



MANAGING OFFENDERS, REDUCING CRIME

A new approach

Patrick Carter
11th December 2003

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Prime Minister
Home Secretary
Chief Secretary to the Treasury

CORRECTIONAL SERVICES REVIEW

Last March you asked me to review correctional services in England and Wales.

We found that considerable progress had been made in the way we manage offenders. Over the last seven years there have been significant improvements in both the Prison Service and the National Probation Service. However, we now need to find more effective ways of using scarce resources if we are to further reduce crime.

We have found an urgent need for the different parts of the criminal justice system to work closer together. At its simplest, each part of the system has little regard for the consequences of its actions on the other parts. This means that resources are not always used effectively. Further, few of the players are focused on the overall aim of crime reduction.

You will see in the attached report that we recommend far reaching reforms, which build on recent improvements and the new sentencing framework set out in the Criminal Justice Act (2003).

It is essential that judges and magistrates have a full range of tough, credible and effective sentences that are properly enforced. This includes income-related fines for low risk offenders, more demanding community sentences and greater sanctions for potentially persistent offenders (including satellite tracking). As now, custody needs to be reserved for the most serious, dangerous and highly persistent offenders.

The judiciary, through the new Sentencing Guidelines Council, needs to ensure that, in the short term, the most effective use is made of prison and probation capacity. In the medium term, decisions about building new prisons or expanding community interventions need to be informed by much clearer evidence on what works to reduce crime.

Despite recent improvements, a new approach is needed in order to break down the silos of prison and probation and ensure a better focus on managing offenders.

To implement these wide ranging reforms significant changes will need to be made. The Report calls for a new National Offender Management Service (NOMS) responsible for reducing re-offending. It separates the case management of offenders from the provision of prison places, treatment services or community programmes (whether they are in the public, private or voluntary sectors).

These reforms will ensure an improved system that works together to punish offenders, whilst ensuring the best use of resources to reduce crime.

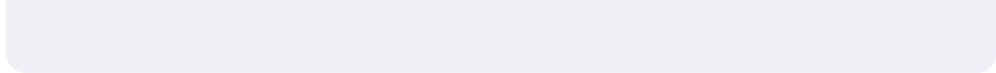
I would like to thank all those who contributed to the Review, particularly Gareth Davies and the Strategy Unit, the Home Office, the Department of Constitutional Affairs and HM Treasury.

We are grateful to both the Prison Service and the National Probation Service for the insights they offered.

Yours sincerely



Patrick Carter



SUMMARY

Context of the review

Far greater use is being made of prison and probation, despite the number of people being arrested and sentenced remaining broadly constant.

- The use of prison and probation has increased by a quarter since 1996, whilst the use of fines has fallen by a similar amount.

Sentencing practice has become more severe.

- One in four first-time domestic burglars were sent to prison in 1995/96. By 2000, this had increased to one in two.

Tougher sentences have had some limited impact on crime.

- The increased use of prison is estimated to have reduced crime by around 5 per cent, compared to an overall fall of 30 per cent since 1997.

Public confidence in sentencing has improved but remains fragile.

- The proportion of people believing sentencing to be "much too lenient" has fallen from one in two to one in three.

Additional investment in prison and probation since 1998 has improved delivery.

- The Prison Service has dramatically reduced the number of escapes, improved decency and increased the number of offenders achieving basic skills.
- The creation of the National Probation Service has given greater focus to performance management and seen the introduction of a range of new services.

The objective now is to ensure that this additional investment is being used to best effect to reduce crime and maintain public confidence.

Current Position

Sentences are poorly targeted and do not bear down sufficiently on serious, dangerous and highly persistent offenders.

- The increased use of prison and probation since 1997 has been concentrated on first time offenders, leading to poor use of additional investment.

The variation in sentencing practice between areas remains too large.

- In Merseyside, Magistrates' Courts send one in four burglars to prison, compared to one in two in Staffordshire (despite the areas having the same burglary rates).

Judges and magistrates do not have sufficient information to make the most effective use of prison and probation and to take into account their capacity to deliver.

- This leads to increased overcrowding, reduced time spent by probation staff with offenders and poor transparency in sentencing with increased use of Home Detention Curfew.

The system remains dominated by the need to manage the two services, rather than focusing on the offender and reducing re-offending.

- There remain gaps in the system, with, for example, interventions in prison often not being followed up in the community.

The benefits of competition – from the private and voluntary sector – could be extended further, across both prison and probation.

- The introduction of competition in prisons has provided a strong incentive for improvements in public sector prisons.

Vision

A new approach is needed for managing offenders, to reduce crime and maintain public confidence.

Targeted and rigorous sentences

The Criminal Justice Act provides a platform for major reform and the more effective management of offenders in order to reduce crime and maintain public confidence.

- Judges and magistrates continue to need to have a full range of tough, credible and effective sentences that are enforced.
- Sentences need to reflect the seriousness of the offence and the risk of re-offending – with better targeting of serious, dangerous and persistent offenders.

This means:

- Diverting very low risk offenders out of the court system and punishing them in the community.
- Income-related fines for low risk offenders.
- More demanding community sentences for medium risk offenders.
- Greater control and surveillance (including satellite tracking) of persistent offenders, combined with help to reduce re-offending.
- Custody reserved for serious, dangerous and highly persistent offenders.

New role for the judiciary

Roles and responsibilities need to be clarified for the judiciary.

- Judges and magistrates need to continue to be able to make entirely independent sentencing decisions in individual cases.
- The judiciary needs to ensure the consistent and cost-effective use of prison

and probation capacity and to ensure a clear understanding of the link between sentence given and sentence served.

The new Sentencing Guidelines Council provides an immediate opportunity to improve the effectiveness of sentencing.

- Each year the Council should discuss the priorities for sentencing practice with the Home Office. It should then issue guidelines that ensure offences are treated proportionately to their severity, are informed by evidence on what reduces offending and makes cost-effective use of existing capacity.
- The Sentencing Advisory Panel (which works to the Council) should be given responsibility for independently projecting future demand and should produce evidence on the effectiveness of different sentencing options in reducing crime and maintaining public confidence.

If there were new and convincing evidence on interventions that reduce crime then additional resources would need to be found (e.g. if greater use of custody was found to significantly reduce crime, more prisons would need to be built).

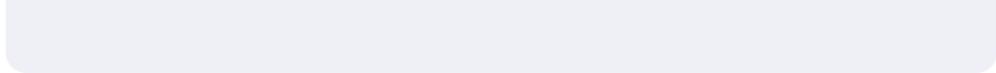
A new approach to managing offenders

Building on the significant improvements in delivery over the last seven years, a new approach is needed to focus on the management of offenders.

- Prison and probation need to be focused on the management of offenders throughout the whole of their sentence, driven by information on what works to reduce re-offending.
- Effectiveness and value for money can be further improved through greater use of competition from private and voluntary providers.

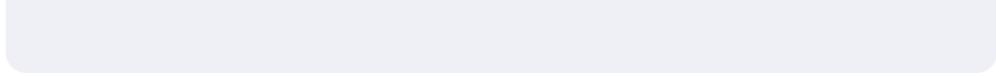
This means:

- The establishment of a National Offender Management Service – restructuring the Prison and Probation Services – with a single Chief Executive accountable to Ministers for punishing offenders and reducing re-offending.
- Within the new Service there should be one person – the National Offender Manager – who is responsible for reducing re-offending – supported by Regional Offender Managers. They would supervise offenders and commission custody places, fine collection and interventions – whether in the public, private or voluntary sector.
- The Regional Offender Managers would break down the current silos of prison and probation and work across the two services. They would fund the delivery of specified contracts – based on evidence of what reduces re-offending – rather than leaving the services themselves to decide what to deliver.



CONTENTS

1. Context of the review	9
2. Objectives of the review	13
3. The impact of prison and probation	15
4. Current position	17
5. Vision	25
6. Targeted and rigorous sentences	26
7. A new role for the judiciary	31
8. A new approach to managing offenders	33
9. Implications	39
10. Next steps	41
11. Conclusion	42
Notes and sources	44



1. CONTEXT OF THE REVIEW

The system needs to ensure that the increased investment in prison and probation is targeted effectively to reduce crime and maintain public confidence. The use of prison and probation has increased by over a quarter since 1996, even though the number of people arrested and sentenced has remained broadly constant. The growth is due to the increased severity of sentences, which is linked to the fall in the use of fines.

Sentencing should be driven by the need for justice

Sentencing should always be driven by the need for justice.

- There always need to be sufficient prison places available for all serious, dangerous and highly persistent offenders who deserve a custodial sentence.
- However, within this, resources should always be targeted effectively to reduce crime and maintain public confidence.

Use of prison and probation has increased significantly

Far greater use is being made of prison and probation.

- In 1996, 85,000 offenders were given a custodial sentence and 133,000 were given a community sentence. By 2001, both had increased by 25 per cent, with 107,000 offenders given a custodial sentence and 166,000 offenders receiving a community sentence¹.

There has been a similar growth in the number of offenders under supervision at any one time.

- In 1996, an average of 55,000 offenders were in custody and a further 127,000 offenders were under supervision in the community. By the end of 2001 this had increased to 66,000 in custody² and 141,000 in the community³.
- The latest figures show that these numbers have grown further. By late 2003 this had exceeded 74,000 offenders in prison⁴.

