



# postnote

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## ALTERNATIVES TO CUSTODIAL SENTENCING

There has been considerable recent debate about overcrowding in UK prisons. The system is struggling to accommodate the growing number of young offenders being given custodial sentences. This POSTnote sets out the scale of the problem and looks at recent trends in sentencing, with a particular focus on young offenders. It examines the factors linked with offending and asks whether better understanding of these can be used to target early actions aimed at deterring young people from offending. Finally, the note examines alternatives to custodial sentencing and assesses how successful these have been in practice.

### Background

#### Trends in sentencing

Courts have a range of options open to them when sentencing offenders (Table 1). These include:

- Custodial sentences in prisons, detention centres, young offender institutions, secure training centres, or secure children's homes. While the number of offenders sentenced through the courts in England and Wales declined between 1996-06, the proportion given custodial sentences increased (from 5.9-6.8%).
- Community sentences. As detailed later, a wider range of community sentences have been introduced in the last few years. Since 1996, the overall number of community sentences given by the courts has risen, particularly for young offenders aged 10-17 (Table 1).
- Fines and other measures (such as conditional or absolute discharges or guardianship orders). The number and proportion of offenders given such sentences has declined since 1996.

#### The prison population

The rise in custodial sentencing has resulted in considerable pressure on the prison estate, which is currently running very close to full capacity. According to

Table 1 Sentences (England and Wales, 1996 & 2006)<sup>1</sup>

Sentences		Age (years)			
		10-17	18-20	21+	All ages
Total sentences	1996	74,507	152,298	1,198,472	1,425,277
	2006	93,806	142,694	1,176,440	1,412,940
Custodial sentences	1996	6,497	14,750	64,002	85,249
	2006	6,183	13,897	75,937	96,017
Community sentences	1996	25,123	22,752	84,762	132,637
	2006	61,498	24,879	104,460	190,837
Fines	1996	16,962	95,330	949,201	1,061,493
	2006	11,599	80,910	861,653	954,162
Other measures	1996				139,114
	2006				134,281

the National Offenders Management Service (NOMS) on the 9th May 2008, the total population in custody (male and female) was 82,323.<sup>2</sup> At the same time, NOMS estimates the total useable operational capacity of the UK prison estate to be 82,949. This is defined as the sum capacity of all establishments on the estate minus 1,700 places to make allowance for operating margins such as the need to provide separate housing for males and females, different categories of prisoners, etc.

A substantial proportion of those in custody are young men: on 31/12/2007, the prison population comprised:

- 2,188 15-17 year olds, 2,128 of whom were male;
- 9,220 18-20 years olds, 8,790 of whom were male;
- 68,081 adults (21+), 64,242 of whom were male.

The government has increased prison places by nearly 20,000 since 1997 and has begun a new building programme to deliver an additional 8,000 by 2012. Lord Carter's Review of Prisons recommended in December 2007 that a further 6,500 new places would be needed by 2012.<sup>3</sup> It also advised changes to sentencing legislation to encourage use of alternative remedies for some low risk offenders and offences, in line with the government's strategy for reserving custody for the most serious and dangerous offenders.

## Alternatives to custodial sentencing

The Criminal Justice Act, the Courts Act and the Anti-Social Behaviour Act were all passed in 2003. They were designed to rebalance the criminal justice system in favour of the victim and the community. As discussed below, the new system embraces a number of approaches including restorative justice, community sentencing, and electronic monitoring.

### Restorative justice

Restorative justice aims to promote accountability through reconciliation and reconnection to the community. In practice it usually involves direct (face-to-face) or indirect (through a mediator) communication between victims and offenders, but can also involve financial restitution ordered by a court. A review<sup>4</sup> of restorative justice in the UK and abroad showed that it:

- Substantially reduced repeat offending for some, but not all, offences. In particular, restorative justice seemed to work best in reducing re-conviction rates for more serious crimes involving personal victims such as violence and, to a lesser extent, property crime.
- Reduced re-conviction rates for some, but not all, offenders. In particular, restorative justice was more effective than prison in reducing re-conviction rates among adult offenders, and gave similar re-conviction rates as prison for young offenders.
- Delivered benefits to the victims where the process involved face-to-face conferences. Benefits included reduced post-traumatic stress symptoms in the short-term, and possibly also longer-term health benefits.
- Delivered cost benefits when used as an alternative to conventional criminal justice, and in terms of reduced costs of healthcare for victims.

