



changing lives  
reducing crime

# Developing proposals for sentencing and achieving a rehabilitation revolution

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## Submission to Ministry of Justice

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Nacro Policy Team, August 2010

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# 1 Reform of sentencing and the rehabilitation revolution

## ● Introduction

In this paper Nacro is responding to a letter from the Under Secretary of State for Justice, Crispin Blunt MP, inviting us to provide comments to inform the development of proposals for reform of the criminal justice system. We have tried to offer practical solutions which address the specific issues raised in the communication of 8 July. However, we have also drawn on research findings in order to ensure that our submission is based on expert knowledge and evidence about what is likely to be effective. On sentencing policy, we have considered proposed penalties on the basis of three principles: **justice, effectiveness** and **cost**, taking account of previous expert commentators such as Halliday and Auld. With regard to the rehabilitation revolution we have sought to avoid reinventing wheels by stressing our support for some of the detailed work that has already been undertaken by the House of Commons Home Affairs and Justice Committees.

You will notice that we have not addressed youth crime in this paper. In the interests of brevity, it was felt that including children and young people in this paper would make it very long and Nacro believe that, how we respond to children and young people in trouble should be completely separate to the adult system. Nacro believes that, any youth justice system needs to adhere to certain principles, that it needs to comply with the United Nations Convention of the Rights of the Child (UNCRC), children's welfare should be the paramount consideration and the age of criminal responsibility should be raised. Nacro is keen to assist Government in its work in this area and will continue to participate in any groups/Forums brought together for this purpose. If we can help further we would be happy to do so. We have attached two papers, one on young offenders, the other on courts and sentencing in the YJS.

## 2 Sentencing

### ● Penalties: In and out of court

Underlying all of our thinking is 'value for money'. In sentencing terms we know that exercising the custody option is the most expensive and arguably the least effective and thus, does not represent value for money. Equally a disposal that does not involve the judicial process and avoids custody is the least expensive and may be effective but not necessarily appropriate.

There is a constitutional argument that demands that wrongdoing has to be arbitrated by the State and any (or any further) erosion of the principle by allowing say, the police to decide upon a non-judicial disposal and then implement a form of punishment, is a constitutional aberration. Hence the reservations expressed, notably by magistrates, to suggestions by the Home Secretary that the police should use their common sense.

In between the two is a range of available penalties some of which are expensive and ineffective (*viz* short term sentences) and unjust (*viz* IPPs).

So perhaps the first task is to assess any proposed penalty on the basis of its

- **Justice:** Including its proportionality.
- **Effectiveness:** Its impact on an offenders propensity to re-offend
- **Cost:** Does it offer value for money?

Such assessments give rise to three other considerations.

The first is the notion which currently holds sway that the justice system has to be victim centric. In the way this has been interpreted, it has distorted the justice system by emphasising punishment and failing to recognise that the interests of victims and offenders are not polarised and that some victims need less attention than others.

The second is the question of how sentences are monitored. Except in the community court in North Liverpool and in some specialist courts, sentences are not monitored by sentencers. When breaches occur and an offender is returned to court, it is not necessarily the same sentencer who deals with the breach; and even when it is the question as to why the original sentence was ineffective, is not canvassed; the only issue is the imposition of further measures to mark the breach – in large measure punitive ones. There is a substantial argument in favour of judicial oversight of case progression as understood by the Halliday principles of accountable sentencing

The third requires an imaginative consideration of who might properly be involved and contribute to the punitive and restorative elements of a measure. Of course there is no logic to an argument that punitive and restorative elements are opposed to each other. Punishment can either be negative or positive and there can be little argument that negative punishment is entirely unproductive and is simply likely to

reinforce resentments and anger and fail in any meaningful way, to be reformative. Historically the contributors to the implementation of any measure have been confined to the experts. There is a pragmatic and economic argument for saying that the contributors should extend to the wider community in general and to the VCS in particular (see Nacro's Connect and Milestones Projects).

## ● The adult and youth sentencing framework

The cost of youth justice is £4 billion per annum in the UK.<sup>1</sup> Some 42% of first time offenders are aged between 18 and 24 years – contributing substantially to annual cost of adult justice.

The Transition to Adulthood (T2A) campaign features in the report of the Independent Youth Crime Commission and some of the Report's recommendations draw on campaign information. Nacro is a member of the T2A Alliance, and we support the recommendations for change put forward in the Alliance publications.

We particularly support the notion of the Enhanced Youth Court to replace all appearances by youths in adult magistrates' courts and in Crown courts as at present in some cases.

We also support the notion of extending the principles of youth provision for all those between the ages of 18 and 24 years both in terms of the process system and the approach to sentencing. In order to facilitate proper provision from both the statutory sector and other parts of the public sector we recommend the use of common terminology and the expression 'young adult' for all those within the 18 to 24 age range to allow better access and to promote easier understanding. Other and more difficult issues to address are:

- Shared access to professionals delivering services to offenders with identified leads
- A common approach to data sets including access and interpretation
- Disposals for offenders based on the assessment of the maturity of the offender through a multi agency approach rather than an offenders age with an outside limit of 24 years as the cut off point

The Bradley Recommendations and those of the Independent Youth Crime Commission should apply to the criminal justice system as it impacts on all those aged 24 years or less. We recite the most important recommendations as follows;

- All outcomes should improve well being and promote the self esteem and welfare of the offender through normalisation, mainstreaming and non stigmatisation.
- No measure should do harm to the offender.
- All measures should promote improvements in community life and reduce the harm to communities caused by crime.

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*The Report of the Independent Commission on Youth Crime and Anti-social Behaviour, p8*

We believe that the adoption of a single justice system for youth and young adults properly reflects the criminogenic needs of this group and avoids the present artificialities, inconsistent responses and waste of resources occasioned by the present artificial demarcations. It follows that if we are right there will be the prospect of less crime, a reduction in the re-offending rate and a saving of significant proportions to the public purse. Implicit in what we say is the adoption of a restorative justice approach and an emphasis on the development of diversion services, including the further development of mental health diversion services. Specifically the following issues require attention to make such a new system viable

Short custodial sentences must be abolished as recommended by The Youth Crime Commission for Youth Justice but for all young adults. (A similar argument is made for total abolition as short custodial sentences represent a criminal justice failure from every perspective.) Similar arguments apply to Indeterminate Sentences for Public Protection (IPPs). Abolition would permit the restoration of judicial discretion in sentencing and facilitate a more nuanced approach.

We support the notion of examination of the offence rather than placing total and exclusive reliance on an offenders' previous record (for risk assessment). Whilst prior conduct is vital in making a proper assessment the mere fact of previous conviction should not precipitate and predispose a recommendation for custody in 60% of the cases where previous convictions exist.

Increased bail support linked to police stations to reduce the use of custody remands, which in turn increase the propensity for use of custody in sentencing, should be available on a 24/7 basis and not least to service the requirements of out of hours courts.

Finally we revert to the issue of an holistic approach – coupled with the concept of Total Place. Proper judicial disposal relies on the active contribution of non-statutory agency service providers – including health, accommodation and education providers. Children's legislation rightly focuses on the primacy of a child's welfare and to include the quality of life afforded by the child's environment. Equal consideration should be given to this focus in criminal justice, and this means that outside services have to be coherent and delivered in a timely fashion. They should also be tiered and delivered on a multi agency approach. That is far from so at present with mental health and substance misuse provision failing to match the requirements of the courts because of lack of accessibility and a preferred option for disposal being thus denied. And in so far as proper disposal requires changes to the environment in which the offender resides what is to happen if there is failure and Total Place assessment is not realised? Who takes responsibility and who bears the cost of failure? None of this is cost free and realisation of a common objective will mean a much less silo approach to budgets. But what we do know is that radical change is required to remedy the abject failure of current policy and to meet the challenges ahead

## ● The choice of court

Magistrates' courts deal with 94% of all cases. Magistrates' courts are cheaper to administer than crown courts. Historically, the jurisdiction of magistrates has been limited only by the imposition of a sentence restriction – viz no more than six months custody for a single offence and a maxima of 12 months consecutive sentences for the commission of two or more offences.

The question has been canvassed; should magistrates' courts undertake more work than currently, and if so (because for instance, the crown court caseload is over burdensome) should magistrates be given greater powers of sentencing, to reflect the prospect of having to deal with more serious cases?

However, there is a need to ask; why is it that we are in this position. If we can answer that satisfactorily, it may become unnecessary to address the sentencing powers of the magistrates' courts whilst remaining focused on what work the magistrates should do.

The court system is at breaking point for three reasons; caseload; the sentence ratchet effect; administrative procedures.

As to caseload, the UK has seen a substantial increase in its population over the last 20 years. This has contributed to an increase in the numbers of cases processed through the criminal justice system. The last 20 years has seen an explosion of criminal law legislation with a new offence created for every day over the last 10 years of the last government's administration. The Crown Prosecution Service operates two tests in any decision to prosecute; sufficient evidence to secure a conviction and public interest. The latter has been widely interpreted and the result has been an overwhelming propensity to prosecute.

There is an argument for saying that the public interest test should be revisited. Reduction of the caseload should be an aim to allow the proper functioning of the judicial system. This has to be achieved whilst at the same time ensuring the confidence of society that wrongdoing will always be properly addressed, and that means making the argument that the response to wrongdoing is simply to send people to court.

Coupled with this should be a moratorium on the creation of further offences; there is an adequate sufficiency – not to say surplus, already. And of course the legislation should be combed to eliminate all those offences which represent a nuancing of existing crimes but which add nothing substantial.

It is clear that sentencing practices have radically changed over the last 20 years. Anecdotal evidence suggests that a Section 18 offence of grievous bodily harm that might properly have attracted a sentence of six years imprisonment in the past, now regularly receives almost double that. The change has been the result of a combination of political pressure fuelled by the tabloid press and primary and secondary legislation. Mandatory sentencing coupled with guidance from the Sentencing Council has directly caused the increase in custody disposals by the court and to which there is a substantial attributable cost within the court system itself – not counting of course the enormous cost of imprisonment itself. We believe that the orientation of the Sentencing Council has to change to reverse the sentence ratchet effect.

In both the crown and magistrates' courts, the issue of case management is crucial. Efficient case management has a cost benefit; reduces the impact of excessive caseload; improves the quality of justice; and adds to public confidence. There is a compelling argument for codification of the criminal law to assist proper case management as suggested by Lord Justice Auld.