The prison population is higher than in the European Union, but far lower than in the United States

England and Wales now have the highest prison population in the European Union.

- There are 139 prisoners per 100,000 of the population, compared to an EU average of 102 per 100,000. Germany has 96 per 100,000, whilst Finland has only 59⁵.

The United States leads the world in the use of custody.

- There are over 2 million people in custody – 700 per 100,000 of the population. Only Russia comes close to this figure.
- In the late 1970s, the US prison population per 100,000 was similar to that in the UK today. It increased five-fold over the next twenty years – increasing by over a million in the 1990s alone⁶.

- Many US states are now attempting to rein back the use of prison in response to severe budgetary pressures⁷. In the past year, 25 states have abolished some mandatory sentences (especially for non-violent drug offences)⁸.

What explains the increased use of prison and probation?

Generally, the increased use of prison and probation could reflect a combination of three factors.

- An increase in the number of offenders caught and sentenced.
- An increase in the overall seriousness of the crimes brought to justice.
- An increase in the sentence severity for specific offences.

The increased use of prison and probation over the last six years reflects the increased severity of sentencing, rather than the other two factors.

The number of offenders arrested or cautioned has remained broadly constant.

- In 1991, 2.2m people were arrested. By 2001 this had fallen slightly to 2.1m⁹.
- The number of offenders found guilty at all courts has fallen over the last decade, reflecting greater use of fixed penalty notices. 1.51m offenders were found guilty in 1991. This fell to 1.44m in 1996 and 1.35m by 2001¹⁰.
- The number of offenders found guilty of more serious offences – indictable offences – has remained broadly constant. In 1991, 338,000 were found guilty. This fell in 1996 to 300,000, but by 2001 had increased again to 324,000¹¹.

There has not been any increase in the overall seriousness of offences brought to justice to justify the greater use of prison and probation.

- For example, the number of offenders found guilty of indictable offences of violence against the person has fallen from 67,000 in 1991 to 55,000 in 2001 (and reached a low of 50,000 in 1995). Similarly the number of offenders found guilty of burglary has fallen from 46,000 in 1991 to 25,000 in 2001. This reflects the fall in the incidence of these crimes over the period (and may be due to specific targeting by the CJS)¹².

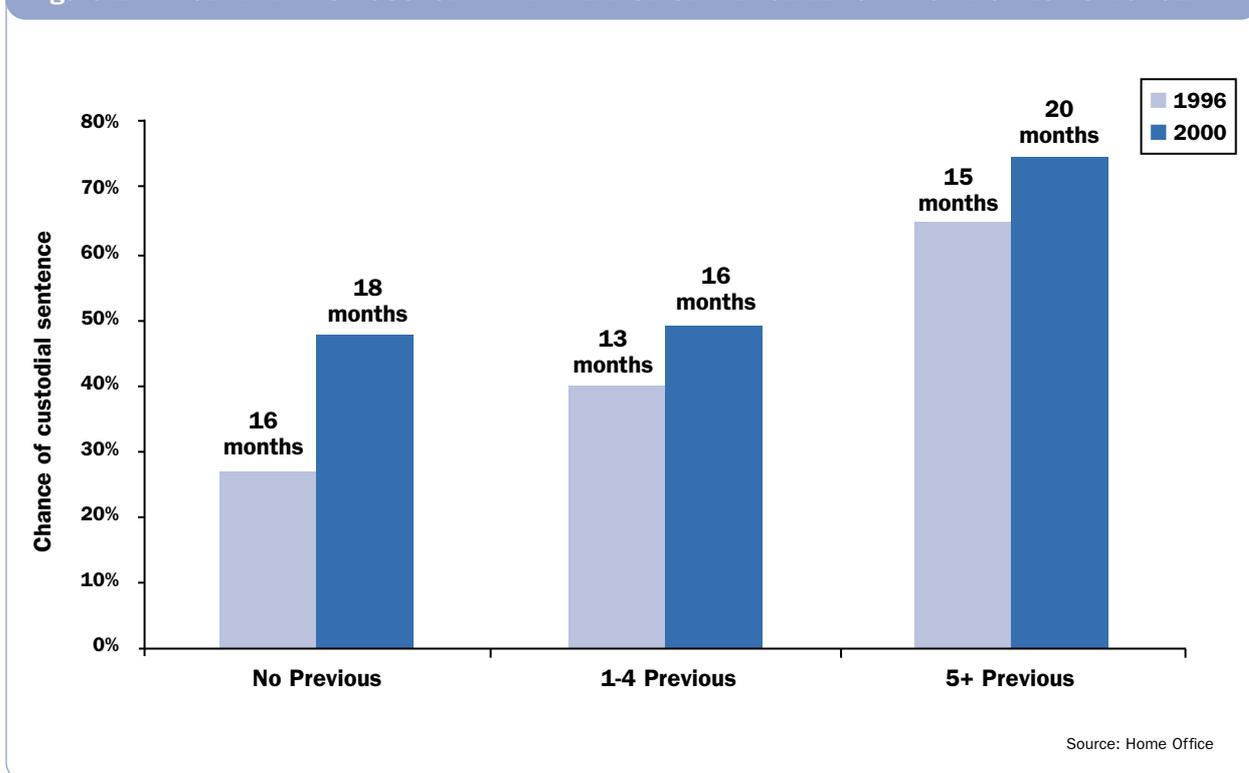
The criminal careers of offenders do not appear to have lengthened.

- The proportion of offenders sentenced each year with no previous convictions has increased over the last decade. In 1991, 34 per cent of offenders found guilty had no previous convictions. By 2001, this had increased to 42 per cent¹³.
- Over the same period, the proportion of offenders found guilty with over five previous convictions had fallen from 30 per cent to 27 per cent¹⁴.
- There remains the perception that offenders have in some way become more persistent or more serious. This may reflect increasing use of drugs over the period and the perception of sentencers that those appearing before them lead more chaotic lifestyles.

The key explanation for the growth in the use of prison and probation over the last decade is the increased severity in sentencing.

- In 1991, 15 per cent of those found guilty of an indictable offence received a custodial sentence. By 1996, this had increased to 22 per cent and by 2001 it was 25 per cent¹⁵.
- The increased severity of sentencing can be seen clearly when considering individual offence types. For example, a first time domestic burglar had a 27 per cent chance of receiving a custodial sentence in 1995/96. By 2000, this had increased to 48 per cent. At the same time, the average sentence length had increased from 16 to 18 months¹⁶ (see Figure 1).

Figure 1: PROBABILITY OF CUSTODY AND AVERAGE SENTENCE LENGTH FOR DOMESTIC BURGLARY



- There has been a similar increase in the use of community sentences. In 1991, 22 per cent of convictions for an indictable offence resulted in a community sentence. By 2001, this had increased to 32 per cent¹⁷.

Sentence severity has increased significantly for women.

- In the Crown Court in 1991, only eight per cent of women convicted of motoring offences went to prison. By 2001 that proportion had increased to 42 per cent. Similarly, a women convicted of theft or handling at the Crown Court is now twice as likely to go to prison as in 1991.
- At the magistrates' courts the chances of a woman receiving a custodial sentence have risen seven-fold.

Fall in the use of fines

At the same time as the use of prison and probation has increased, there has been a fall in the use of fines.

- In 1991, 1.2m offenders received a fine. By 2001 this had fallen to 0.9m, a fall of 25 per cent.
- For more serious offences, the fall in the use of fines has been even greater. In 1991, 35 per cent of offenders found guilty of indictable offences received a fine. By 2001, this had fallen to 24 per cent, a fall of over 30 per cent¹⁸.

Why has sentencing become more severe?

The increased severity of sentencing reflects the interaction of a number of different factors, which are difficult to isolate.

- Legislative changes – such as increasing the maximum sentence for death by dangerous driving – has increased the use of custody.
- There have been changes to sentencing guidelines. For example, the entry points for over a third of offences in the Magistrates' Association Guidelines have become more severe since 1993¹⁹.
- Judges' and magistrates' confidence in less severe sentences may have been reduced by poor enforcement. For example, 30 per cent of fines are not paid²⁰.
- Behind this there has been the interaction between public perception, media, politicians and sentencers. This interplay has helped to drive up the severity of sentencing²¹.

2. OBJECTIVES OF THE REVIEW

The question facing the review has been to establish a credible and effective system, which is focused on reducing crime and maintaining public confidence, whilst remaining affordable.

Reducing crime

Crime has fallen significantly over the last decade.

- Crime has fallen by over 35 per cent since 1995 – driven by the reduction in property crime. Between 1995 and 2001, burglary has fallen by 44 per cent, vehicle theft by 45 per cent and violent crime by 34 per cent²².
- The risk of being a victim of crime has also fallen. In 1995, 40 per cent of the population was a victim of crime. By 2003, this had fallen to 27 per cent²³.

However, crime remains relatively high in England and Wales compared to other industrialised countries²⁴.

Maintaining public confidence

The fall in crime since 1996 has helped to improve public confidence.

- Fear of crime has fallen significantly over the last seven years. For example, fear of burglary has fallen by a third between 1996 and 2003. Over the same period, fear of vehicle theft has fallen from 25 per cent to 16 per cent²⁵.
- However, public confidence remains fragile, as seen in recent concern about gun crime.

The system needs to recognise the particular concerns of victims.