The Home Office funded three restorative justice schemes from 2001 through its Crime Reduction Programme. These included the Connect scheme in Inner London, the Justice Research Consortium which operated at three sites (London, Thames Valley and Northumbria) and the Remedi scheme in South Yorkshire. These offered a range of direct and indirect mediation to offenders and victims. An evaluation of the schemes reported higher levels of satisfaction following direct mediation than with indirect mediation.<sup>5</sup> However, the report noted that indirect mediation allowed those not wishing a direct meeting with the other party to access restorative justice.

### Community sentencing

As part of the reform of sentences brought about by the Criminal Justice Act 2003, the generic community sentence was introduced in 2005. It is used as one of the four orders detailed in Box 1 and is designed to allow the sentence to be tailored to the offender/offence through one or more of the following 12 requirements:

- compulsory (unpaid) work on community projects;
- participation in specified activities, such as education or training;
- participation in Offending Behaviour Programmes;
- prohibition from certain activities;
- electronic curfew;

### Box 1 Community orders

The requirements in the generic community sentence can be applied to offenders age 16 and over in four main ways:

- Community Rehabilitation Order (CRO) – between 6 months and 3 years in length - may include requirements such as residence, probation centre attendance or treatment for drug, alcohol or mental health problems.
- Community Punishment Order (CPO) – unpaid work in the community of between 40 and 240 hours.
- Community Punishment and Rehabilitation Order (CPRO) – a combination of the above, with between 1 and 3 years probation combined with between 40 and 100 hours community punishment. Like a CRO, it may have additional requirements.
- Drug Treatment and Testing Order (DTTO) – requires the regular testing of drug offenders and compulsory attendance at a specified drug treatment centre for 6 months to 3 years.

Under the Community Payback scheme, local residents are able to make suggestions and nominate work that they would like to see offenders carry out in their area.

- exclusion from certain areas (usually monitored electronically);
- residence requirement (such as an approved hostel);
- mental health treatment;
- drug treatment and testing;
- alcohol treatment;
- supervision (by an offender manager from the Probation Service);
- attendance at a centre offering structured activities.

In May 2007, the Ministry of Justice's Penal Policy paper outlined the Government's intention to develop higher intensity community orders as an alternative to short term custody (under 12 months). This approach is being developed initially in Derbyshire for implementation in March 2008. In January 2008, the Ministry of Justice announced an additional £13.9 million over the next three years for such projects (see Box 2 for details).

### Box 2 Pilot on high intensity community orders

The intensive community sentences pilot began in Derbyshire in March 2008. The format of these orders includes a combination of unpaid work, electronic monitoring, behaviour programmes, mentoring, and help with resettlement, all under intensive supervision. Overall, the projects funded will test two new approaches:

- Intensive Control Sentences: these might include supervision, programme and activity requirements, plus other requirements as necessary, such as peer mentoring, judicial monitoring, engagement with the police and resettlement work.
- Intensive Punitive Sentences: made up of unpaid work and curfew adapted to provide a short, intensive, community punishment as an alternative to very short term custody (6 months and under). This could include a supervision requirement and involve a set number of hours of physically demanding unpaid work combined with supervision appointments and curfew restrictions to last for 3-6 months.

### Electronic monitoring

As well as being used as a condition of bail or to enable early release from prison, electronic monitoring can also be imposed as a sentence following conviction for an offence. Introduced nationally in 1999, community orders using electronic monitoring require an offender to stay at a particular address during specified times, usually overnight. Two types of electronic monitoring are currently available, both involve a 'tag' on the ankle:

- radio frequency technology alerts a monitoring company when offenders go 'out of range' (usually as a result of leaving their house);
- satellite tracking uses the GPS system to track an offender's whereabouts away from the home address.

A Home Office evaluation of electronic monitoring<sup>6</sup> showed that 80% of offenders successfully completed their curfew orders but two year reconviction rates were fairly high, at 73% (compared with 66% for those serving custodial sentences).<sup>7</sup>

### Early intervention

The government has launched a number of initiatives in an attempt to tackle the underlying causes of offending and to steer young offenders away from crime. These include a new youth justice system and initiatives such as the Surestart scheme which aims to bring together early education, healthcare and family support. A key component of the youth justice system is the multi-agency Youth Offending Teams found in local authorities in England and Wales. These assess specific problems that make a young person offend, and the risk an offender poses to others, and identify suitable interventions to address each young offender's needs with the intention of preventing further offences.