Taking all the above into account, the issue of sentencing powers of magistrates to enable them to accommodate more cases becomes irrelevant, whilst leaving open the question of which court does which sort of case.

At present the summary trial procedure, which is meant to denote the less serious cases, is the exclusive territory of magistrates whilst trial on indictment is the exclusive province of the crown court reserved for more serious cases. Ignoring for present purposes those cases that fall in the middle, what distinguishes a more serious from a less serious case apart from the sort of sentence it attracts? The major difference is the availability of jury trial, regarded as a constitutional right for suspects charged with more serious offences.

There is a substantial argument for looking at the whole issue of jury trial and its current constitutional relevance and any changes to which, would have a substantial impact on which court undertook which trials, and without it, this sentencing policy review may not make much difference to the question of case distribution.

So a more profitable approach may be to look at the question of trial of offences from a different perspective; namely specialist courts. We already have domestic violence courts and drugs courts and further development of these and others could be beneficial with the proper training of judges who specialise in a particular area of criminal law. To take a health analogy murder and fraud are as different as ophthalmics is from orthopaedics. We look to the development of community courts in particular, to improve the quality of outcomes from the operation of the judicial system.

### ● Sentences: Maxima and minima

We presume that consideration is being given to the prospect of framing sentences with maximum and minimum parameters for two reasons; to achieve transparency and through this flexibility, to assist the rehabilitative effect of a sentence through incentivising an offender to comply.

A number of questions arise. Will this type of sentencing be universal? How will it impact on the present regime of allowing automatic release at the half way stage for custody sentences of less than four years? How will it impact on the parole system and decisions to allow early release for sentences of over four years? Does it just refer to the custody element of a sentence or to licence provisions as well?

We agree that, for no other reason other than transparency, a sentence of three years imprisonment should actually be expressed as 18 months custody followed by 18 months licence under supervision. This was the rationale and substance of the Custody Plus proposals all of which we would like revived.

However, the principle test of sentencing should be its effectiveness in reducing re-offending and as a by product the crime rate. We believe that the principle of flexible sentencing assists this task.

We address some of the difficulties by way of the following illustration.

## Illustration

An offender commits a serious act of violence and has previous convictions for similar offences. For public protection it is thought right to impose a substantial custodial term. In this instance the sentence is a maximum sentence of seven years and a minimum of 4 years during which time the offender must show that he deserves no more than the minimum sentence by satisfying the Parole Board that he can demonstrate reform. The offender has serious mental health problems triggered by substance abuse as a child and violence offered to him by his father when he was a child.

Questions:

- 1** If the decision is made to release after four years, is that unconditional or subject to supervised licence? The time immediately after release is critical. How is this to be managed with the maxima/minima sentencing framework?
- 2** The decision is made to release after four years because the assessment is that further custody is counter productive and that without proper post-release support, the offender is a risk in terms of harm and re-offending. What mechanisms will be in place for post-release support and what happens if they are deemed inadequate?
- 3** The decision is made to keep the offender in custody after four years because reform has not been demonstrated because of the unavailability of therapy and other enabling courses. What is the offender's recourse?
- 4** The maximum sentence date is reached and the offender is discharged in the face of parole and other informed opinion that he continues to present a risk. In framing a maximum sentence is it intended that it is a determinate sentence without the prospect of post-release supervision? If so, how is the perceived risk of further offending at the point of discharge to be contained?
- 5** Does the current system of sentence discounts for early plea work in addition to a maxima/minima sentencing framework and if so how? We are concerned that a combination of the two (if intended) may defeat the effectiveness of a sentence in reducing the re-offending of the offender.

We are informed that a maxima/minima sentencing framework is being devised. We assume our questions and others will be addressed.

## 3 Rehabilitation revolution

### ● Making better use of not-for-profit sector

Since the 2002 Treasury cross-cutting review, *The Role of the Voluntary and Community Sector in Service Delivery*, there have been continued efforts and initiatives to increase the voluntary and community sector's (VCS)<sup>2</sup> role in working with offenders and those at risk to reduce crime and antisocial behaviour. At a time of shrinking public expenditure, it is crucial to consider the VCSs optimum role in delivering cost-effective services. However, to augment this role, it is vital to maintain the sector's capacity to develop new and innovative responses to offending and to influence public policy.

Despite numerous initiatives to boost capacity and increase delivery by the VCS within the criminal justice sector its overall participation remains stubbornly low: an estimated 2% of the Ministry of Justice budget (ACEVO 2010).

Nacro believes that a more effective system will be founded on commissioning that considers services impact on offending, rather than immediate costs. This shift will not only involve a technically challenging readjustment to systems, but also the political courage to look at different community provision and to shift prison from its current automatic and costly position at the heart of responses to offending.

To optimise the VCS role in reducing reoffending change is required under five headings:

- 1 Joining it up:** Involving the sector in service design, developing better partnerships and encouraging diversity
- 2 More agile commissioning:** Meeting local needs, developing joint commissioning and a focus on meaningful outcomes and value for money
- 3 Enhancing effectiveness:** Building in evaluation, assessing impact and payment by results
- 4 Innovation and influencing change:** Trying new approaches, taking risks and promoting new ideas
- 5 Meeting the cost:** Reinvesting from prisons into community provision, enhancing effectiveness and reviewing the best use of social investment mechanisms.

#### 1 Joining it up

Joining up services for offenders has been a priority for government, particularly since the Carter review (*Securing the Future: Proposals for the efficient and sustainable use of custody in England and Wales, 2007*). The ideal model

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<sup>2</sup> The VCS refers in this paper to charities and community groups, but the paper does not encompass issues around social enterprises or the statutory sector's use of volunteers.

encompasses both seamless processes through the criminal justice system and providing wraparound or personalised responses to individual offenders. The growing success of the approach – combined with police control – is demonstrated in the roll out from prolific and other priority offenders (PPOs) work and the drugs intervention programmes (DIP) through more recent integrated offender management (IOM) initiatives.

With the changes set out in this paper, the third sector could underpin a more joined up system, because it is: locally based and informed; provides a wide range of services across the system; and is good at working in partnership. Equally importantly, the sector is made up of organisations that engage with, learn from and represent the young people at risk and the offenders whose lives have to change if offending is to be reduced. The third sector can help the system join up if;

- third sector providers are involved in the process of designing services and commissioners learn from their experience
- partnerships focus on shared outcomes, underpinned by productive reporting systems and strong communication
- bidding consortia are encouraged, keeping a useful balance between competition and partnership working
- there is a breadth and diversity of provision to meet the needs of young people, older prisoners, women and people from black and minority ethnic groups.

## 2 More agile commissioning

The development of commissioning processes has been vital to ensure that services are accountable, good value and deliver against specification. Being able to participate effectively in commissioning processes is important to Nacro as a professional service provider, but we believe that more can be done to ensure that the process tests fitness to deliver essential outcomes.

The third sector can contribute more if:

- commissioning is based against outcomes and providers ability to deliver, leaving more decisions about the method of delivery in the hands of the provider
- commissioning is an assessment of which deliverer is most likely to have an impact on offending, rather than of which is offering the cheapest service
- commissioning outcomes recognise distance travelled and don't present a disincentive to work with the most difficult offenders
- local systems of joint commissioning are developed to support joined-up services that relate to local needs and existing provision
- longer contracts become the norm to allow services to become properly established and tested, while incorporating assessment and break clauses to ensure outcomes continue to be delivered.

### 3 Enhancing effectiveness

Continual improvement in commissioning against outcomes requires a better analysis of what makes a service effective. Most of Nacro's current contracts for delivering services necessarily demand extensive reporting as we are spending public money. However, there is rarely any capacity within contracts to assess the services actual impact on offending. The third sector can contribute more if:

- there is improved understanding of which services are effective in reducing offending in a variety of settings and relating to different individual needs. This might be through: embedding evaluation within all contracts, whoever runs them, to build up a national knowledge base about effective provision that could be recycled into future commissioning and delivery; or creating an Impact Fund specifically for the sector (as proposed by New Philanthropy Capital, March 2010)
- effectiveness is measured against impact on reducing risk factors affecting offending, to allow distance travelled to be measured
- there is careful consideration about the implications of commissioning based on payment by results. While recognising this might drive efficiency, this system carries risks, including favouring the commercial sector and shifting spending from provision to assessment. It is also dependent on identifying the right outcomes. Using recorded offending as a measure – apart from its arbitrariness, given much offending is not recorded – would make it difficult to allocate reward equitably or accurately to the different services that might have contributed to that result. Most importantly, any such system would have to be incredibly carefully calibrated to ensure it didn't encourage working only with the easiest cases.

### 4 Innovating and influencing change

The third sector exists to bring about change and therefore has a strong tradition of developing innovative projects and campaigning. For Nacro, the tradition of innovation continues, but is difficult within commissioned services. For instance, with funding from the Monument Trust and Northern Rock Foundation, we established successful through-the-gate support and mentoring projects for Portland YOI and prisons in the North East. However, rolling out similar services more widely would need more joined-up local commissioning between funders such as NOMS and Supporting People.

Nacro exists to further our cause of reducing crime by changing peoples lives for the better. As well as delivering the services that achieve this, we play a positive public role by lobbying for the changes to national policy and regional or local implementation that we believe would be more likely to help reduce crime.

The third sector can contribute more if:

- there is a growing shared knowledge base about effective services (see above)
- where a new need has been identified, commissioning allows risks to be taken with new services

- the third sector's advocacy and campaigning role is recognised as adding value to our provision by keeping innovation rolling and influencing the debate, particularly to ensure there is a place for effective but potentially unpopular change.

## 5 Meeting the cost

The third sector should not be viewed as a cheap option – left with only the sub-contracted crumbs from the commercial and public-sector table. Nacro believes refocusing commissioning on effective services that bring in significant long-term savings will allow the sector to play a full role delivering better value services. We also believe that the existing social investment mechanisms (Capacitybuilders, the Social Investment Bank, *et al*) should be reviewed to ensure they are as effective as possible in building the sectors capacity – particularly on how appropriate it is to support third sector organisations through loans. Beyond these points, however, we believe the biggest most immediate saving would be to transfer investment from expensive prison provision to preventive services and restorative justice and payback sentences for those in the community.

