP High Down and HMP Leeds to establish pilots which will test different options for applying payment by results principles to prisons managed in the public sector, beginning later this year. In the latest phase of prison competitions, the Ministry of Justice has invited variant bids showing how payment by results can contribute to reduced reoffending. The outcome of the competitions will be announced in November 2012.

Officials are working with the Wales and Staffordshire and West Midlands Probation Trusts to develop two reducing reoffending pilots covering offenders serving community sentences.

To test the potential for new approaches using payment by results, a procurement exercise is underway with the aim of establishing two innovation pilots, to be based on proposals for reducing reoffending submitted by the market.

The principles of payment by results are also being extended across the wider justice system. Pilots are running in Greater Manchester and five London boroughs testing a justice reinvestment approach to reducing demand on courts, prison and probation. Four Youth Custody Pathfinder pilots are also underway, encouraging local authorities in the pilot areas to reduce reoffending and prevent young people most at risk of custody from escalating through the justice system.

Officials are working to test the benefits of co-commissioning services on a payment by results basis, with the Department for Work and Pensions to introduce two pilot projects, testing the inclusion of a reoffending outcome into the Work programme, and with the Department of Health to design and implement eight drug and alcohol recovery pilots, which will also include a reoffending outcome.²⁷⁰

In May 2012, Crispin Blunt, outlined how the Government intended to reduce reoffending rates.²⁷¹ Some weeks earlier, he had described how the cohort of prisoners serving sentences of less than 12 months was to be included in the first wave of the payment by results programme:

²⁶⁸ HC Deb [18 May 2011 cc15-6WS](#)

²⁶⁹ Ministry of Justice "Minister announces 'cutting edge' probation pilots" 25 January 2012

²⁷⁰ HC Deb [23 March 2012 c910W](#)

²⁷¹ HC Deb [21 May 2012 c416W](#)

This cohort of offenders is the target of the first custody related pilot of our payment by results programme to reduce reoffending and will be an important focus of many of the other pilots, whether managed from custody or by other agencies in the community helping address the cause of their offending on release.²⁷²

²⁷² HC Deb [29 February 2012 c375W](#)