Social and psychological variables associated with whether or not an individual becomes involved in offending are well documented. They include:

- 'problematic' behaviours of childhood such as bullying and aggressiveness;
- 'teenage anti-social behaviours' such as substance use, sexual activity and gambling;
- problems at school;
- poor family relationships;
- economic and social factors such as poverty.

Where such factors are identified, it may be possible to target those at highest risk of offending through early interventions. These may include parental approaches, where parents are provided with support and advice, or family-based approaches, such as providing foster care treatment for young people with poor family relationships. Young people with several risk factors may need multi-pronged service provision. There is evidence that such early interventions can be effective (see Box 3 for an example) in reducing anti-social behaviour and offending and truancy rates. In general, interventions are most effective when they:<sup>8</sup>

- match the specific needs of the young person;
- are targeted to changing specific behaviours and include training in social skills and problem solving;

### Box 3 Rainer's Rapid Action Project (RAP)

Rainer's RAP is an early intervention scheme that offers support for young people whom the police have identified as being 'at risk' of offending or who have committed their first minor offence. Outreach youth workers based in police stations take referrals; a key strength of the project is its early response and support for young people and their families. The project also has the capacity to signpost those most at risk to specialist services/agencies in order to deal with any other problems contributing to offending behaviour. An internal evaluation revealed that 1% of young people who engaged with the project went on to offend.<sup>9</sup>

- are well structured, planned and monitored;
- stay true to the original programme (if the intervention is based on a published model) while allowing flexibility to adapt an intervention to individual needs;
- are designed to intervene across several contexts at once, which may mean involving people from different domains of the young person's life;
- are long-lasting and well resourced.

### ISSUES

#### Effectiveness

There is evidence from studies abroad that community approaches to sentencing can have positive outcomes. In the UK, Ministry of Justice research shows that participation in a group programme can reduce the chances of reconviction for some offenders.<sup>10</sup> An evaluation of adult offenders found that those sentenced to a Community Punishment Order had the lowest re-offending rate (40%) compared with those sentenced to prison (66%).<sup>7</sup> A crude comparison of Community Punishment and/or Rehabilitation Orders and a comparison sample of those who received a lesser sentence (i.e. no supervision from probation services)<sup>11</sup> revealed that those issued with a Community Punishment Order had a lower reconviction rate than those on Community Rehabilitation Orders.

Less evidence is available to assess which of the 12 requirements are likely to be most effective in achieving the desired sentence outcomes. A report on the supervision of community orders in England and Wales by the National Audit Office (NAO) recommended that the Ministry of Justice "*identify the degree to which the twelve...requirements reduce reconvictions and achieve other sentencing outcomes*". It suggested this might be achieved through a longitudinal study assessing similar groups of offenders given different types of sentences.<sup>12</sup>

#### Costs

Community sentences are often regarded as a cost-effective alternative to custodial sentences. However, this depends on two main factors. First, there is the cost of administering community sentences compared with the costs of alternatives such as custodial sentences. Estimates suggest that the average annual cost per young adult prisoner is over £34,000.<sup>13</sup> While the average cost of community sentences is likely to be lower than this, the actual cost of a sentence will vary depending on the

requirements it contains. The NAO has recommended that the Ministry of Justice should determine the full cost of implementing different types of community orders.<sup>12</sup> Second, there is the value that community sentences add to communities. For instance, in 2007, more than 6 million hours of compulsory unpaid work were carried out in communities in England and Wales by offenders who received a community order. This is estimated to have benefited communities by around £33 million.

### Availability of requirements

In its report on the supervision of community orders in England and Wales<sup>12</sup>, the NAO concluded that some community order requirements are not available, or are rarely used, in some areas. In particular, it noted that there were long waiting lists for some requirements, such as group programmes dealing with domestic violence. A recent survey by the National Association of Probation Officers also highlighted problems with availability of treatment courses used as part of community penalties.<sup>14</sup> The NAO has recommended that the Ministry of Justice work with the Department of Health and other agencies to increase the provision of mental health and alcohol treatments across all areas.