The third sector can contribute more if:

- the prison population is reduced, particularly among those serving ineffective short sentences (see recent National Audit Office report)<sup>3</sup>, young offenders, people with mental health problems, and women
- in prisons, a range of providers are commissioned to deliver resettlement programmes throughout prison sentences and into the community, thus reducing the cost of reoffending
- there is the political courage to allow robust community responses and resettlement initiatives to thrive.

## ● So how can the rehabilitation revolution be achieved?

The *First Report of the Home Affairs Select Committee, 2004*<sup>4</sup>, sets out in Chapter 17 the need for: An effective rehabilitation strategy. It goes on to say:

384. We agree with the Government that the core purpose and measure of rehabilitation must be to reduce re-offending. However, a reduction in re-offending can only be achieved through a rehabilitative strategy which reintegrates offenders into society by giving them the opportunity and assistance needed to reform.

385. An effective prison rehabilitation strategy must look not only at the offending criminal behaviour but also at the individual prisoner himself or

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<sup>3</sup> *Managing Offenders on Short Custodial Sentences* (NAO, 2010) identifies a £7-10 billion cost of reoffending. See also *Cutting Crime: The case for justice reinvestment* (Justice Committee, 2010).

<sup>4</sup> House of Commons, Home Affairs Select Committee (2004) *Rehabilitation of Prisoners, First Report of Session 2004-05*. London: The Stationery Office.

herself. A prison rehabilitation regime must, where appropriate, challenge a prisoners chaotic and deprived lifestyle by:

- investigating the prisoners background and needs in order to develop specific measures for his or her reintegration into society
- addressing offending behaviour and other deficiencies such as drug and alcohol misuse
- offering alternative life choices to the offender through the provision of education, training and work opportunities.

Further, the rehabilitation regime must be designed to deal with the different needs of different types of prisoner and the different factors affecting the re-offending of certain groups—in particular, women, young adults, black and minority ethnic groups, remand prisoners and short-term prisoners.

386. Wherever possible, offenders should be actively engaged in their own rehabilitation, and encouraged to take responsibility for themselves and their behaviour, from sentence planning through to resettlement.'

The report then lists a series of changes that if implemented could make a significant impact in achieving positive resettlement outcomes. The proposals are worth repeating at length, given the emphasis on the importance of linking offenders into mainstream services in the community and the central role for prisons and probation in brokering such services as a way of improving the present arrangements. The starting point for the House of Commons Home Affairs Select Committee is that it is imperative that resettlement should aim to:

'... normalise the prison experience, (ie maintaining close ties between the inside and the outside, through links to social support services, voluntary organisations, church organisations and family members). Further, resources are invested in building up and sustaining adequate community provision rather than spending ever increasing sums on ever increasing numbers of prison places and wasting resources building a second – arguably substandard – tier of treatment within the prison estate...'

Reference is made to the fact that such an approach was advocated by Lord Woolf following his investigation into the disturbances in prisons in 1990. The report goes on:

'390. A major impediment to rehabilitation within the existing system is that too many prisoners are held in prisons that are geographically remote from their homes, families and communities. This is partly a legacy of past decisions about where prisons should be built and how large they should be. The Director General of the Prison Service, Mr Phil Wheatley, told us that "the reason why we do not have community prisons is not because they are not a good idea, it is because the prison estate is where it is and it does not actually line up with where prisoners come from".[310] This situation is exacerbated by over-crowding and the consequent high level of transfers of prisoners across the country as places become available. We recommend that, in future, rehabilitative needs should be taken into account when decisions are taken on the locations of new prisons. New prisons should be built with the right facilities to deliver a rehabilitative regime that meets the needs of the

local prison population. The Prison Service should focus on developing a variety of types of prisons across a region. It is particularly important that a network of local community prisons be built up to benefit short-term prisoners and prisoners close to the end of their sentence.

392. Historically, in England and Wales, the focus of prison rehabilitation regimes within individual prison establishments has depended more upon the views of the governor than on any overarching Prison Service strategy. As we have seen in many different contexts earlier in this report, the result has been a wide divergence from prison to prison in what is provided by way of education, training, work activities and offending behaviour programmes.

393. The current situation means that it is something of a lottery as to whether a particular prisoner actually benefits from rehabilitative interventions appropriate to his or her needs. We believe that this is unfair to the individuals concerned. We recommend that the Prison Service should move towards ensuring greater consistency of provision across the prison estate, by means of common standards and, where appropriate, ring-fenced funding for particular rehabilitative provisions. We accept that this will inevitably entail some loss of prison governors present autonomy, but consider that this would be a price worth paying.' (House of Commons Home Affairs Select Committee, 2004:109-110)<sup>5</sup>

There has been some progress in relation to some groups of offenders since the report was published, however, much remains to be achieved. For instance, the special arrangements in place for offenders categorised as prolific and other priority offenders (PPOs) and the recently developed Integrated Offender Management (IOM) schemes offer much in the way of wraparound support that is on-going once the prisoner is discharged from custody. Locally-based drugs intervention programmes (DIP) provide a similar form of personalised intervention for offenders with substance misuse needs. These forms of inter-agency working at local level provide the best models for ensuring that offenders' needs and risks are managed holistically. However, there must be resources targeted at voluntary organisations to provide the additional mentoring support that people need to sustain change. Special arrangements for women offenders (recognising their particular vulnerabilities highlighted by the Corston Enquiry) must be developed further and embedded nationally. The particular health and social care needs of older offenders (a significantly increasing proportion of the prison population are over the age of 50) and the widely unmet needs of those with learning disabilities must also be addressed. Offenders from black and minority ethnic groups may have special needs that require culturally sensitive provision. Again the voluntary sector has models of work that can effectively engage marginalised groups and voluntary sector participation must be a central element of service provision

There is scope for an expansion of programmes such as PPO, DIP and IOM, alongside the extension of layered offender management to make a significant contribution to the reduction in reoffending. However, where will the money come from? Reductions in public spending are likely to impact severely on the ability of local commissioners to procure the services required to address the multiple needs of offenders. In this context it would seem to be foolhardy in the extreme not to

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<sup>5</sup> House of Commons Home Affairs Select Committee (2004) *Rehabilitation of Prisoners, First report of session 2004-05*. London: The Stationery Office

consider seriously the findings of the House of Commons Justice Committee. (2010)<sup>6</sup> in relation to justice reinvestment.

The report falls into two parts. The first part contains a detailed examination of the failings of the criminal justice system coupled with a warning that criminal justice policy must radically change to achieve reductions in offending. The second details the Justice Committee's support for justice reinvestment as a criminal justice solution, advocating the diversion of funds currently earmarked for the expansion of the prison estate to enhance community based provision.

The report contains 98 recommendations and 493 paragraphs so it is not possible to do it justice here. There is merit, however, in outlining some of the key proposals as an illustration of how things might be done differently. Nacro agrees with the Justice Committee which argues that we should think differently and challenge the status quo by;

- reforming the *Rehabilitation of Offenders Act* and making all necessary changes to reduce the social exclusion of ex-offenders
- altering the prison estate to approximate as nearly as possible to a community prison system
- increasing probation representation at senior levels within NOMS
- making the reduction of offending/reoffending the primary purpose of sentencing, as opposed to punishment
- using ex-offenders as a resource in the drive for promoting public safety
- reviving the commitment to the use of small voluntary sector organisations whose business is rehabilitation.

Such changes, the report suggests, can support and reinforce a different investment strategy that would allow;

- diversion of the earmarked £5 billion for prison new build to probation, to enable it to manage high-risk offenders
- a substantial increase in the £40 million for community sentence pilots, so that these are fully funded and ring-fenced in the face of the £1.3 billion savings required over the next three years
- abandoning efficiency savings that would render impossible the delivery of front-line prison and probation services to increasing numbers of offenders
- abandoning the predict and provide model that underpins the prison build policy
- providing access to a national fully funded restorative justice programme
- the reintroduction of a fully funded programme of post-custody supervision for short-term prisoners

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<sup>6</sup> House of Commons Justice Committee (2010) *Cutting Crime: The case for justice reinvestment. First report of session 2009-10.* London: The Stationery Office

- the application of youth justice principles to young adult offenders up to the age of 24, a group that currently commits a third of the total volume of offences.

From the evidence it reviewed, the Justice Committee concluded that the projected incarceration rate of 170 per 100,000 population was a disgrace and represented a failure of government. A focus on punishment does not deter offenders and it fails to reform or rehabilitate. At the same time, it offers little of value to victims. The system is too expensive: the cost of criminal justice is perceived as a free commodity because it is funded out of general taxation. Unlike health and education, it is not local and therefore there is no sense that the costs of criminal justice impact financially upon local citizenry. Yet projected efficiency savings will undermine criminal justice delivery. The solution is to change policy. Criminal justice should be taken out of the arena of political knockabout. Investment in non-custodial criminal justice outcomes should be resourced through savings made by reducing the overall prison population. This process of reinvestment would allow the removal from custody of all those except violent and dangerous offenders, and the expansion and consolidation of community based services. It would permit justice delivered locally, with the active participation of the judiciary throughout the sentence, based on evidence-led decision-making.

## ● Conclusions

We need to find ways of reducing reoffending and deliver more for less. As Hedderman's (2008) findings (see the Appendix on p28) demonstrate, custody is failing by those two criteria. There is a strong case for more holistic, joined-up approaches at local level coupled with preventative initiatives and early intervention. The Ministry of Justice needs to achieve substantial savings and the opportunity to take a radical approach to reform must be seized. There is widespread acceptance of the need for treatment in cases where drugs, alcohol and mental ill health play a major role in offending behaviour. The House of Commons Home Affairs Select Committee report (2004) offers a number of recommendations that, if fully implemented, would go a considerable way to improving prisoner resettlement and reintegrating prisoners into communities. But there is also a clear need to call a halt to the relentless expansion of prison capacity and invest the savings in effective community provision. The House of Commons Justice Committee report (2010) illustrates how change on a much greater scale could be achieved should the political will be there to drive it forward.

## 4 Practical solutions: Getting offenders off drugs and alcohol and into employment

### ● Personalised approaches

The Carter Review (2007)<sup>7</sup> suggested the need for wrap-around or personalised responses to individual offenders. As already stated, this approach has been developed to some extent through PPO, DIP and IOM. Central to its effectiveness is multi-agency working that incorporates statutory and VCS organisations providing services at local level. The Offender Management (OM) model as developed by NOMS offers a comprehensive risk and needs assessment process coupled with a case management system intended to provide the range of interventions required to secure the necessary changes that will result in rehabilitation.