- Over 10m people are victims of crime each year²⁶.
- The impact of crime can be devastating – 83 per cent of burglary victims reported being emotionally affected, with 11 per cent suffering depression and 12 per cent panic attacks²⁷.
- Recent victims of crime are twice as likely to feel unsafe as other members of the public²⁸.

A cost-effective and affordable system

Sentencing should always be driven by the need for justice.

- There always need to be sufficient prison places available for all serious, dangerous and highly persistent offenders who deserve a custodial sentence.

However, within this, resources should always be targeted effectively to reduce crime and maintain public confidence.

- Spending on prisons and probation has increased by over £1bn (in real terms) in the last decade to £3.5bn. However, it is not clear whether capacity has been effectively targeted so that best use is made of prison and probation. For example, it may be as effective and proportionate to fine a low risk – low harm offender with a low probability of re-offending, than to use either a community sentence or a prison place which should be reserved for serious and dangerous offenders.
- Decisions on changing the capacity and composition of prisons and probation need to be set against other interventions to reduce crime and improve public confidence. For example, it may be more effective to increase the number of police officers rather than to extend the period of community supervision for offenders. These investment decisions need to be informed by evidence of what works, when and for whom.

3. THE IMPACT OF PRISON AND PROBATION

The increased use of prison and probation has only had a limited impact on crime. The deterrent effect of tougher sentences is weak; more important is the fear of being caught. Prison does reduce crime, but there is no convincing evidence that further increases in the use of custody would significantly reduce crime. Rehabilitative work can reduce the chance of re-offending, but by only 5 to 10 per cent.

Fear of being caught and convicted

To maintain order, offenders need to know that if they commit a crime they will be caught, convicted and punished.

- Evidence suggests that the fear of being caught is more important than marginal changes in the severity of sentencing²⁹.
- There is little evidence to suggest that increased severity of punishment is a significant deterrent to committing crimes. The cross-national analysis conducted by Langan and Farrington³⁰ could not find any significant relationship between the severity of the sentence and the impact on crime.
- The deterrent effect of tougher sentences is strongest for those with social ties (a family or a job)³¹. This in part explains the success of tougher penalties for drink driving. Tougher sentences for specific offences (say car crime) may have the result of diverting offenders into other forms of crime.

The impact of prison on crime

Without prison, offenders would be free to commit serious crimes and would be a clear and present danger to the public. Prison is vital to protect the public.

- Prison incapacitates serious, dangerous and highly persistent offenders. In 2001, 3,387 murderers and 2,754 rapists were held in prison³².
- Estimates suggest that of the 100,000 persistent offenders who commit 50 per cent of all crime, around 15,000 are held in prison at any one time.
- If we could identify and incapacitate the 100,000 persistent offenders, crime could fall dramatically.

However, historically incapacitation is only associated with small falls in crime.

- In the United States, crime has fallen whilst the use of prison has increased. However, at a State level, there is a much more varied picture. It is difficult to find any strong relationship between the use of prison and the change in the level of crime. Some States that have seen a relatively small expansion in the use of prison have still seen significant falls in crime.
- Econometric analysis from the United States suggests that the increased use of prison is responsible for a 6 per cent fall in violent crime (out of a 33 per cent total fall)³³.

- The increased use of prison in England and Wales since 1997 is estimated to have reduced crime by around 5 per cent. The fall in the number of young people over the same period is estimated to have reduced crime by a similar amount³⁴.

This reflects practical difficulties in identifying persistent offenders.

- There is a problem with identifying persistent offenders before they stop offending. 40 per cent of those with three previous convictions will stop offending without further intervention from the criminal justice system.
- A more fundamental issue is that the population of persistent offenders is not stable. 20 per cent of them desist and are replaced by a new cohort each year. Even if persistent offenders this year could be identified, there will be a different group of persistent offenders next year. 300,000 people are, or have been, persistent offenders over the last decade³⁵.

The role of rehabilitative work

There is an important role for targeted rehabilitative work.

- International analysis suggests that well-designed, well-run and well-targeted rehabilitation programmes can reduce reconviction rates by 5-10 per cent³⁶.
- These programmes can be cost-effective, though returns can vary substantially (pilots have shown average returns of just over £1 to £7 for every £1 invested).
- The maximum effect is achieved when programmes target a spectrum of risk factors – employment and education, along with behavioural or cognitive programmes³⁷. Although drug treatment is difficult, evidence suggests that it can be cost-effective in reducing crime and social harms³⁸.
- However, there are significant issues around the scalability of some rehabilitative programmes – it is not clear that the average returns measured in pilots can be maintained on a large scale.

4. CURRENT POSITION

Sentencing practice needs to be better targeted on the need to reduce crime and improve public confidence. Judges and magistrates do not have the necessary information to make the most effective use of the capacity of prison and probation. Despite significant improvements, neither service is sufficiently focused on the management of offenders across the whole of their sentence.

1. Sentencing practice

Sentencing practice has become better aligned with public opinion and there is a wider range of community options available. However, the growth in the use of prison and probation has been poorly targeted. The system needs to improve its grip on persistent offenders to ensure they are effectively punished, face greater restrictions on their liberty and, where appropriate, receive the help they need to stop offending. This is vital to maintain public confidence in the Criminal Justice System.

Improvements in sentencing practice

Sentencing practice has become tougher, bringing it closer in line with public opinion.

- There have been significant increases in sentences for those crimes that most concern the public. The custody rate and sentence length for burglary and violence against the person have increased dramatically over the last decade.
- This has gone some way towards dispelling the belief that sentencing is too lenient. The proportion believing sentencing policy to be "much too lenient" has fallen from 51 per cent in 1996 to 35 per cent in 2001³⁹.

A wider range of sentencing options is available to judges and magistrates.

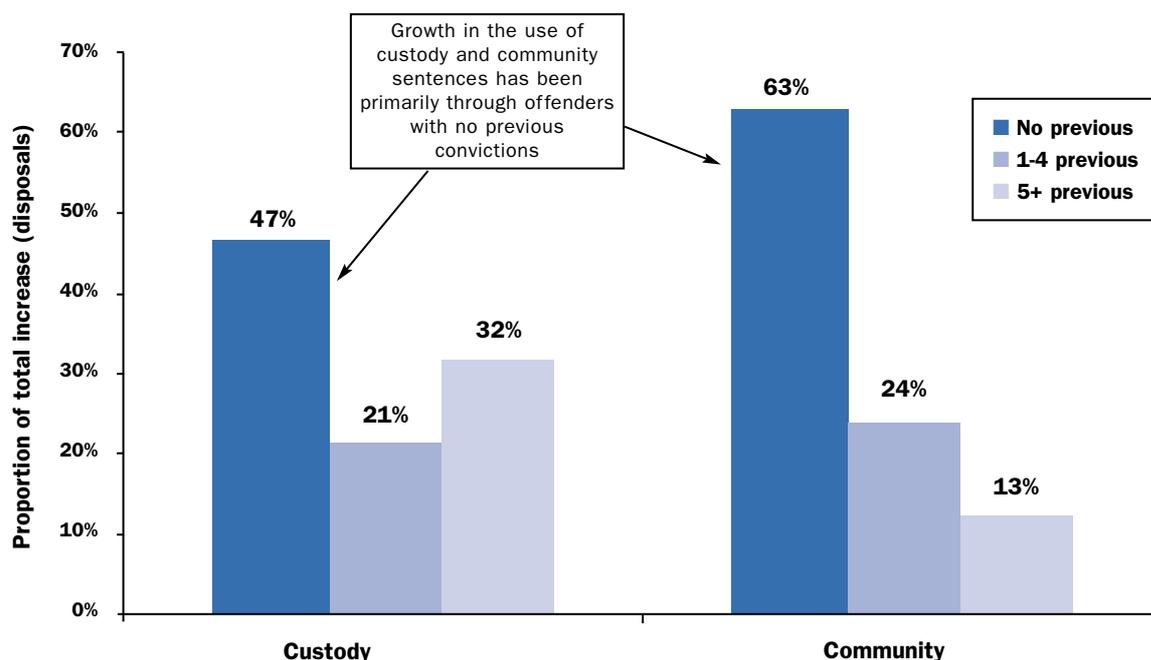
- Judges and magistrates are increasingly able to recommend the use of new technology in dealing with offenders. Electronic tagging can be used with curfew orders and juvenile bail to restrict the movement of offenders.
- The Drug Treatment and Testing Order (DTTO) is an intensive community sentence that was introduced to tackle the link between drug use and offending. It involves more intensive contact with supervision officers, as well as regular drug treatment and testing. In 2002, over 6,000 DTTOs were ordered.
- The Intensive Control and Change Programme (ICCP) is being piloted for 18-20s to provide a range of interventions targeted at the specific needs of young adult offenders. It includes tagging, curfew and police surveillance options, as well as providing 18 hours a week of offending behaviour programmes, employment and training.

Sentencing remains poorly targeted

Too much of the increased use of prison and probation has been focused on those offenders with no previous convictions.

- Of the increase in the number of offenders receiving a custodial sentence since 1996, over half have no previous convictions. Similarly, of the increase in the number of offenders receiving a community sentence, two-thirds have no previous conviction⁴⁰ (see Figure 2).