### Completion of community orders

Data on the completion of order requirements are not routinely compiled. A case file review conducted by the NAO suggested that around 6% of offenders were unable to complete an order requirement before their order ended. The NAO recommended that the Ministry of Justice should require all Probation Areas to report the percentage of community orders which end before sentence requirements are completed along with the reasons for the non-completion. Reasons might include a breach of the order by the offender, revocation of an order by a court or lack of probation capacity to deliver the requirement.

### Public perception

There is some evidence to suggest that the public may perceive community sentences as being too lenient. The Lord Chief Justice contrasted such perceptions with the realities of the criminal justice system in a speech in May 2006.<sup>15</sup> He stressed that community sentences were not used for offenders committing serious crimes or those who pose a threat to society. Furthermore, he noted that community sentences provide a visible demonstration of reparation to the community in which the offence took place and that the community is able to influence and to understand the nature and type of sentence performed.

### Research issues

The relationship between type of sentence and re-offending rates is complex. There is a need for further research on the impact and effectiveness of alternatives to prison, along with consideration of why, and under what circumstances, community sentences work. It has been argued that there has been an over-reliance on reconviction data and that reconviction needs to be considered in relation to other life-style or risk factors.<sup>16</sup> There has also been a lack of rigorous evaluation of UK

programmes, which means that much of the evidence base for UK policy comes from evaluations of North American interventions.

### Young adult offenders

Young men make up a significant proportion of the prisoner population; a quarter of all sentenced and unsentenced receptions to prison are under twenty-one years of age. However, 18-21 year-old prisoners have been described as "a lost generation"<sup>17</sup> in terms of policy focus. While recent initiatives and policy developments such as the Youth Justice Board, Surestart, Child Trust Funds, Connexions, and Youth Offending Teams target the under 18s, resources are less readily available to young people who have passed their 18<sup>th</sup> birthday.

### The wider perspective

This note has focused on the effectiveness of the main alternatives to custody for young people. However, there is a wider range of issues associated with housing, poverty, and education that are beyond the scope of this note, but that are important factors in any consideration of the reduction of offending by young people.

- 1 [www.justice.gov.uk/docs/population-in-custody-dec07.pdf](http://www.justice.gov.uk/docs/population-in-custody-dec07.pdf)
- 2 [www.hmprisonservice.gov.uk/assets/documents/1000397609052008\\_web\\_report.doc](http://www.hmprisonservice.gov.uk/assets/documents/1000397609052008_web_report.doc)
- 3 [www.justice.gov.uk/docs/securing-the-future.pdf](http://www.justice.gov.uk/docs/securing-the-future.pdf)
- 4 [www.smith-institute.org.uk/pdfs/RJ\\_full\\_report.pdf](http://www.smith-institute.org.uk/pdfs/RJ_full_report.pdf)
- 5 [www.justice.gov.uk/docs/Restorative-Justice.pdf](http://www.justice.gov.uk/docs/Restorative-Justice.pdf)
- 6 Sugg D et al, Findings 141.2001 London: Home Office.
- 7 Shepherd A & Whiting E, *Home Office Statistical Bulletin* 20/06
- 8 *Adolescence and Antisocial Behaviour*. APSA Practitioner Briefing No.1, July 2006
- 9 Howard League for Penal Reform (2008). *The Community Programmes Handbook*. London: Howard League for Penal Reform.
- 10 Research Development Statistics NOMS, *Reconviction Analysis of Interim Accredited Programmes Software*, September 2007
- 11 *Using Reconviction Data to Explore the Usefulness of Community Penalties in West Yorkshire*, West Yorkshire Probation Service, 2005
- 12 *The supervision of community orders in England and Wales*, NAO, 2007
- 13 *HM Prison Service Annual Report and Accounts 2005-2006*. London: The Stationary Office
- 14 [www.napo.org.uk/cgi-bin/dbman/db.cgi?db=default&uid=default&ID=180&view\\_records=1&ww=1](http://www.napo.org.uk/cgi-bin/dbman/db.cgi?db=default&uid=default&ID=180&view_records=1&ww=1)
- 15 [www.judiciary.gov.uk/publications\\_media/speeches/2006/sp10056.htm](http://www.judiciary.gov.uk/publications_media/speeches/2006/sp10056.htm)
- 16 Friendship C et al, *Legal & Criminological Psychology* 8, 1, 115-127, 2003
- 17 Solomon E, *A Lost Generation: The Experiences of Young People in Prison*. The Prison Reform Trust, London 2004

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