For those offenders who are in scope for OM there is the opportunity for personalised risks and needs assessment. However, it is debatable as to how far a personalised, holistic case management approach is then provided. Offender managers have large caseloads and are often unable to provide the level of personalised support required. This is particularly important with regard to through the gate interventions. For example, a referral to a housing provider in the community may result in the need for some form of assessment by that provider. The usual approach would be to interview the applicant to assess suitability. However, community based housing providers are frequently unable to interview a prisoner as part of their assessment process (due to costs of time and travel) so no personal link is made before release.

If a paper-based suitability assessment results in an offer of accommodation, the absence of pre-release personal contact reduces the chances of the prisoner successfully taking up the offer of accommodation. If a support worker or volunteer mentor could act as the bridge there would be a greater chance of a successful housing outcome. Once established in accommodation, some form of support needs to be on-going. The offender manager is unable to provide this level of support. Models of floating support attached to various forms of accommodation, including privately rented housing, can be very successful but are not currently widely available.

For many short-term prisoners, who are currently out of scope for OM there is no hope at all of a personalised approach being provided. Intensive support in the early weeks following release is particularly important and this should incorporate support for families of offenders as appropriate. We need to be mindful that families can be part of the problem as well as potentially part of the solution to rehabilitation. Where it is possible to make them part of the solution, information, advice and support can make a significant difference. Services for families can be

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<sup>7</sup> Lord Carter of Coles (2007) *Review of Prisons: Securing the future: Proposals for the efficient and sustainable use of custody in England and Wales*. London: The Stationery Office.

incorporated into provisions such as visitor centres at prisons, special family visits and programmes that address relationship needs. Where domestic violence is an issue, use should be made of community based programmes such as the integrated domestic abuse programme (IDAP) which offers behaviour-challenging group work for male perpetrators of domestic abuse and support for their partners and children.

Addressing needs in relation to finance and managing money is crucial. Many prisons offer debt advice services and Nacro (and others) provide money management training. However, there is a serious problem with accessing money on discharge from custody. Currently, the periods of time that elapse before the first benefits payment reaches the released prisoner almost guarantee a risk of further offending; it is not uncommon for people to wait for five or six weeks. A system of having the first weeks benefit entitlement paid just prior to release must be implemented.

Gains made in addressing substance misuse during custody can be undermined if on-going support is not in place. Care plans in relation to drug and alcohol misuse that have been implemented in prison must be on-going in the community. The integrated drug treatment system (IDTS) should ensure that this is the case. The objective of IDTS is to expand the quantity and quality of drug treatment within prisons by;

- increasing the range of treatment options available to those in prison, notably substitute prescribing
- integrating clinical and psychological treatment in prison into one system that works to the standards of Models of Care and the Treatment Effectiveness Strategy and works to one care plan
- integrating prison and community treatment to prevent damaging interruptions either on reception into custody or on release back home.

Measures to provide ongoing care include ensuring released prisoners have a prescription and access to a community drug team. This should be supported by effective communication between all services involved with the individual before discharge. However, there are still people who fall through the net and additional support may be required to ensure that they access the relevant services.

It may be that a much more radical approach to reducing reoffending by drug addicted offenders is required. We have already advocated the increased use of specialist courts, particularly in relation to domestic violence and drugs. It is worth considering the potential benefits of residential drug rehabilitation services being provided as part of a sentence that has judicial oversight of progression at its heart. Recovery from drug and alcohol addiction is usually a lifelong process, with high levels of motivation, support, and supervision. Recourse to appropriate sanctions may be necessary but gains made will best be sustained when the rehabilitation programme and support structure is provided in the community.

For those who have a realistic chance of finding work (and this entails having housing, finance and health issues properly addressed first) there should be much more targeted support by way of skills training, job search and interview support and advice about how to deal with disclosing a criminal record to potential employers. Confidence building and motivational approaches are critical. There are

many organisations with a track record of providing such programmes. However, if meaningful change is to be achieved in relation to employment it is crucial that the *1974 Rehabilitation of Offenders Act* is reformed.

Even when prisoners are released on licence and under community supervision there is a need for improvement in the way they are managed. Nacro has found that many individuals do not understand fully the terms of their licence and more needs to be done to ensure that they realise what the conditions entail. Simple things, such as regular reminders to attend probation and other appointments would help. Efforts need to be made to ensure that released prisoners are aware of the consequences of non-compliance with licence conditions. In some cases, people fail to meet the conditions and are then subject to more stringent conditions that they are even less likely to comply with. This results in breach procedures and recall to prison. Again personal support is critical to avoid this situation.

One of the best models for such personalised approaches is that offered by the community women's centre services, currently funded by the MoJ. They provide gender specific, holistic, person-centred services for women, operated by VCS providers. Such a model could be productively adapted for use with the offender group that are responsible for high volumes of crime, namely 18-25 year old males.

VCS organisations should be commissioned (see earlier section of this paper) to develop and operate such services on a much larger scale than is currently the case. Partnerships between organisations specialising in resettlement services and those offering drug rehabilitation services would be particularly beneficial.

Nacro, as a large, national organisation, is capable of acting as a lead provider and brokering services from smaller specialist organisations. We have a service model that is based on a personalised approach with wrap-around support at its heart. Nacro has the national infra-structure and the capacity to deliver this model on a significant scale. We envisage national provision throughout the English regions and Wales.

The Nacro Model, in this instance targeting 18-25 year olds (a group who produce large volumes of crime), is outlined below:

## ● The Nacro Model

### Aim

To reduce reoffending and avoid repeated use of short custodial sentences through provision of a holistic, gender specific case management approach which provides a personalised range of intensive interventions, during custody and through the gate into the community.

### Model outline

Our model works on a community-based in-reach case management (CM) structure which has layers of specialist knowledge and interventions provided by Nacro and our partners. The model is based on a personalised approach which recognised the need for gender specific and culturally sensitive service provision.

At the heart of this model is a core CM function operating across each region which Nacro will manage and co-ordinate. We have developed Specialist Knowledge Banks to ensure that we have the most current expertise in relation to what works with specific groups of offenders. These knowledge banks will be developed and maintained by our Policy Unit. Interventions and services will be delivered by our partners. Nacro knowledge banks will provide specialist support to case managers in order to tailor the CM function and interventions to the individual needs of the service user.

CM will be supported by access to a range of interventions and services designed to meet specific needs and create opportunities. Specialist providers who are members of our delivery partnership will supply these interventions. These will include employer engagement and enterprise, housing, finance and money management, education, mentoring, alcohol and substance misuse and restorative justice.

Tracking and impact analysis, will be used to assess the impact of the service on factors likely to result in a change of behaviour, and consequently achieve a reduction in reoffending. Data from this process will inform the specialist knowledge banks which will in turn shape the ongoing development of the service to ensure maximum effectiveness with specific service-user groups.

The model could be targeted to work with those who are not currently subject to statutory OM or could replace existing OM being carried out by probation staff. It could work very well as part of local integrated offender management schemes. The model is based on Nacro case managers operating both in prisons and in the community which allows for a continuation of care of support through the gate from the same case manager throughout an offenders journey through the programme. The case management will be supplemented with the provision of mentors, in some cases peer mentors. The reformed offender can be a powerful agent for change and the model uses this where appropriate. Nacro has developed specialist training packages to enable peer mentors to work effectively.

## Service user journey

The service user journey encompasses;

- assessment and selection
- tailored individualised action planning
- activity and interventions
- mentoring
- transition and exit
- tracking and impact assessment
- motivating service users

All front-line project staff will be trained in motivational interviewing techniques. Interventions will be planned in wrap-around form to meet holistic needs, as this has been shown by us and partners to help generate motivation to reduce attrition and sustain progression. Similarly the presence of peer mentors has been shown to foster engagement and facilitate on-target outcomes. Where practical, they will be pre-allocated pre-release. Service users will be matched with mentors taking account of gender, ethnicity, disability, sexuality and faith as we believe that appropriate matching is a key driver in engaging and holding offenders in programmes they may otherwise see as culturally irrelevant and unwelcoming.

Nacro's experience of delivering successful mentoring services with people leaving prison enables us to provide a service model based on what works. This is particularly true in respect of the provision of training and supervision, and the centrality of the mentor's role in improving engagement and reducing attrition.

## Personalised approach

Each person will be at the centre of their own rehabilitation. We will take account of needs in relation to age, gender, ethnicity, disability, sexuality, faith and we will ensure that staff receive training that enables them to recognise the importance of diversity. The specific individual circumstances of each service user will be factored in to each rehabilitation plan. Throughout the project, both in custody and community, we will work with the service users to enhance their personal skills, communication skills and attitudes to building and maintaining their rehabilitation. We will focus on developing positive relationships, be they with family, friends, landlords or employers. In practice this will be through delivering informative and challenging training courses delivered in ways which are designed to engage those people who are often regarded as the hardest to reach. Interventions delivered by the partner agencies, will be designed to address the core areas of identified need for the individual. An individualised action plan will be used to provide direction towards the most appropriate activities for learning and development for that participant.

Service users will move through the programme at their own pace and at various points along the way support can be reduced or intensified. The option of becoming a peer mentor will be appropriate for some service users and there are structures to support this.

## 5 The *Rehabilitation of Offenders Act* and the case for reform

### ● About the Act

The *Rehabilitation of Offenders Act 1974* provides that after specified rehabilitation periods ex-offenders do not have to declare spent convictions when they are applying for jobs (except in sensitive areas such as work with young people or vulnerable adults, or in criminal justice agencies, financial institutions). It has an impact on insurance and some other processes, such as applying for a clean drivers licence and a visa to some countries. Since it was enacted in 1974 the Act has helped many ex-offenders to live down their past.

However, the rehabilitation periods laid down in the Act are lengthy and many genuinely reformed ex-offenders can never benefit from it. For example, if an offender is fined, the offence becomes spent after five years from the date of sentence. If an offender is given a three month prison sentence, the offence takes seven years to become spent. If he or she gets a nine month sentence, the offence does not become spent until 10 years later. Sentences of more than two and a half years never become spent.

Since the Act was implemented, sentence lengths have significantly increased. Many offenders who would have received sentences of two and a half years or less back in 1974 are receiving sentences of between three and four years today. This means that many offenders who would previously have been helped by the Act now find that their offences will never become spent.

### ● The stalled reform process

In 2001 the then Home Secretary, Jack Straw, set up a review group to examine whether, three decades after the Acts implementation, there was a case for reform.