Figure 2: COMPOSITION OF THE GROWTH IN THE USE OF CORRECTIONAL SERVICES



Source: Home Office

- However, since these offenders typically receive shorter sentences, they still make up only a small proportion of the prison population at any one time. In 2001, those serving less than 12 months accounted for only 13 per cent of the prison population⁴¹ (despite accounting for over two-thirds of those given a custodial sentence⁴²).

The system needs to improve its grip on persistent offenders (for example, the estimated 100,000 offenders with three previous convictions who are estimated to be responsible for 50 per cent of all crime)⁴³.

- Sentencers appear to give greater emphasis to the seriousness of the offence rather than the number of previous convictions.
- However, the Criminal Justice Act introduces the 'persistence principle' – whereby persistent offenders will be treated more severely.

The interventions to help reduce re-offending are not effectively targeted.

- With the increase in the number of short-term prisoners and large numbers of transfers during the prison sentence, many offenders are not in the same place for long enough to receive effective interventions. However, often it is these short-term prisoners that would most benefit from interventions. For example, Home Office research indicates that drug misuse is most prevalent among offenders sentenced to less than a year⁴⁴.
- In probation, the interventions available are largely dependent on the court order issued. For example, someone given a Community Punishment Order is unlikely to have access to suitable rehabilitation programmes, irrespective of their needs.
- The quality of interventions varies greatly depending on the area in which the offender receives them. This was highlighted by the latest HM Inspectorate of Probation annual report⁴⁵, whilst the National Audit Office reported in 2002 that "a prisoner's access to programmes still owes much to where they are sent"⁴⁶.

Public confidence remains fragile

Despite the increased severity of sentencing, the public continues to believe that sentencing is too lenient. However, public opinion has improved over the last seven years.

- Only a third of people believe sentencing is "much too lenient", compared to half in 1996⁴⁷.
- Public opinion on sentencing appears to be tougher than in most other countries. In an international survey, England and Wales had one of the highest proportions recommending custody for a convicted domestic burglar⁴⁸.
- However, a range of findings suggests that the public regularly underestimates the severity of sentences. For example, over half of people surveyed significantly underestimate the extent to which burglars are sent to prison⁴⁹.

However, the belief that sentencing is too lenient is not just due to a lack of knowledge about actual sentencing practice.

- England and Wales remains a high crime country by international standards.
- The enforcement of fines is poor – 30 per cent are not paid⁵⁰.
- Many community sentences are ineffective – only 10 per cent involve intensive rehabilitation programmes and there is poor visibility of community punishment⁵¹.
- There is poor transparency between the prison sentence given and the prison sentence served. Parole arrangements and the use of Home Detention Curfew change the expected release date for prisoners. However, the new sentencing arrangements in the Criminal Justice Act will help improve transparency.

Public confidence in sentencing is vital, as it is one of the key factors determining confidence in the wider criminal justice system.

2. Role of the judiciary

The system serves and is driven by the judiciary. However, they do not have sufficient information on the efficacy of different sentences, they are not able to take account of the capacity of the services to deliver the sentences they pass. The result is inconsistent sentences, poor use of resources and continued upward pressure on sentencing – which leads to greater overcrowding and the pressure to release more prisoners through Home Detention Curfew.

The judiciary is the key driver of demand for prisons and probation

The system serves and is driven by the judiciary.

- The Courts drive the demand for prison, probation and fines. The Prison Service and National Probation Service deliver the sentences set by the Courts.
- Whilst the Crown Court sentences only 6 per cent of offenders, it is responsible for 15 per cent of those given community sentences. However, because custodial sentences given at the Crown Court are typically longer, they account for 88 per cent of those in prison at any one time. The Crown Court is responsible for approximately 70 per cent of the expenditure on prisons and probation (over £2bn)⁵².

Lack of information

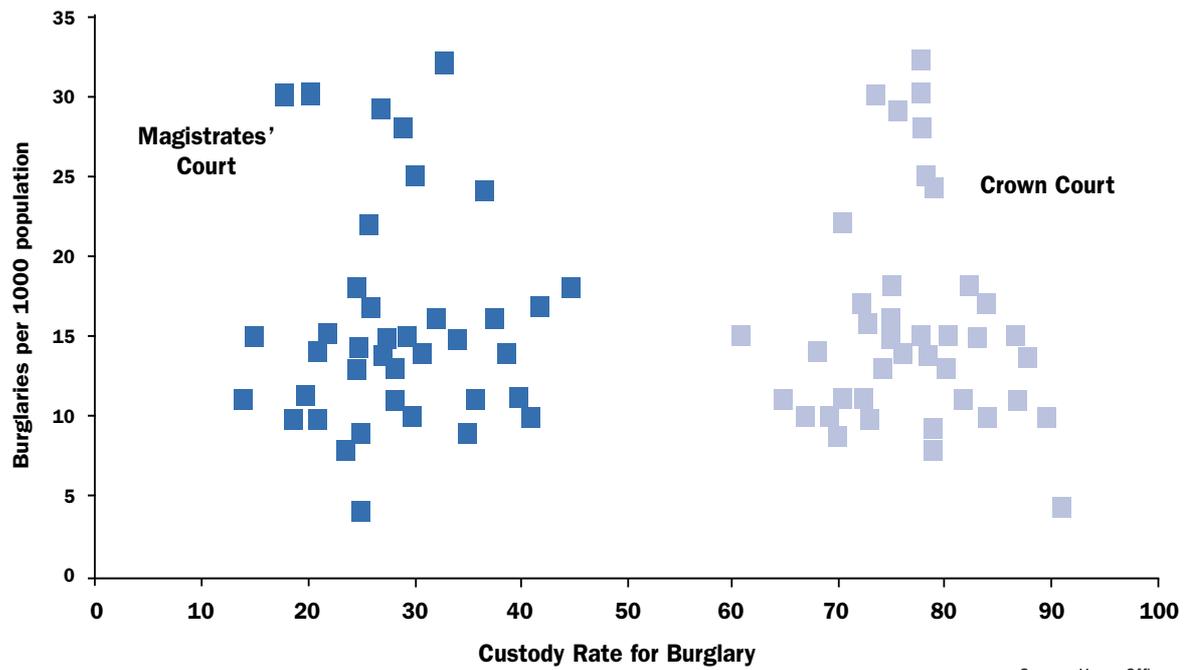
Judges and magistrates have poor information about the sentences that they pass.

- Individual courts and sentencers need to be more systematically informed about how their use of fines, probation and prison compares to sentencing practice elsewhere.
- Judges and magistrates are not generally given feedback on the outcomes of the sentences they pass. They do not receive information on whether the offender meets the conditions of the sentence, nor whether they subsequently re-offend.
- However, this is starting to change. The Youth Justice Board led the way in the provision of information to sentencers. The new DTTO involves the judge or magistrate in the ongoing management of the offender throughout the sentence. The DCA and Home Office are working together to provide information on sentencing trends, which is sent to the Local Criminal Justice Boards and sentencers twice a year.

There is poor self-governance in respect of sentencing practice.

- At present, there is no formal process for ensuring consistency of sentencing practice. The main device is the Court of Appeal. However, this is a relatively blunt tool (particularly with the current loose guidelines).
- This results in unwarranted sentencing disparity – which does not appear to reflect local concerns⁵³. For example, in Magistrates' Courts in Merseyside, the custody rate for burglary is 25 per cent, whereas in Staffordshire it is 45 per cent⁵⁴, despite the incidence of burglaries being the same⁵⁵ (see Figure 3).

Figure 3: BURGLARY RATE AND USE OF CUSTODY BY COURT AREA



- The Criminal Justice Act creates the new Sentencing Guidelines Council, which has a mandate to promote consistency of sentencing.

Sentencing practice is unable to take account of the capacity of the services to deliver.

- Individual offenders will always need to be sentenced according to the merits of the case. However, no one is responsible for ensuring that the aggregate impact of the individual decisions is consistent with the capacity of the prison and probation services to deliver.
- In the short term, the capacity of prison and probation is relatively fixed – it takes three to six years to build a prison and two years to train a probation officer⁵⁶.
- With the demand for prison and probation exceeding capacity, the services have had to adjust at the back-end. This has been through increased overcrowding in prisons, reduced time spent by probation staff with offenders and increased use of Home Detention Curfew. There are limits to how far this can be continued whilst maintaining public confidence.

3. Delivery of prison, probation and fines

Investment in the Prison Service and National Probation Service since 1998 has delivered significant improvements. It is now vital that there is greater coherence between the work of the services, ensuring both prison and probation can work together effectively to reduce re-offending. Despite improvements, problems remain in the management of offenders across the whole of their sentence and the enforcement of fines has been poor. There needs to be better targeting of interventions and greater use of providers from the voluntary and private sectors to further improve delivery.

Service provision has improved over the last decade

Despite the pressures created by overcrowding (for example, this is likely to result in over 40,000 prisoner moves this year) the Prison Service has improved its performance.

- The number of escapes has been reduced dramatically since the mid-1990s. There were over 230 in 1994 but only five last year and there have been no Category A escapes since 1995.
- Measures to improve decency have been implemented. Slopping out was abolished in 1996 and compliance with health care standards has increased.
- There have been significant improvements in the provision of constructive regimes. For example, 41,300 Basic Skills awards were achieved last year (43 per cent above target)⁵⁷.

The creation of the National Probation Service brought greater consistency and innovation to a previously fragmented service.