In 2002 the review group published its conclusions in the report *Breaking the Circle*. In 2003, the Government accepted a modified version of the review group's proposals. The current rehabilitation periods would be replaced by new buffer periods which would begin after the sentence (including any post-release supervision) was completed. The buffer periods would be four years for custodial sentences of four years or more; two years for custodial sentences of under four years; and one year for non-custodial sentences. These periods would apply to all offences except those which resulted in a life sentence. Sentencing courts would have discretion to disapply these provisions in any case where the sentencer decided that there was a particular risk. The new provisions would not apply to jobs in sensitive occupations, for which applicants would still have to declare their full criminal record.

In April 2003, the Government announced plans for reform of the Act. Yet since then there has been no sign of legislation coming before Parliament.

Earlier this year Lord Dholakia introduced a Private Member's Bill to enable Parliament to express a view on these reforms. The Bill has had its first reading in the House of Lords and is due for a second reading in the autumn. Government should incorporate reform of the Act into the Green paper.

## ● The case for reform

A reformed system would greatly reduce the scope for unfair discrimination against ex-offenders in the job market. Regrettably, such discrimination is still widespread. Surveys of ex-offenders in Nacro projects have shown that 60% have been explicitly refused jobs because of their criminal records. Of course it is sometimes reasonable to refuse an ex-offender a job because of his record. For example, we must obviously bar offenders with a history of offences against children from working with children. We should bar offenders with a history of defrauding elderly people from work caring for elderly people. However, in many cases employers are turning down applicants because of offences which have no relevance to the jobs for which they are applying.

The scope for discrimination is wide because decisions to employ or refuse people jobs are not made at the top of companies. They are made by large numbers of individual managers and personnel staff who have usually had no specific training in how to deal with applications from people with criminal records. A large scale research study by the Joseph Rowntree Trust found that no private sector employers in their sample and only one in seven public sector employers had provided specific training on this point to staff making recruitment decisions.

The scope for discrimination would increase if basic disclosures were introduced if Part V of the *Police Act 1997* was fully implemented. This would enable employers to require any job applicant applying for any job – not just one of the sensitive occupations – to produce a basic disclosure certificate from the Criminal Records Bureau listing his or her unspent criminal convictions. Government-commissioned research by the National Institute for Economic and Social Research has found that, if this provision was implemented, employers are likely to reject people with criminal records for half their vacancies and to reject those with more serious convictions for 90% of their vacancies. The researchers concluded that the introduction of basic disclosure certificates was likely severely to reduce employment opportunities for people with criminal records.

The case for reform of the *Rehabilitation of Offenders Act* would be a powerful one whether or not the basic disclosure provisions of the *Police Act* were implemented. It is powerful even on the basis of the discrimination against ex-offenders which already exists. Moreover, the risk of discrimination against ex-offenders in the job market is even greater in a time of recession when unemployment is rising and employers have a wider choice of job applicants than previously.

Unfair discrimination against ex-offenders is wrong in principle because it imposes an additional illegitimate penalty of refusal of employment on people who have already served the judicially ordered punishment for their crime. It also reduces public safety because an ex-offenders risk of reoffending is reduced by between a third and a half if he or she gets and keeps a job. The whole community benefits when offending is reduced but employers benefit in particular because crimes such as cheque and credit card fraud, shoplifting and burglary of commercial premises have a particularly damaging impact on their businesses.

The reforms to which the Government committed itself in 2003 would allow many more people with criminal records to start again with a clean slate. They would thereby reduce the risk of further offending by former offenders excluded from the job market.

## 6 The scope for cutting costs in the CJS

### ● Challenges and opportunities

The government has signalled that major reductions will be required over the foreseeable future in the funding available to public services. Yet it is also committed to trying to protect frontline services. Within the criminal justice system, it has already announced cuts in funding to individual police forces in the current financial year; and this is requiring them urgently to revise budgets which had already been agreed.

Proposals to reduce the costs of the courts and reforms to the legal aid system are underway and the Secretary of State for Justice has stated clearly his intention to re-consider how custody is used, suggesting the need to be 'creative' in order to meet the challenges of deficit reduction. This final section of the paper considers the scope for cutting costs in the broadest sense.

In addressing the challenges it faces, the government is unlikely to be able to rely on new thinking within the civil service. Civil servants will endeavour to meet the demands of their new political masters; but their ways of thinking on both fronts will have become deeply ingrained over the last 13 years. Importantly, many civil servants also lack any first hand experience of the day-to-day reality of delivering frontline services in a criminal justice context. However, any formal proposals from representatives of the criminal justice agencies themselves will necessarily be viewed as in some measure self-serving, even if they appear to advocate major departures from the status quo. We offer a disinterested appraisal of the challenges as well as suggestions for constructive new approaches to addressing the issue.

### ● The problem with conventional approaches to cutting budgets

The traditional approach to cutting budgets has been two fold.

Central government will be advised by civil servants on the specific budget heads under which the largest savings can be made. The choice is likely to be determined by a combination of crude mathematical calculations around some high level aggregate figures and considerations about the relative political fall-out of cuts under different budget heads. It will lack any real-world understanding either of the impact on the service as a whole (where the cuts in one area may have a knock on effect to others) or of alternative approaches which could generate the same savings but would consist of a package of cuts under many different budget heads.

Faced with the requirement to cut costs, the criminal justice agencies themselves will tend to take a similar approach at local level. That is, senior managers and their financial advisers will pore over spreadsheets and trim from different items until they achieve the desired reduction. The amounts they trim will vary according to the assumptions they make about the relative damage of cuts in the items as listed

on the spreadsheet; but they are unlikely to be informed by consultation with personnel much nearer the point of service delivery.

Both of these approaches will inevitably have adverse consequences – whether in the short or the medium to long term. Many of these consequences may be unforeseen by those making the decisions about where to cut; but one certain outcome is likely to be resentment and demoralization among personnel who feel excluded from the decision making process but who are most likely to be affected. Especially where the cuts also increase their workload (whether directly or indirectly) this is likely per se to affect service delivery, even though to the eye of an accountant it might appear that the cuts had been made in such a way as to protect front line services.

### ● Existing alternative approaches (and their current limitations)

Both approaches also risk overlooking a unique current opportunity for adopting an alternative approach. This is likely to be cost-effective (though it may not entirely obviate the need for some additional savings) and to protect service delivery not least because front-line staff may actively support it. It should additionally generate savings at national level by significantly reducing the staff time which is currently taken up with processing information from local sources.

The alternative approach is based on recognising that the criminal justice system – along with other public services – was subject under the previous government to many years of micro-management in the context of repeated reorganization and initiative overload. The New Labour administration not only increased bureaucracy by extending recording requirements but added to the demands on services to provide information (to central government departments, inspectorates and the public). It was often highly prescriptive about the responsibilities of different staff and added to demands on their time in ways which many saw as progressively eroding their capacity to undertake their core functions. Meanwhile, though the objective of improving inter-agency co-operation (both within the CJS and more widely) can only be applauded in principle, the proliferation of formal multi-agency arrangements has in practice further detracted from the time available to staff at many levels. Middle and senior managers in particular have thereby been distracted from ensuring the smooth running of their own organisation and the quality of the service it was delivering. Some of the worst aspects of this legacy can only be addressed in the medium term through fully considered and informed changes in policy (and, possibly, legislation). In the short term, however, savings could quickly be made if the present government were to release criminal justice agencies from many of the unnecessarily resource-intensive additional demands made of them by its predecessor.

To take policing as an example, a good start has already been made by Jan Berry (following Sir Ronnie Flanagan's report) in recommendations for reducing bureaucracy as outlined in her report of November 2009. It is doubtful, however, that these recommendations are being followed systematically, fully or with any consistency across the 43 police forces in England and Wales. For, although Jan Berry was appointed to her role by the previous government which claimed to support her work, many aspects of the report implicitly criticised the impact of government policy on policing (in particular with regard to the perverse effects of the 'target' culture). So the government did not *require* chief officers to take any action in the light of her recommendations; and it is uncertain to what extent they

will even have read the report, still less discussed the potential for implementing it within their own force.

In 2001, an interviewee for the *Policing for London* study complained of the increasing amount of time he was required to spend away from his main job in endless meetings where he saw the same people from other agencies simply wearing a different hat at each meeting.

## ● Possible ways forward

It is staff with the agencies themselves who are well placed to identify the considerable scope for immediate savings through a radical review of the additional demands placed on them by the previous government. Examples are given in the appendix in relation to the police; but the approach which each of the criminal justice agencies could usefully adopt would be as follows.

In each area, each agency should itemise all of the additional tasks and responsibilities it has taken on since 1997. In consultation with staff at all levels, decide which of these;

- could usefully continue much as they are currently undertaken
- are worth retaining but the process could be streamlined
- should be dropped entirely.

Estimate the likely savings from streamlining or dropping those identified.

This exercise may produce some degree of local variation but it seems highly likely that a consensus will emerge for each agency which the government could then sanction. This could avoid the opprobrium of appearing arbitrarily to impose cuts top down while leaving intact practices which are wasteful of resources.

Aside from tasks and responsibilities, it is of course necessary to look at the costs of certain criminal justice phenomena – amongst which the issue of re-offending has assumed great significance because it places huge demands on the criminal justice system generally and on the requirement for prison places in particular – as a result of a sentence of last resort when courts feel there is no alternative to a custodial disposal. There are two elements under consideration; the first is the rate itself (discussed later) and the second is the administrative cost of process (in which the cost of re-offending is a part)

The administrative cost is a function of an impossible proliferation of measures and targets across all CJ agencies, many of which are in tension with each other and which have been creating tensions at different levels within the same agency. They include nationally set measures and targets by MoJ and the Home Office but also by inspectorates and the Audit commission locally agreed joint targets by LSPs, CYPPs and others which vary both between LAs and within the CJ areas agreed local priorities as a result of consultation – eg at PACT meetings.

Clearly there is an opportunity to streamline the process and to save administrative cost, subject to the caveat that streamlining should not detract from clearly stated service delivery across the totality of all strands of core business. The street crime initiative was a case in point with local commanders being told that the success of

this initiative was so important that they could ignore burglaries under a value threshold which was arbitrarily set.