- The National Probation Service was created in 2001 from the 54 quasi-independent probation services.
- The NPS has seen the introduction of new services, including the Multi-Agency Public Protection Arrangements (MAPPA) work with dangerous offenders and the new Intensive Change and Control Programme.
- There is a greater focus on performance management, with local areas losing resources if they fail to deliver against their seven priority targets.

However, fine collection remains poor.

- Payment of fines (including confiscation orders) fell to just 51 per cent in the first three months of this financial year⁵⁸. Since then, payment rates have increased, though it is not clear whether this will be sustained.
- Poor enforcement undermines public confidence and the willingness of judges and magistrates to use fines for lower risk offenders, pulling more into community sentences.
- There is a raft of measures in the Courts Act to improve rates of fine collection. These include greater use of private providers, a convert to work scheme and incentives, early payment and tougher enforcement tools.

Significant structural problems remain

The system remains dominated by the need to manage both services rather than having a focus on the offender and reducing re-offending.

- The system is dominated by the two services. Attempts are made to work across the silos – for example, through the creation in the Home Office of the Commissioner for Correctional Services. However, the services remain largely detached from one another and the structure of the system encourages concentration on the day-to-day operation of the services. A more strategic approach to the end-to-end management of offenders across their sentence is needed.
- Despite recent changes that have brought the management of the services closer together, no front line organisation ultimately owns the target for reducing re-offending. This can lead to gaps in the system – for example, there is no joint national resettlement strategy and interventions in prison are often not followed up in the community⁵⁹.
- This is in sharp contrast to the Youth Justice Board, which has a clear aim to "prevent offending by children and young people". They have a strong focus on managing young offenders (through the Youth Offending Teams). This structure, together with increased funding for juvenile custodial places, appears to have made a significant impact on rates of re-offending.

The benefits of competition could be further extended.

- The performance of private sector prisons has generally been very good, with the quality of the service improving quickly after start-up⁶⁰. The proportion of prisoners held in privately managed prisons is now greater than in the United States.

- The introduction of competition has provided a strong incentive for improvements in public sector prisons. The introduction of performance testing has been successful in driving down costs, changing the culture and enabling flexible staffing structures to be introduced⁶¹.
- There is a danger that the full benefits of contestability will not be realised if the involvement of the private sector is limited to new and failing prisons. Private providers need to be given an incentive to invest if they are to continue to be a credible alternative to public sector providers.
- Currently there is minimal contestability in the front-line provision of probation services. However, internationally (especially in the United States) there is strong evidence of a wide range of potential providers – especially from the voluntary sector.

5. VISION

A new approach is needed to ensure offenders are punished for their crimes, the public is protected and the appropriate help is available to reduce re-offending. This will ensure that the system is focused on the ultimate goals of reducing crime and maintaining public confidence.

A new approach

A new approach is needed for dealing with offenders. The objectives of the system must be clear.

- Offenders should be punished for their crimes.
- The public needs to be protected.
- Persistent offenders should be punished more severely and face increasing restrictions on their liberty.
- Offenders should be given the appropriate help to reduce re-offending.

To achieve this, the system for dealing with offenders should be based on a number of core principles, which build on the Criminal Justice Act.

Targeted and rigorous sentences

- Judges and magistrates continue to need to have a full range of tough, credible and effective sentences that are enforced.
- Sentences need to reflect the seriousness of the offence and the risk of re-offending – with better targeting of serious, dangerous and persistent offenders.

A new role for the judiciary

- Greater transparency (as promoted by the new Criminal Justice Act) is needed between the sentence given by the court and the sentence served by the offender.
- Judges and magistrates need to be able to discharge their responsibility for managing demand for probation and prisons to ensure the consistent and cost-effective use of existing capacity.

A new approach to managing offenders

- Prison and probation need to be focused on the management of the offender throughout their sentence, driven by information on what works to reduce re-offending.
- Effectiveness and value for money can be further improved through greater use of competition from private and voluntary providers.

This will ensure that the system is focused on the ultimate goals of reducing crime and maintaining public confidence in the broader criminal justice system.

6. TARGETED AND RIGOROUS SENTENCES

Building on the measures set out in the Criminal Justice Act, there needs to be:

- A renewed focus on paying back to the community
- Fines rebuilt as a credible punishment
- More demanding community sentences
- More extensive use of electronic monitoring
- Greater sanctions and help for persistent offenders
- More effective use of custody

Principles of sentencing

The current poor targeting of resources needs to be tackled by ensuring that judges and magistrates have a full range of tough, credible and effective sentences.

The Criminal Justice Act sets out in legislation that, in dealing with offenders, courts must have regards to the five purposes of sentencing:

- The punishment of offenders
- The reduction of crime
- The reform and rehabilitation of offenders
- The protection of the public
- The making of reparation by offenders to persons affected by their crime

Public confidence will be maintained by ensuring that these principles are properly enforced.

1. A renewed focus on paying back to the community

There is considerable scope for low risk, low harm adult offenders who plead guilty to be diverted from the formal court process.

- In youth justice, diversions are provided by reprimands and final warnings, which replaced repeat cautions in the 1998 Crime and Disorder Act. Final Warnings are normally accompanied by intervention packages provided by Youth Offender Teams. They include reparations and interventions to help tackle the cause of offending. In 2002, there were 20,000 Final Warnings with interventions.
- The proportion of males convicted of a standard list offence that have no previous convictions is around 40 per cent for all age groups. For example, 40 per cent of offenders between 40 and 50 are first convictions, compared to 45 per cent of offenders aged between 18 and 21⁶².

Diversion from court is used widely in other European countries.

- In Germany, between 25 and 30 per cent of offenders are given conditional dismissals as an alternative to prosecution⁶³. The decision is the responsibility

of the prosecutor. The offender can be asked to pay a fine or make reparation or undertake community service. They do not get a criminal record. If they fail to keep to the conditions they can be taken to court.

A similar approach should be used in England and Wales, building on the new statutory conditional cautions in the Criminal Justice Act.

- The conditional caution would be linked with financial reparation to the victim, an apology, restorative work, victim-offender mediation or community work.
- If the offender does not comply with a conditional caution they would be prosecuted.
- To ensure that costs are not excessive it would make sense to complete a short assessment on each offender given a conditional caution.

2. Fines rebuilt as a credible punishment

Fines should replace community sentences for low risk offenders.

- 30 per cent of community sentences are given to offenders at low risk of re-offending⁶⁴.

Day Fine systems are used successfully in much of Europe.

- In the German Länder of Bavaria and Nordrhein Westphalia, 80 per cent of criminal sentences are Day Fines. The fine is set as a number of days (between 5 and 360). This is then multiplied by an amount based on the offender's ability to pay.
- The offender can pay in a lump sum, in instalments or can opt instead to work for the community. However, if the offender fails to do this, he faces a custodial sentence. The length of the sentence is linked to the fine. For example, if the court ordered 30 days of fines, then the number of days to be served would be 30, as would the number of days' community service.

A Day Fine system should be introduced in England and Wales.

- Day Fines would need to be restricted to those offences that would go to court. Fixed penalty and minor offences, where the offender is not normally in court, should be excluded. This would avoid excessive fines for very low level crimes.
- They offer a transparent link with ability to pay – and so give sentencers the ability to impose credible punishment for offenders.
- Those failing to pay their fine would face a prison sentence based on the number of unpaid days.
- The current maximum deduction from benefit for fine payment (£2.70 a week) should be increased and the priority order for deductions from benefit should be reconsidered.

3. More demanding community sentences

Community sentences should be made more demanding and the new Criminal Justice Act can help make this a reality.

- At present, only 10 per cent of those given a community sentence receive intensive rehabilitative programmes⁶⁵.
- With the use of fines rebuilt, many fewer low risk offenders would need community sentences, which could instead be concentrated on medium and high-risk offenders.

The Criminal Justice Act introduces a generic community sentence (replacing the existing range of orders). There should be three levels within the new sentence – based on a risk assessment of offenders:

- **Level 1 – Community Punishment** – involving the local community but more visible than current sentences in the sense that communities would have a say in and be much more aware of, the work completed by offenders.
- **Level 2 – Community Rehabilitation** – tackling offenders' risk-assessed needs including education, drugs, thinking and behaviour. It would include work for the community, so that there is a punishment element. This would involve more than the current average time spent under probation supervision.
- **Level 3 – Intensive Supervision and Monitoring** – for persistent offenders. It would require a minimum number of hours of supervision a week, including attendance at programmes, as well as rigorous surveillance through tagging and, over time, satellite tracking.

4. More extensive use of electronic monitoring

There is significant opportunity to extend the use of electronic monitoring.

- Electronic tagging is already extensively used to manage offenders in the community. Over 70,000 offenders have been tagged through the Home Detention Curfew scheme.
- Tracking technology (using GPS satellite technology) offers more detailed monitoring of offenders in the community.

Satellite tracking has been successfully used with large numbers of dangerous offenders in the United States.

- 20,000 offenders have been monitored using satellite tracking technology in the United States. In Florida, the system is used to monitor dangerous sex offenders.
- Offenders can be tracked 24 hours a day either in real time (active tracking) or with information provided at the end of each day (passive tracking). An alert is activated if an offender departs from an agreed schedule or they enter an exclusion zone.