Having undertaken the review of all non essential functions which had been added to agencies' responsibilities by the last government (as to which see above), and now absolved from a continuing responsibility for them, it may be preferable to talk about outcomes rather than targets. That is to say there would be a general expectation that each agency would be expected to improve the effectiveness and efficiency with which it delivered the totality of its business both individually but most importantly, in concert with other CJ partners. Specified outcomes such as reduced re-offending should result from this rather than being imposed as a discrete goal at the expense of other strands of business and which if not achieved in reality is seen to be achieved through administrative manipulation.

In short there has to be an expectation that the daily operations of an agency will deliver a high quality service that is fit for purpose. In prisons, therefore, that includes a safe and stable environment for staff and inmates; maintenance of discipline; meeting acceptable standards of hygiene etc; maximum opportunities for constructive activity and association; maximum use of release on temporary licence for resettlement purposes.

And because it is reasonable to assume that such general precepts should contribute to a prospect of reduced re-offending post-release for instance, there should be a presumption against specific dedication of personnel and financial resources deployed to achieve the intended result – ie there should be no rush to set up reducing re-offending units in the same way that Confidence – Citizen Focus Units were set up in the wake of the introduction of the newly abandoned Confidence Target.

Whilst on the one hand therefore reduced re-offending must start within the routine business of each agency, there must also be an acknowledged collective goal whereby the individual efforts of each agency are dovetailed and complement each other. Until now the atomization created by Treasury led target setting and mutual competition over resource allocation has meant that no agency could pool resources with any other – even where there was a local will to do so. The invidious state of non co-operative affairs has been that no agency with the prospect of failure to meet its prescribed targets has been in the least bit interested in assisting another to achieve theirs. Outcomes therefore should be jointly owned and be backed with an implementation plan which links them back to the core business of each agency with progress towards them subjected to joint inspection.

## Appendix

# Improving rehabilitation: what the research says

Sentencing for purposes of rehabilitation is not an exact science. As we have already stated, we consider sentencing in the light of three principles: Justice, Effectiveness and Cost. If we take effectiveness to mean reducing further offending (ie rehabilitation) then we need to know more about the impact on reducing reoffending of particular forms of sentence. The relative merits of custodial vs non-custodial penalties are often debated but research in this area is limited.

Work by Smith and colleagues (2002)<sup>8</sup> looks at the relative effectiveness of different sentencing options. Analysis of data from 117 previous studies dating from 1958 involving 442,471 offenders produced 504 correlations between recidivism and (a) length of time incarcerated, (b) serving an institutional sentence vs. receiving a community-based sanction, or (c) receiving an intermediate sanction. The data was analysed using quantitative methods (ie meta-analysis) to determine whether prison and community sanctions reduced recidivism.

The results showed that;

- type of sanction did not produce decreases in recidivism under any of the three conditions
- there were no differential effects of type of sanction on juveniles, females, or minority groups
- there were tentative indications that increasing lengths of incarceration were associated with slightly greater increases in recidivism.

The findings from the 2002 study were found to be consistent with those of the meta-analyses. The essential conclusions were as follows:

- Prisons and intermediate sanctions should not be used with the expectation of reducing criminal behaviour.
- On the basis of the present results, excessive use of incarceration may have substantial cost implications.
- In order to determine who is being adversely affected by time in prison, it is incumbent upon prison officials to implement repeated, comprehensive assessments of offenders attitudes, values, and behaviours throughout the period of incarceration and correlate these changes with recidivism upon release into the community.

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<sup>8</sup> Smith P, Goggin C and Gendreau P (2002) *The Effects of Prison Sentences and Intermediate Sanctions on Recidivism; General effects and individual differences*. Ottawa: Solicitor General, Canada.

The first point is an important one in terms of proposals to improve rehabilitative outcomes for offenders brought to justice. The second highlights the potential for savings should a reduction in the use of custody be actively pursued. However, there is no conclusive evidence showing that non-custodial sanctions necessarily produce lower levels of reoffending. The picture that emerges is clouded by the inherent difficulties in conducting scientifically valid research that produces robust evidence.

Killias and colleagues (2006:1)<sup>9</sup> note that 'relatively few studies compare recidivism rates for offenders sentenced to jail or prison with those of offenders given some alternative to incarceration (typically probation).' Findings from this review show that: the rate of re-offending after a non-custodial sanction is lower than after a custodial sanction in 11 out of 27 comparisons. In a further 14 there was no significant difference in terms of reoffending, and just two showed a significantly favourable outcome for custody. The reviewers' conclusions are mixed and it is worth reproducing them in full here, so that the complexities of attempting to scientifically evaluate the comparative impacts of custodial/non-custodial sanctions in relation to re-offending can be understood. They highlight:

- Controlled experiments are still rare exceptions, although obstacles to randomisation are far less absolute than often claimed.
- Follow-up periods rarely extend beyond two years. Even in cases of controlled trials where later follow-up studies might be feasible, periods considered never extended to significant parts of subjects biographies.
- Despite alternative (and presumably more valid) measures of reoffending, such as self-reports, most studies do not include measures of reoffending beyond re-arrest or reconviction.
- In most studies, only the occurrence (prevalence) of re-arrest or reconviction is considered, but not the frequency (incidence) of new offences. Some studies have shown, however, that most offenders reduce offending rates after any type of intervention. Thus, the relevant question may be to what extent they improve differently by type of sanction. Therefore, it is urgent to look in future studies at rates of improvement (or reductions in offending) rather than merely at 'recidivism' as such.
- Rehabilitation in other relevant areas, such as health, employment, family and social networks, is rarely considered, despite century-old claims that short custodial sentences are damaging with respect to social integration in these other areas.
- No study has addressed the possibility of placebo (or Hawthorn) effects. Even in controlled trials, it is not clear to what extent outcomes that favoured 'alternative' sanctions were due to the fact that subjects assigned to non-custodial sanctions may have felt being treated more fairly, rather than to specific effects of 'alternative' sanctions as such. Given recent research on neurobiological effects of feelings of fairness (Fehr and

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<sup>9</sup> Killias M, Vilettaz P and Zoder (2006) *The Effects of Custodial vs Non-custodial Sentences on Reoffending: A systematic review of the state of knowledge*. Campbell Systematic Reviews

Rockenbach, 2003)<sup>10</sup>, such a possibility should be envisaged with more attention in future research.

Given the lack of conclusive research evidence to show that non-custodial sanctions produce better outcomes with regard to reoffending, it may be sensible to approach the issue from the angle of value for money. Yet again, there is a need for more work to be done so that the relative costs and benefits of interventions/sanctions can be understood. However, recent research on community alternatives to custody for women offenders by the New Economics Foundation (2008: 2)<sup>11</sup> found that:

'...for every pound invested in support-focused alternatives to prison, £14 worth of social value is generated to women and their children, victims and society generally over ten years...'

'Using Social Return on Investment (SROI) analysis, [the New Economics Foundation] examined the costs and long-term benefits associated with the work of two centres providing an alternative to prison in Glasgow and Worcester. It concluded that support-focused community penalties involving high-quality facilities such as these are a more cost-effective option than imprisonment for non-violent women offenders.'

The National Audit Office (2010)<sup>12</sup> published a report in March 2010 looking specifically at the 60,000 adults per year that receive sentences of less than 12 months custody. It suggests that more could be done to rehabilitate them and reduce their risk of reoffending. Short-term prisoners constitute only 9% of the prison population on any given day but account for some 65 per cent of all sentenced admissions and releases. The report goes on to say that the National Offender Management Service (NOMS), responsible for managing prisoners and achieving reduced levels of reoffending, has little information on the quality, cost or effectiveness of its rehabilitation activities. Despite acknowledging that NOMS manages to keep the majority of short term prisoners safe, well and secure, the NAO concludes that not enough is being done to address their needs in a way that will impact positively on reoffending rates. The NAO estimates that:

'Around 60% of short-sentenced prisoners are convicted of at least one offence in the year after release ... cost[ing] the economy ... between £7 billion and £10 billion a year.'

One of the things that impacts negatively on the ability of prisons to rehabilitate prisoners is overcrowding. The lack of space and the high volume of prisoners reduces the potential for activity. The National Audit Office found that one half of short-sentenced prisoners are not involved in work or courses and spend almost all day in their cells. Prisons offer a range of courses and other activities to reduce re-offending; but waiting lists are too long and, with the exception of drug services, prisons often do not match prisoners with appropriate assistance. Those with learning disabilities and mental health problems are often excluded from those activities, as are those older or disabled prisoners with mobility problems.

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<sup>10</sup> Fehr E and Rockenbach B (2003) Detrimental effects of sanctions on human altruism. *Nature* **422** 137-140.

<sup>11</sup> New Economics Foundation (2008) *Unlocking Value: How we all benefit from investing in alternatives to prison for women offenders*. London: New Economics Foundation

<sup>12</sup> National Audit office (2010) *Managing Offenders on Short Custodial Sentences*. London: Home Office

## ● Better use of community sentences

Regardless of the evidence about the relative merits of custodial sentences and non-custodial sentences on reducing reoffending, there is the question of how a humane and just society responds to people in trouble. Nacro has long proposed that custody should be reserved for the most serious offenders, enabling less serious, but repeat, offenders to be rehabilitated via effective community sentences. In 2001, Edwards (2001)<sup>13</sup> argued in Nacro's *Safer Society* that:

'Custody should be reserved for those committing very serious and violent offences. But the Government's plans for persistent offenders will mean imprisoning people whose offences, taken individually, would not be sufficiently serious to attract a prison sentence.'

In its *Annual Review 2003/04*<sup>14</sup>, Nacro urged that:

'This profligate use of prison must be curbed. Prison is not the right place to deal with mental health problems, homelessness, and poverty related issues such as the inability to pay fines.' (Nacro, 2004:2)

With reference to women prisoners. Nacro has consistently stated the need for reform and a reduction in the use of custody. Responding to a consultation by the Fawcett Commission: *Women and the Criminal Justice System*, Nacro (2003)<sup>15</sup> pointed out that:

'The majority of women prisoners have not committed a violent offence and do not pose a danger to others. Much more needs to be done to promote community penalties and alternatives to custody for women, so that fewer women are imprisoned in the first place.'

Nacro has long sought to influence the development of diversionary approaches to young offenders and offenders with mental health problems and has produced a substantial body of literature in support of that position (see <http://www.nacro.org.uk>).