- The whereabouts of offenders are known and their probation officer can communicate with them at any time. This can then be mapped against known crimes.

Satellite tracking should be used more extensively in England and Wales.

- It would help control the movement of offenders. Surveillance would need to be tough and could include house arrest. The regime would be reduced over time if offenders comply with the regime.
- Monitoring technology would help to ensure offenders attend work or rehabilitation programmes⁶⁶.
- The system would be used to provide the police with information on the behaviour of persistent offenders.

It is important not to over-hype the technology, which is an aid to supervision and does not provide complete control. However, this would still be an improvement on current levels of monitoring.

5. Greater sanctions and help for persistent offenders

There needs to be a more sophisticated approach to managing persistent offenders.

Persistent offenders need to know that they will be punished more severely.

- There needs to be a clear gradient of sentencing severity, which increases with the number of previous offences. This will range from pre-court diversions, through to fines, community sentences and ultimately custody.

There needs to be a consistent approach to ensure that the liberty of persistent offenders is progressively restricted.

- There should be greater use of curfews and house arrest.
- Greater use should be made of electronic monitoring, including satellite tracking for highly persistent offenders.

Strong links need to be forged between prison, probation and the other criminal justice agencies (set out in detail in Chapter 9).

- There needs to be a clear overall approach to managing the offender from bail to resettlement.
- Building on recent progress, there should be more intelligence exchanged between probation and the police to identify those at high risk of re-offending. This collaborative approach is taken in areas such as Avon and Somerset today.

Once identified, persistent offenders should have priority access interventions to help to reduce re-offending (in particular, drug treatment).

- There is a significant overlap between the persistent offender and serious drug using population. Early data from OASys shows that 53 per cent of prisoners

and a third of the probation caseload have drug treatment needs but analysis of arrest data suggests this is an underestimate⁶⁷.

- Whilst there may be gains from the strict management of drug offenders, there is a risk of rapidly increasing the prison population. In California, almost 70 per cent of prison sentences are for breach of probation conditions (the majority being failed drugs tests)⁶⁸.

6. More effective use of custody

Custody should be recognised as the ultimate sanction and as such be reserved for the most serious, dangerous and highly persistent offenders.

- Lower risk offenders would be more effectively punished through restrictions of liberty in the community than through short prison sentences.
- There is no convincing evidence to suggest that small changes in the use of custody and sentence length are likely to have any significant impact on crime. There is no evidence that, say, a 15 month sentence is any less effective than a 18 month sentence in terms of reducing re-offending.
- Given the current level of the prison population, there is no convincing evidence that further increases in the custody rate or sentence length will significantly reduce crime.
- At present the only rationale for significantly increasing the number in custody is if we arrest and convict more offenders.

7. A NEW ROLE FOR THE JUDICIARY

There needs to be greater emphasis on judicial self-governance, ensuring compliance with guidelines. In the short term, when capacity is fixed, the Sentencing Guidelines Council needs to provide guidance that takes account of the capacity of prison and probation. Over the medium term, the Sentencing Advisory Panel needs to provide evidence on what works to reduce crime and increase public confidence. This will form the basis for adjusting the capacity of prisons and probation.

Judicial self-governance

Judges and magistrates need to recognise their responsibility to ensure the effective use of prison and probation. This includes:

- Greater consistency of sentencing practice in relation to sentencing guidelines.
- Greater provision of information on individual sentencing practice and its impact on re-offending.
- Sentencing guidelines informed by evidence of what reduces offending and makes cost effective use of existing capacity.

New roles and responsibilities

In the short term, the capacity of correctional services cannot be significantly increased. It takes three to six years to build a prison⁶⁹ and two years to train a probation officer.

- The Sentencing Guidelines Council⁷⁰, with the Rules Committee⁷¹, needs to ensure better consistency in sentencing practice. This can be enforced through the greater provision of information and professional training and development.
- The Sentencing Guidelines Council needs to have responsibility for using the existing capacity of correctional services to the best effect.
- The Council, as its first task, would need to develop quickly a comprehensive set of guidelines (which would require additional resources). This could be based on the approach taken by the Virginia Sentencing Commission⁷².
- Each year the Council should discuss the priorities for sentencing practice with the Home Office. It would then issue guidelines that ensure offences are treated proportionately to their severity, are informed by evidence on what reduces offending and make cost effective use of existing capacity.

This would require a new role (with additional resources) for the existing Sentencing Advisory Panel⁷³.

- The Panel would have responsibility for independently projecting future demand for prison and probation.

- The model underlying this would need to be shared with the Home Office (and the rest of the Criminal Justice System), although the Panel would maintain responsibility for final projections. It would also work with the services to produce evidence on the effectiveness of different sentencing options on reducing crime and maintaining public confidence.
- The Panel would need to provide judges and magistrates with accurate and up-to-date information on their sentencing practice and the impact on re-offending (which will need to be supported by appropriate technology).

Unless this approach is adopted, the demand for prisons and probation will continue to be poorly targeted. Demand is likely to continue to exceed capacity and any additional investment will not be used effectively.

Investment decisions based on evidence

In the medium term, the capacity of correctional services can be changed in terms of scale and composition.

- The Sentencing Advisory Panel, working to the Sentencing Guidelines Council, would provide evidence on the efficacy and cost-effectiveness of sentences in reducing crime and maintaining public confidence.
- This evidence would form the basis of a dialogue with the Home Office on sentencing strategy and help inform decisions on capacity. This would help ensure the most effective targeting of correctional services.

If there were new and convincing evidence on interventions that reduce crime then additional resources would need to be found (for example, if greater use of custody was found to significantly reduce crime, more prisons would need to be built).

8. A NEW APPROACH TO MANAGING OFFENDERS

A National Offender Management Service should be established, led by a single Chief Executive, with a clear objective to punish offenders and help reduce re-offending. Within the service there should be a single person responsible for offenders. This would be separate from day-to-day responsibility for prisons and probation. This new structure would break down the silos of the services. It would ensure the end-to-end management of offenders, regardless of whether they were given a custodial or community sentence.

Despite significant improvements within the services, problems remain

Increased investment since 1998 has delivered significant improvements in the work of both the prison and probation services.

- In the Prison Service, measures to improve decency have been implemented. Stopping out was abolished in 1996 and compliance with health care standards has increased.
- There have been significant improvements in the provision of constructive regimes within prison. For example, 41,300 Basic Skills awards were achieved last year (43 per cent above target)⁷⁴.
- The creation of the National Probation Service has brought greater consistency and innovation to a previously fragmented service.
- The National Probation Service has seen the introduction of new services, including the Multi-Agency Public Protection Arrangements (MAPPA) work with dangerous offenders and the new Intensive Change and Control Programme.

However, despite improvements in both services, access to services such as drug treatment and education depends more on whether an offender is sent to prison or probation, rather than their individual needs.

- With the increase in the number of short-term prisoners and large numbers of transfers during the prison sentence, many offenders are not in the same place for long enough to receive effective interventions. However, often it is these short-term prisoners that would most benefit from interventions. For example, Home Office research indicates that drug misuse is most prevalent among offenders sentenced to less than a year⁷⁵.
- In probation, the interventions available are largely dependent on the court order issued. For example, someone given a Community Punishment Order is unlikely to have access to suitable rehabilitation programmes, irrespective of their needs.
- The quality of interventions varies greatly depending on the prison or probation area to which an offender is sent. This was highlighted by the latest HM Inspectorate of Probation annual report⁷⁶, whilst the National Audit Office reported in 2002 that "a prisoner's access to programmes still owes much to where they are sent"⁷⁷.

The problem is particularly stark for those offenders who move from custody into community supervision.

- Programmes and interventions received in prison are often not followed-up in the community. This is compounded by the absence of a national resettlement strategy⁷⁸.
- Information sharing on offenders between the services is often poor. Prison and probation operate different systems, with different ways of capturing data. The organisational boundaries also raise legal issues – such as data protection concerns.
- No single organisation is ultimately responsible for the offender. This means that there is no clear ownership on the front line for reducing re-offending.

A new approach for managing offenders

The existing organisations need to be absorbed within a new service to ensure:

- A system focused on the end-to-end management of offenders throughout their sentence – with a clear responsibility for reducing re-offending two years after the end of the sentence.
- The risk-assessed use of scarce resources, through the use of a system based on improved information.
- More effective service delivery can be achieved through greater contestability, using providers of prison and probation from across the public, private and voluntary sectors.

National Offender Management Service

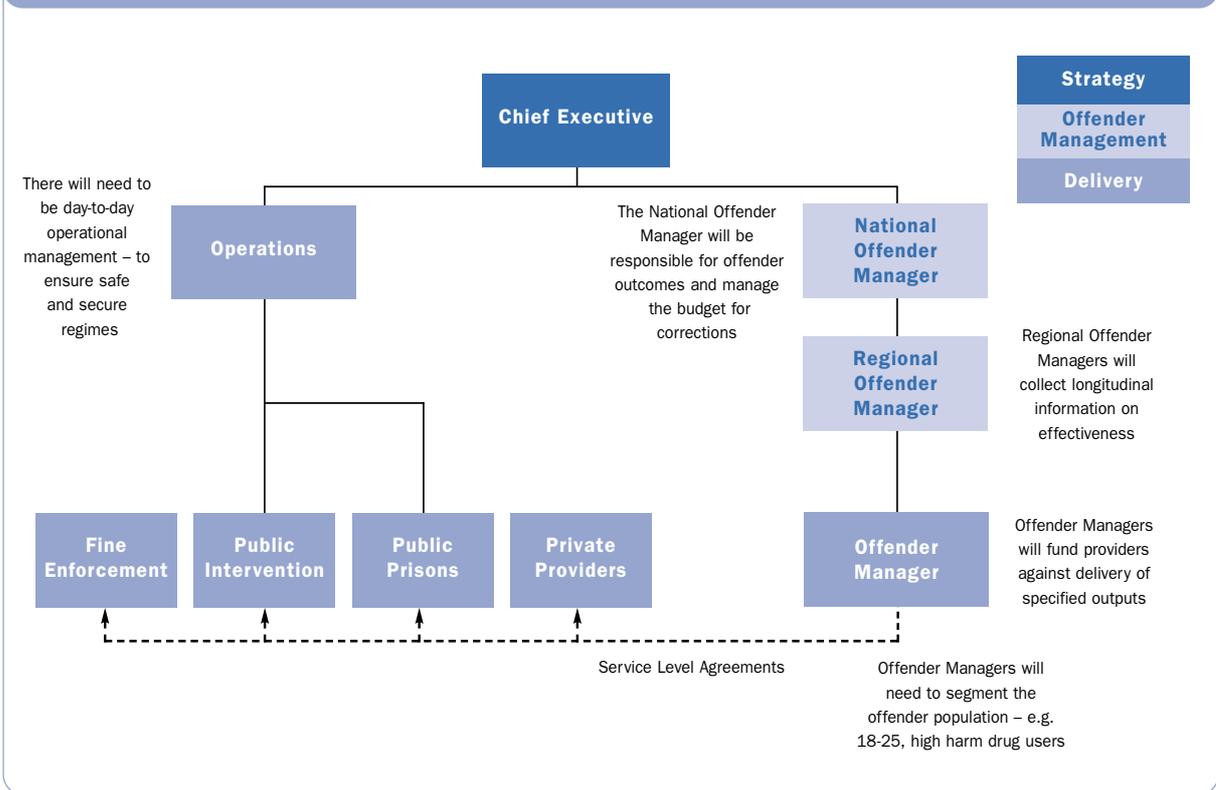
The delivery of rigorous sentences will need a clear focus on managing offenders, the targeted use of resources and greater contestability.

- A National Offender Management Service (NOMS) should be established, accountable to Ministers for punishing offenders and reducing re-offending.
- This would restructure the current activities of prison and probation to provide the end-to-end management of offenders, regardless of whether they are given a custodial or community sentence (see Figure 4 – opposite).

There should be a single Chief Executive to lead the service.

- He or she would be accountable to Ministers for the delivery of offender outcomes and the efficient operation of the public sector providers.
- He or she would have overall responsibility for the strategic development of the sector. This would include developing policy and standards, the provision of a shared offender database, strategic finance and HR.
- He or she would agree operating targets and annual plans with the operational heads.
- He or she would have responsibility for ensuring contestability in the provision of prison and probation by attracting new providers into the market, through a planned programme of market testing.

Figure 4: STRUCTURE OF NOMS



- The Minister would chair an executive board, supporting the work of the Chief Executive, which would include a number of independent non-executive directors (potentially including a member of the judiciary).

The Chief Executive would be the voice of the service.

- He or she would need to sit on the National Criminal Justice Board to ensure that the strategy for managing offenders supports the rest of the work of the Criminal Justice System.
- He or she would also need to work closely with the senior members of the judiciary and sit as an observer on the Sentencing Guidelines Council. This would help provide feedback to the judiciary and magistracy on the capacity of the Service to deliver. Crucially, it would also ensure that the Service could understand the needs and concerns, and win the confidence of, sentencers.

Responsibility for offenders

Within the Service there should be a National Offender Manager – reporting directly to the Chief Executive – who would have responsibility for offenders.

- The National Offender Manager would be responsible for the target to reduce re-offending and have control of the total budget for managing offenders.

Rather than being directed centrally from Whitehall, this responsibility should then be devolved to the regions.

- There should be Regional Offender Managers in the nine English regions and also for Wales. They would be responsible for the end-to-end management of offenders in their region and would report to the National Offender Manager.
- The Regional Managers would contract with the providers of prison places, community punishment and interventions (such as basic skills or health) – whether in the public, private or voluntary sector. They would fund the delivery of specified contracts – based on evidence of what works to reduce re-offending.
- This would create a strong incentive to try to innovative new approaches to managing offenders, rather than just seeing the world through the prism of prison and probation.

Operations separate from offender management

The Regional Offender Managers would not line-manage the providers of prisons, community punishments and interventions.

- They would have a purely contractual relationship, with services funded according to the delivery.
- The Regional Offender Managers would need to treat all providers – whether in the public, private or voluntary sectors – on an equal basis. This would dramatically increase the level of contestability in the system.

The public providers of prison places, community punishments and interventions would have a separate line management structure within NOMS.

- The heads of these services would report directly to the Chief Executive. The Chief Executive would hold them accountable for the efficient operation of the services, whilst they would be accountable, for the delivery of contracts, to the Regional Offender Managers.

The inspection regime would need to be aligned to this new structure.

Prison

This new structure would radically change the nature of public sector prisons.

- There would be a public sector prison service operating as a delivery arm of the new Service.
- The head of public sector prisons would be responsible for delivering the contracts agreed with the Regional Offender Managers. These contracts would specify the types of interventions to be provided.
- The head of public sector prisons would have day-to-day operational responsibility for running the business on the basis of operating targets and an annual plan agreed with the Chief Executive.
- The public sector prison provider, as an operating arm of NOMS would not have policy responsibility, other than for its own operational policies which support effective and efficient delivery. This would put them on a level playing field with other providers.

- Estate management (but not minor maintenance), population management (and other activities that apply to both public and private prisons) would be managed directly by the Chief Executive.

The Chief Executive of NOMS would have responsibility for ensuring contestability in the provision of custodial places.

- He or she would be able to replace the management of failing prisons, as with the current performance testing regime.
- He or she would run the competition to manage any new prisons.
- He or she would have a planned programme of market testing.

There should be consideration of innovative options to increase contestability. This could include fixed term management contracts for all prisons, which would be open to competition at the end of the term.

Probation

Within NOMS there would be a clear separation of the supervision of offenders (offender management) and the provision of punishments (community work) and interventions in the community (e.g. basic skills training and drug treatment programmes).

The Regional Offender Managers would manage the supervision of offenders.

- Offender managers would work to the Regional Offender Managers to provide the end-to-end supervision of offenders (in custody or in the community). The offender managers would be the key part of the system – ensuring offenders meet the conditions of their sentence and receive the help they need to reduce re-offending.
- Offender managers could be from a range of providers in the public, private or voluntary sector. Some may specialise in specific types of offenders (for example drug users) or in particular areas (for example urban or rural locations).
- Regional Offender Managers would then monitor the performance of the offender managers. This could be measured by looking at re-conviction rates, for potentially two years after the end of the sentence.
- Initially, the majority of offender managers would be from the public sector. However, over time, new providers will emerge.

There would be a separate function of community interventions and punishment.

- The operational head would report to the Chief Executive of NOMS.
- The operational head would be responsible for delivering the contracts agreed with the Regional Offender Managers.
- The operational head would have day-to-day operational responsibility for running public sector interventions and punishments, based on operating targets and an annual plan agreed by the Chief Executive.

- The operational head would not have any policy responsibility, other than for internal delivery with the public sector.

As with prisons, the Chief Executive of NOMS would have responsibility for ensuring contestability. This would include replacing failing managers, running competitions for new providers and a planned programme of market testing.

Fine Collection

Over time, Regional Offender Managers should have responsibility for fine collection.

- Fines are a sentence of the court and so NOMS should have responsibility for ensuring they are enforced.
- This does not require those currently working in the Courts and collecting fines to be moved to NOMS. The key is that fines are enforced. The Offender Managers' focus is on the outcome and if performance does not meet necessary levels, managers could contract with other providers.

Youth Justice Board

The success of the Youth Justice Board means that it should remain an independent body with responsibility to advise the Home Secretary. Funding should flow through the office of the Chief Executive of NOMS, who, as now, would have oversight and monitor programmes with, and on behalf of, Ministers.

9. IMPLICATIONS

The proposals will target resources more effectively and should keep numbers under supervision lower than currently forecast. However, this relies critically on the Sentencing Guidelines Council. At the same time there is the issue of old and unsuitable prisons. Depending on the business case, they could be replaced by new, larger and more suitable institutions, providing better value for money.

Effective use of resources

These proposals will ensure that all serious, dangerous and highly persistent offenders receive a custodial place.

- Less serious offenders will be more effectively managed through intensive community supervision, which will include satellite tracking, reparations and interventions to help reduce re-offending.
- Very low risk offenders – those convicted of less serious offences, with a low probability of re-offending – will be fined or required to pay back to the local community through pre-court diversions.

On current forecasts, by 2009 there will be 93,000 offenders in custody and 300,000 under supervision⁷⁹.

Implementing the proposed package in this report would ensure more effective targeting of resources and help keep numbers at lower levels – estimated at under 80,000 offenders in custody and 240,000 under supervision, whilst increasing the effectiveness of offender management.