Nacro believes that positive change could be achieved by investing the money saved from a reduction in the use of expensive custody in improved community provision that would make mental health treatment, drug and alcohol treatment, housing and financial support more available. In addition, community based services could offer mentoring support and specialist advice, guidance and advocacy to help offenders with chronic, multiple needs to make and sustain positive life changes.

Courts currently have a menu of 13 possible requirements that they can attach to a community order. These include options such as mental health and alcohol treatment. However, sentencers are frequently faced with long waiting lists or lack of access to services that would provide the required treatment. Too often, this results in a decision to use a short custodial sentence instead of a community penalty. Improved community-based services would both save money on ineffective

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<sup>13</sup> Edwards H (2001) Editorial 'The most comprehensive reform of the criminal justice system since the war' *Safer Society* 9 (Summer)1. London: Nacro.

<sup>14</sup> Nacro (2004) *Annual Review 2003/04*. London: Nacro

<sup>15</sup> Nacro (2003) *Consultation Response to the Fawcett Commission: Women and the criminal justice system phase two – women and offending*. London: Nacro

short prison sentences and offer the means to provide much better post-release resettlement support to prisoners.

## ● Resettlement and rehabilitation of prisoners

Evidence gathered by Social Exclusion Unit (SEU: 2002) confirmed that there are a number of factors that have a bearing on whether released prisoners will continue to offend, specifically:

- education
- employment
- drug and alcohol misuse
- mental and physical health
- attitudes and self-control
- institutionalisation and life-skills
- housing
- financial support and debt
- family networks

Such factors can have a substantial impact on the likelihood of reoffending. Being in employment reduces the risk of re-offending by between a third and a half and having stable accommodation reduces the risk by a fifth. The SEU demonstrated how poor skills and little experience of employment combined with few positive social networks, and severe housing problems resulted in ex-prisoners having little chance of staying away from a life of crime, especially when for many, the complications of drug, alcohol and mental health problems further exacerbate problems. The report made it clear that many prisoners have experienced a lifetime of social exclusion and cited statistics comparing ex-prisoners with the general population. They found that:

- Prisoners are 13 times as likely to have been in care as a child, 13 times as likely to be unemployed, 10 times as likely to have been a regular truant, six times as likely to have been a young father, and 15 times as likely to be HIV positive.
- 80% have the writing skills, 65% the numeracy skills and 50% the reading skills at or below the level of an 11-year-old child.
- 60% to 70% of prisoners were using drugs before imprisonment.
- Over 70% suffer from at least two mental disorders. And 20% of male and 37% of female sentenced prisoners have attempted suicide in the past.
- The position for 18–20-year-olds is often worse than the above statistics suggest.

The SEU report pointed out that the enormous difficulties facing many ex-prisoners were exacerbated by additional obstacles placed in their way by different agencies and government departments failing to work together to create a coherent resettlement process.

Since the publication of the SEU's seminal report, there have been a raft of major policy changes and the establishment of NOMS. We have had the introduction of Offender Management, the Pathways approach to reducing reoffending and the Offender Assessment System (OASys). We have seen significant investment in drug treatment in prisons, via CARATs (Counselling, Assessment, Referral, Advice and Throughcare) and the IDTS (Integrated Drug Treatment System) along with the provision of prison based housing advice services and key performance targets that measure housing outcomes. We have had national and regional Reducing Reoffending Plans setting out how NOMS will achieve a reduction in reoffending. We have had regional offender managers (ROMs) and now directors of offender management (DOMS) and legislation to create Probation Trusts. What is the impact of all this change and to what extent is it bringing about a reduction in reoffending?

In October 2009, in response to a written parliamentary question, Prisons Minister, Marie Eagle (2009)<sup>16</sup> provided the information on reoffending in 2007 (shown in Table 1 below).

**Table 1 Actual reoffending rate and frequency rate per 100 offenders from the 2007 adult cohort**

| Sentence type                             | Number of offenders released from prison or commencing a court order | Actual reoffending rate | Number of offences per 100 offenders |
|---|--|-------------------------|--------------------------------------|
| Custody                                   | 12,810   | 47.2                    | 223.2                                |
| Court orders under probation supervision* | 37,275   | 36.1                    | 121.3                                |

\* Court orders include community sentences, community orders and suspended sentence orders supervised by the probation service. They do not include any pre or post release supervision.

The rate of reconviction for people released from custody remains considerably higher than the rate for those serving community sentences; so, too, does the frequency of reoffending.

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<sup>16</sup> Eagle M 92009) Reoffenders *Hansard* 29 October, column 558W

**Table 2 Actual reoffending rate and frequency rate per 100 offenders, by number of previous custodial sentences, from the 2007 adult cohort**

| Number of previous custodial sentences | Number of offenders released from prison or commencing a court order | Actual reoffending rate | Number of offences per 100 offenders |
|--|--|-------------------------|--------------------------------------|
| No previous                            | 26,819   | 25.2                    | 72.6                                 |
| One previous                           | 6,225  | 40.3                    | 131.4                                |
| Two previous                           | 3,629  | 48.9                    | 179.9                                |
| Three previous                         | 2,491  | 52.4                    | 198.2                                |
| Four previous                          | 1,883  | 56.6                    | 236.3                                |
| Five previous                          | 1,585  | 59.9                    | 256.8                                |
| Between six and 10                     | 4,516  | 64.5                    | 288.7                                |
| More than 10                           | 2,937  | 76.4                    | 447.1                                |

Further information, provided in the same written answer (Table 2) shows that where people had served a higher number of previous custodial sentences the rates of reconviction were significantly worse.

People serving between six and 10 previous custodial sentences had a reoffending rate of 64.5% and those serving more than 10 a rate of 76.4%. This suggests that repeat imprisonment has a negative impact on reducing reconvictions.

As Britain's prison population has increased, so has the percentage of prisoners committing offences within two years of leaving. A study by Hedderman (2008)<sup>17</sup> poses a direct relationship between the expansion in incarceration and a growth in recidivism, with reconviction rates within two years having surged from just over half to almost two-thirds between 1987 and 2008. Hedderman concludes that:

'...[although] the Prison and Probation Services are being more effective with those they are sent by the courts, the bald fact is that, for most of the period that our use of custody has been increasing, reconviction rates on release have also been rising'. (Hedderman 2008: 8)

In Hedderman's view it is likely that sending significantly more minor offenders to prison for short periods of time simply disrupts their lives, resulting in a loss of

<sup>17</sup> Hedderman C (2008) *Building on Sand; why expanding the prison estate is not the way to 'secure the future'* London: Centre for Crime and Justice Studies.

employment, accommodation and contact with support networks without providing a corresponding opportunity to pursue worthwhile rehabilitative work

### ● What are the current barriers to effective rehabilitation?

In 1999, in recognition of the need for more effective resettlement services, the Home Office established a number of Resettlement Pathfinder pilot projects with the aim of reducing reoffending by short term prisoners. These projects were led by probation, prisons and voluntary organisations and tested different models of provision. An evaluation of the pilots (Lewis *et al*, 2003)<sup>18</sup> defined the problems as follows:

'Short-sentence prisoners – those sentenced to less than 12 months and normally released at the mid-point of their sentence – constitute the majority of adult prisoners. This group has the highest re-conviction rate among released adult prisoners, but as a consequence of their short-sentences, few are able to take advantage of offending behaviour programmes and pre-release services designed to improve their prospects of resettling successfully and leading law-abiding lives in the future. Unlike longer-term prisoners, moreover, they are not subject to statutory post-release supervision and are thus dependent upon voluntary after-care services for help with the multiple problems which research demonstrates are a consistent feature of the profile of short-sentence prisoners.'

The findings from the evaluation were similar to those of the SEU the previous year. There was a need for;

- improved partnership working with employment services, benefits agency, local authorities and relevant voluntary/private sector agencies
- access to a wider range of suitable housing including supported housing and drug rehabilitation centres
- an end to the local authority practice of excluding offenders from available housing
- improved systems to allow benefit claims to be prepared and processed pre-release
- improved employment opportunities and services for offenders not considered job ready as a result of poor skills, drug/alcohol abuse.

Early in its life, NOMS developed an approach to reducing reoffending that reflected the SEUs analysis of offending related needs based on seven pathways:

- 1 accommodation
- 2 education, training and employment
- 3 mental and physical health
- 4 drugs and alcohol

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<sup>18</sup>Lewis S, Vennard J, Maguire M, Raynor P, Vanstone M, Raybould S and Rix A (2003), *The Resettlement of Short Term Prisoners; an evaluation of seven pathfinders*, Occasional Paper No.83 London: Home Office

- 5 children and families of offenders, finance
- 6 benefit and debt
- 7 attitudes, thinking and behaviour.

For women offenders, an additional two pathways were recognised, reflecting the impact of domestic violence and sex work.

NOMS established multi-agency strategic groups at regional level to drive forward policy to meet offender needs under the various pathways, since many of the resources that target these needs are controlled by other government departments and agencies.

At the same time, NOMS developed the offender management model– a structured form of case management, alongside an integrated assessment system (OASys). The OASys provides the means through which Offender Managers (those holding responsibility for managing the case) make judgements about how best to reduce the risks of reoffending in each individual case, through provision of suitable interventions to reduce assessed risks and meet assessed needs. These systems should, in theory, be capable of bringing about a reduction in reoffending. However, NOMS does not control the resources at local level that fund the services required to address all of the needs. Many of the reducing reoffending pathways require co-ordinated approaches involving a range of commissioning partners. These commissioners may have other pressing priorities leading to offenders not being given sufficient consideration. As the Ministry of Justice (2008b; 9)<sup>19</sup> notes:

‘To deliver the efficiencies required to operate within our financial settlement, we need to drive greater value from our partnership arrangements.’

This suggests a need for a collective or collaborative approach at local level if NOMS is to successfully meet its aims.

Even where NOMS does control the resources, as is the case with prisons and probation, there are no easy wins. A central offering on the menu of interventions is a range of offending behaviour programmes (OBPs) designed to address perceived deficits in offenders attitudes, thinking and behaviour. These are largely cognitive behavioural programmes and they make up the bulk of courses offered to prisoners to help them to change their behaviour. The House of Commons Home Affairs Select Committee (2004; 72)<sup>20</sup> concluded that there were limitations to the effectiveness of these programmes:

‘In our view, the results of the Home Office research argue in favour of reducing the priority given to offending behaviour programmes. They should continue to be offered as part of the range of interventions for prisoners but fitted into a much wider rehabilitation agenda.’

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<sup>19</sup> Ministry of Justice (2008b) *National Commissioning and Partnerships Framework: 2008/09*. London: Ministry of Justice.

<sup>20</sup> House of Commons, Home Affairs Select Committee (2004) *Rehabilitation of Prisoners, First Report of Session 2004-05*. London: The Stationery Office.

More recently, the Sainsbury Centre for Mental Health (2008: 2)<sup>21</sup> has expressed a similar view in relation to the effectiveness of OBPs for offenders who have severe and enduring mental health problems. Their report comments:

'OBPs focus on changing behaviour but do not consider the offenders' wider circumstances and the impact these might have on offending. Finding somewhere to live, getting a job, and maintaining family relationships are pivotal to help offenders to pursue more socially acceptable goals and alternative ways of living.'

It seems reasonable to assume that when combined with practical support in relation to health, housing, money and employment these programmes can offer a means of better equipping people with multiple, complex needs to make changes in their lives. However, there is a question of access to both programmes and practical support services. NOMS in strategic planning documents (see, *National Regional Reducing Re-offending Delivery Plan*, Home Office, 2005, *NOMS Offender Management Model*, Home Office, 2006, *National Commissioning and Partnerships Framework*, Ministry of Justice 2008) make it clear that in prioritising limited resources, programmes and other forms of intervention should be targeted at those who represent the greatest risk of harm to the public. Many of the revolving door prisoners – those who commit frequent lower level offences – will not cross the threshold and will miss out. For most adult prisoners serving less than 12 months, there is currently no access to the very programmes that could potentially halt their cycle of offending and prison.

Even where prisoners are able to access offending behaviour programmes there are problems due to the churn in the system. People are moved around in order to free up space and this sometimes means that courses started cannot be completed or access to courses is denied due to them not being available at the next prison to which a prisoner is transferred. Overcrowding of course makes this worse.

If prisoners do complete the right courses and access appropriate healthcare and treatment, there are still likely to be problems after they are discharged from custody. Changes made during the prison sentence need to be sustained post-release. In order to create greater stability and long-term change people require on-going support in the community. The current NOMS offering is very limited in this respect. For many of those serving sentences of less than 12 months imprisonment there is currently no obligation to engage with statutory services and no supervisory contact with the probation service in their local area. A new initiative, called layered offender management is being piloted in recognition of the need to address this gap with the aim of offering some level of offender management to those who are currently out of scope. This is clearly to be applauded but in the present financial climate resources are likely to remain scarce.

Services to meet health needs (including mental health, drug and alcohol advice and treatment) are provided in prisons through Primary Care Trust (PCT) and Drug and Alcohol Action Team (DAAT) commissioning within Department of Health frameworks. This is intended to ensure that prison based provision is commensurate with what is available in the community and that people's ongoing needs can be met appropriately in their home after discharge from prison.

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<sup>21</sup> Sainsbury Centre for Mental Health (2008) *A Review of the Use of Offending Behaviour Programmes for People with Mental Health Problems*. London: Sainsbury Centre for Mental Health.

However, for those serving less than 12 months, continuity of care is highly questionable. In many cases, arrangements made by prison-based workers for ongoing care in the prisoners home area are simply not followed through. This is often due to the individual not attending appointments that have been made. The need for through the gate support is widely acknowledged and various models, delivered by voluntary sector organisations have been tested. However, there is little money available for such services and few examples of this kind of support being generally available. What little provision there is tends to be extremely patchy, subject to short-term funding arrangements with few opportunities for mainstreaming.

Housing and accommodation support needs have been recognised as critical factors in developing and sustaining a non-offending lifestyle. Housing advice is now provided in all prisons, and prisons and probation are currently subject to three accommodation related key performance indicators. For prisons, the targets in 2009/10 were:

- **Initial Assessment (prisons)** At least 90% of all new offenders entering custody are assessed for housing need within the first four days of custody.
- **Releases to settled and suitable accommodation (prisons)** At least 80% of sentenced offenders are released to settled and suitable accommodation.

For probation the target in 2009/10 was:

- **Completing supervision in settled and suitable accommodation (probation)** At least 75% of offenders serving a period of probation supervision on licence from release from custody or a community sentence/order that requires the offender to be supervised by probation services, are in settled and suitable accommodation at the end of their supervision period.

Prisons and probation areas are subject to monthly reporting requirements for target compliance and both report surprisingly high levels of compliance, routinely reporting performance exceeding targets.

NOMS itself is reviewing the targets with a view to proposing new ones. Whilst it is clear that there have been considerable benefits associated with the introduction of the KPIs, there are a number of flaws associated with the current targets which call into question the integrity of the data being recorded at prison and probation level. There are complex reasons for why the data may not be entirely reliable. and insufficient space to go into the level of detail required to explore this here. In a piece of research carried out by Nacro in early 2010 (Hughes 2010)<sup>22</sup> we found that there were a host of reasons why prisoners who had given addresses did not actually end up residing at those addresses: This findings from that report are based on interviews with 114 people in prisons and in the community. This is a relatively small sample but when combined with Nacro's experience of providing housing advice in prisons it presents a compelling case for doing things differently. A few examples from the report are given below:

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<sup>22</sup> Hughes A (2010) *Prisoners' Housing Destinations; Why prisoners don't go to or don't stay at accommodation arranged for them on release, and the implications of this for NOMS key performance targets*. London: Nacro.

'Some we spoke to stated that they had given an address just to get ECL [end of custody licence] and never had any intention of going there. Addresses given included parents and friends addresses, but also derelict and demolished buildings and shops (one member of staff in a prison had recognised one address given as the local branch of Currys).'

'One prisoner told us that his Mother had allowed her address to be used several times for prisoners, so they could be released on ECL, but there was never any expectation that they would actually go there on release.'

'Some people interviewed were not released on ECL but told us they had never had any intention of going to the address they had given the prison.'

'There was a belief amongst some that they wouldn't be released if they didn't give an address, so they provided whatever they could think of.'

'Some prisoners we interviewed had set out with every good intention of getting to their address, but drinking or drug use meant they never got there. One young man we interviewed, who had served over 10 short sentences, said that he was always met at the gate by a group of friends who had a stash of drink and drugs in their car, which led to him going on a bender for several days. As a result, he never got to the appointment that had been made for him at a housing project, along with various other interviews.'

'Two prisoners interviewed were very open about their plans to head straight for the nearest off-licence on release, and said this would be their main priority. One prisoner said he had never got past the licensed café at the train station after his last release, and then failed to show up at the accommodation arranged for him. Another said he had gone to buy alcohol as soon as he was released.'

'Some prisoners, released together, had all encouraged each other to go drinking instead of heading to arranged appointments. Housing advisors confirmed that this can be a real problem, particularly where groups of released prisoners are all released at around the same time and all head to the station.'

'We spoke to one prisoner, though, who didn't stay at the friends address he had put down because when he got there he realised that there was significant drug use in the property. He had left prison determined to keep off drugs, and didn't think he would be able to resist the temptation to use if he had stayed there.'

'In our sample, alcohol was a bigger problem than drugs immediately on release.' (Hughes 2010)

The Nacro report found that there were also issues about the nature of accommodation provided, its location and the pull of family and friends. Several interviewees commented on the apparent wisdom of starting afresh in a new area being undermined by the lack of support and the important role played by family and friends in their lives. Practicalities involved in getting to the accommodation were also cited as problematic.

The target for releases to settled and suitable accommodation was 80% for 2008-09 and, according to the data, this was exceeded. The reality of what happens to prisoners on release, as Nacro's recent study has shown, suggests a different picture to that portrayed by the official data. There is an overwhelmingly obvious case for providing much more direct support to individuals once they are released.

Preventing loss of existing housing would result in fewer people having to be assisted to find new accommodation for release. Tenancy sustainment work is carried out by prison-based housing advisors but housing benefit regulations and their interpretation can make this tricky. Only those likely to serve no more than 13 weeks in custody are eligible to claim for housing benefit to meet their rent costs. Nacro has heard recently that cases involving sentences of six months (with half expected to be served in custody) are sometimes being deemed ineligible, as their sentence will take them a day or two over 13 weeks (and the length of the months that will be spent in prison can have an impact here), whereas those sentenced to 26 weeks, who will serve exactly 13 weeks, can claim successfully. This clearly needs further investigation. However, this area of work is not currently covered by the key performance indicators.

Identifying and brokering suitable forms of accommodation for release present major challenges and dealing with people who often have severely chaotic housing histories can make the task almost impossible. Local authorities and other social housing providers have policies which tend to exclude such people and there are not enough schemes that provide supported housing. It is particularly difficult to address the housing needs of people with drug and alcohol problems. A history of rent arrears also creates serious difficulties. Housing workers must be able to advise on housing related debt and help prisoners to set up suitable repayment plans. Financial needs are high and there is no standardised form of debt advice and money management provision available. Various local arrangements exist and Citizens Advice Bureau offer services in many prisons. There are a variety of education and training programmes intended to improve financial capability. The Consumer Financial Education Body (CFEB), formerly the Financial Services Authority (FSA), has funded a series of pilots to test the best ways of delivering services to people in prison. One of these pilots, developed and run by Nacro, delivers a Money Management training course that aims to equip staff in prisons with the knowledge and resources they need to offer appropriate advice and information to prisoners and the take-up of this has been extremely popular. Participant evaluation shows a very high level of satisfaction and indicates the need for much more similar support for staff to enable them to properly support prisoners in their care to address finance needs. The courses being delivered currently by Nacro have been funded to run for a further year but after that it is unclear as to how the provision will be resourced in the future.

With regard to education and improving employability there are a myriad of schemes and programmes that aim to address prisoners learning, skills and employment needs. However, unless health, housing and financial needs are properly addressed it is unlikely that progress made during custody will be sustained after release. In the present economic climate, those with lengthy histories of unemployment combined with long criminal records stand little chance of competing successfully in the employment market. It is worth noting also that areas of work that have traditionally appealed to ex-offenders, and where they stood a reasonable chance of success, such as construction, are in decline at present, and areas that are being promoted as growth areas for the future, ie retail

and social care, are likely to be closed to many offenders because of their criminal records and the checks that are carried out. Reform of the 1974 *Rehabilitation of Offenders Act*, as we have already argued, is long overdue. However, it is equally important to review the way in which criminal record checks are carried out and to support employers in making effective risk assessments in relation to decisions about offering jobs to people with criminal convictions.

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