This would be achieved through preventing further sentencing drift, increasing the use of fines and intensive community sentences and marginal reductions in sentence length.

This will have resource implications, though less than if policy continued on current trends.

Risks

However, the package is crucially dependent on the Sentencing Guidelines Council managing sentencing practice and in particular rebuilding the use of fines. This is a significant change. There could be transitional issues with the prison population in the short term before this package of measures has effect.

Old and unsuitable prisons

There is also the issue of replacing old and unsuitable prisons. Some of the

prison stock in England and Wales is extremely old, dating back to the 18th century. However, some of the most unsuitable prisons date from the 1960s and 1970s.

There is a case for replacing these unsuitable prisons, although any build programme would need to be justified by a detailed business case. Early work should focus on the women's estate.

10. NEXT STEPS

The first step should be to set up the implementation team, who will need to set out a timetable for the next four years.

The implementation team

The first step should be to set up a project team, reporting to a Project Board. This should consist of senior representatives from the Home Office, Department of Constitutional Affairs, Her Majesty's Treasury and No. 10. The existing Correctional Services Board, which is chaired by the Minister for Correctional Services, should be used. The non-executive directors would provide external, independent challenge. The Home Secretary and ultimately the Prime Minister should hold the Minister responsible for implementation.

Within one year:

- The National Offender Management Service would be established, with an initial focus on achieving efficiency savings. This would include reviewing the use of pre-sentence reports and merging back-office functions between the Home Office, Prison Service and National Probation Service.
- The Sentencing Guidelines Council would stabilise sentencing practice and look to rebuild the use of fines. The Sentencing Advisory Panel would be given the capacity to forecast demand and develop the evidence base on the efficacy of different sentences.

Within two years:

- The Regional Offender Management structure would be established with the full use of Service Level Agreements with providers of custody and interventions.
- The Sentencing Guidelines Council would have issued guidelines on the new sentences (including Day Fines). The Sentencing Advisory Panel would have produced evidence to inform the next spending review.

Within five years:

- Contestability would have been introduced across the whole of prisons and community interventions, with outcome based contracts.
- The Sentencing Guidelines Council would be issuing annual guidelines informed by Government priorities to manage the demand for prison and probation, ensuring the cost-effective use of capacity.

11. CONCLUSION

This package will provide a full range of tough, credible and effective sentences, will ensure the judiciary are able to manage demand and ensure services are focused on the end-to-end management of offenders.

This is a radical package that offers a new approach for dealing with offenders to focus on reducing crime and maintaining public confidence.

Tough and rigorous sentences

The Criminal Justice Act provides a platform for major reform and the more effective management of offenders to reduce crime and maintain public confidence.

- Judges and magistrates continue to need to have a full range of tough, credible and effective sentences that are be enforced.
- Sentences need to reflect the seriousness of the offence and the risk of re-offending – with better targeting of serious, dangerous and persistent offenders.

This means:

- Taking very low risk offenders out of the court system and punishing them in the community.
- Income related fines for low risk offenders.
- Demanding community sentences for medium risk offenders.
- Greater control and surveillance (including satellite tracking) of persistent offenders, combined with help to reduce re-offending.
- Custody reserved for serious, dangerous and highly persistent offenders.

A new role for the judiciary

New roles and responsibilities need to be established for the judiciary.

- Judges and magistrates need to continue to be able to make entirely independent sentencing decisions in individual cases.
- The judiciary needs to ensure the consistent and cost effective use of prison and probation capacity.

The new Sentencing Guidelines Council should have greater responsibility for ensuring the effectiveness of sentencing.

- Each year the Council should issue guidelines that ensure that offences are treated proportionately to their severity, are informed by evidence on what reduces offending and make cost effective use of existing capacity.
- The Sentencing Advisory Panel (which works to the Council) should be given responsibility for independently projecting future demand and should produce

evidence on the effectiveness of different sentencing options in reducing crime and maintaining public confidence.

If there were new and convincing evidence on interventions that reduce crime then additional resources would need to be found (e.g. if greater use of custody was found to significantly reduce crime, more prisons would need to be built).

A new approach to managing offenders

Building on the significant improvements in delivery over the last seven years, a new approach is needed to focus on the management of offenders.

- Services need to be focused on the management of the offender throughout sentence, driven by information on what works to reduce re-offending.
- Service delivery can be further improved through greater use of competition from private and voluntary providers.

This means:

- The establishment of A National Offender Management Service – replacing the Prison and Probation Services, with a single Chief Executive, accountable to Ministers for punishing offenders and reducing re-offending.
- Within the new Service there should be one person – the National Offender Manager – who is responsible for reducing re-offending and supported by Regional Offender Managers. They would supervise offenders and commission custody places, fine collection and interventions whether in the public, private or voluntary sectors.
- The Regional Offender Managers would break down the current silos of prison and probation and work across the two services. They would fund the delivery of specified contracts – based on evidence of what reduces re-offending – rather than leaving the services to decide for themselves what to deliver.

NOTES AND SOURCES

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- ⁶ Prison statistics, Bureau of Justice Statistics, US Department of Justice.
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- ¹⁰ Table 5.6, Criminal statistics England and Wales 2001, Home Office.
- ¹¹ Table 5.6, Criminal statistics England and Wales 2001, Home Office.
- ¹² Table 5.11, Criminal statistics England and Wales 2001, Home Office.
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- ¹⁴ Home Office analysis.
- ¹⁵ Table 7.13, Criminal statistics England and Wales 2001, Home Office.
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- ¹⁹ Strategy Unit Analysis of Magistrates' Association Guidelines.
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- ²³ Table 3.03, Crime in England and Wales 2002/03, Home Office.
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- ³² Table 1.5, Prison statistics England and Wales 2001, Home Office.
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- ³⁴ Strategy Unit estimate, based on a range of sources.

- ³⁵ Criminal Justice – The Way Ahead, 2001, Home Office.
- ³⁶ "Preventing Crime: What Works, What Doesn't, What's Interesting", Sherman, 1997; and "What Works in Reducing Criminality", McGuire, 2000.
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- ³⁹ Figure 8.4, Supplementary Volume, Crime in England and Wales 2001/02, Home Office.
- ⁴⁰ Analysis based on Home Office internal data.
- ⁴¹ Table 1.6, Prison statistics England and Wales 2001, Home Office.
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- ⁴⁴ Prisoners' drug use before prison and the links with crime, Liriano and Ramsay, in Home Office. Research Study 267, Prisoners' drug use and treatment: seven research studies, 2003.
- ⁴⁵ HM Inspectorate of Probation Annual Report 2002/03.
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- ⁵³ This could reflect other differences – such as police detection rates or the confidence in the local probation board. However, analysis of the data suggests that this is not the case.
- ⁵⁴ Home Office data based on Criminal Statistics England and Wales.
- ⁵⁵ Table 6.05, Recorded Crime Statistics, Home Office.
- ⁵⁶ There is limited scope to further increase capacity through the use of house blocks and Ready To Use (RTU) units. However, they are not cost effective and are not always able to be built in suitable locations.
- ⁵⁷ HM Prison Service data.
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- ⁵⁹ This is set out in detail in "Reducing re-offending by ex-prisoners", SEU, July 2002.
- ⁶⁰ The Operational Performance of PFI Prisons, NAO, June 2003.
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- ⁶³ Strategy Unit meetings in Germany.
- ⁶⁴ Home Office data on Durham OASys pilot 2001-03.
- ⁶⁵ Strategy Unit analysis based on National Probation Directorate internal data.

⁶⁶ Bonta, Rooney, Wallace-Capretta 1999.

⁶⁷ Home Office data on Durham OASys pilot 2001-03.

⁶⁸ Data Analysis Unit, Office of Correctional Planning, California Department of Corrections, 2003.

⁶⁹ There is limited scope to further increase capacity through the use of house blocks and Ready To Use (RTU) units. However, they are not cost effective and are not always able to be built in suitable locations.

⁷⁰ The Sentencing Guidelines Council was established in Criminal Justice Act. It will take over the role of the Court of Appeal and the Magistrates' Association in issuing sentencing guidelines to magistrates and judges. The Council, following advice from the Advisory Panel can issue guidelines on specific offences, groups of offences or allocation decisions. The Council must have regard to a range of factors including consistency, current practice, cost effectiveness, public confidence and recommendations of the SAP.

⁷¹ As established in the Criminal Justice Act (2003).

⁷² For more information, see www.vcsc.state.va.us.

⁷³ The Sentencing Advisory Panel was set up in 1999 to advise the Court of Appeal on guideline judgements. It will continue in its role when the Sentencing Guidelines Council is initiated. The SAP can be asked to address crime groups by the Home Secretary, the Guidelines Council or can initiate work itself. If the Guidelines Council wishes to amend guidelines it must first notify the Advisory Panel.

⁷⁴ HM Prison Service data.

⁷⁵ Prisoners' drug use before prison and the links with crime, Liriano and Ramsay, in Home Office Research Study 267, Prisoners' drug use and treatment: seven research studies, 2003.

⁷⁶ HM Inspectorate of Probation Annual Report 2002/03.

⁷⁷ "Reducing Prisoner Reoffending", National Audit Office, 2002.

⁷⁸ Reducing re-offending by ex-prisoners, SEU, July 2002.

⁷⁹ Based on Home Office projections.

