How to reduce prison overcrowding – some practical solutions

Summary and bullet points for action

A Cumberland Lodge Forum, Monday 8th October, 2007

Cumberland Lodge is grateful to Reliance Secure Task Management for kindly supporting this event.

Speakers at the forum:
Phil Wheatley, Director General, H.M. Prison Service
Anne Owers, H.M. Chief Inspector of Prisons for England and Wales
Dr Chloe Chitty, Head of Unit, Research, Development and Statistics, National Offender Management Service
Dr Nicky Padfield, Senior Lecturer, University of Cambridge
David Scott, Chief Officer, London Probation
Rob Lyman, Director Offender Services, Reliance Secure Task Management Service
Dr David James, Consultant Forensic Psychiatrist, North London Forensic Service
Olga Heaven, Director, Hibiscus
Helen Edwards, Chief Executive, National Offender Management Service
Juliet Lyon, Director, Prison Reform Trust and Secretary General, Penal Reform International

The Problem
Since 1995 the prison population has risen by over 30,000 from 49,542 (end Jan 1995) to 81,245 (October 2007). Over 24% of prisoners are in overcrowded conditions.
Negative consequences:
• population churn, prisoners moving from place to place, is difficult for prisoners, staff and courts.
• a marked increase in self-inflicted deaths.
• education and drug or alcohol treatment programmes are impeded.
• a shortage of constructive activity for one third of prisoners.
• prisoners are forced to share cells, increasing the risk of violence and unrest.

The prison population can be understood roughly as follows:
• just over 10% of prisoners, over 8000, spend under one year in prisons; this is quite a low number, historically speaking.
• 12% are serving either Indeterminate Sentences for Public Protection (IPP) or life sentences, a significantly increased proportion.
• 31% serve four years to life; ‘long, thick’ sentences.
• 28% serve between 1 – 4 years, a medium term sentence.
• 7% of the prison population are recalled, having failed their licenses.
• 2% of the population are foreign nationals awaiting deportation.
• overall, there is a 2% growth, year on year, in the prison population.

Between 1995 and 2005 there has been an average increase in the length of crown court sentences by 24% and a 28% increase in use of custody for indictable offences. The increase in the number sentenced to immediate custody and the imposition of longer sentences are the two key drivers behind the increase in the prison population.
Other, less significant, factors causing the increase in prison population are:
• the introduction of Indeterminate Sentences for Public Protection (IPP) or Suspended prison sentences (SSOs)
• greater enforcement of breaches of community orders with recalls for breaching the conditions of licence
• fewer releases on parole
• a fall in the use of Home Detention Curfew, and a rise in foreign nationals of 6,500 or 140% from 1997 to 2007.

The Criminal Justice Act 2003 increased the starting point for the minimum term for murder. This has had the effect of raising substantially the terms of imprisonment to be served, not merely for murder, but for a whole range of other offences that must logically bear a relationship to the sentences imposed for murder. This is a major reason for an increase in the prison population. Was this consequence intended and planned for?

The Indeterminate Sentence for Public Protection (IPP), introduced in 2005, is one that the judge must impose where, according to the terms of the statute, the offender is dangerous and poses a serious risk of harm to the public. There is the view that IPPs are being imposed in respect of offences which are not, in fact, very serious and which carry a relatively short minimum term.

Statistics show that those who receive short prison sentences are particularly likely to re-offend, of those discharged after short sentences in 2001, 67% were reconvicted within two years. It is estimated that 50% of offences are committed by 10% of offenders.

**Political, humanitarian and financial arguments for non-custodial punishment**
International standards make it clear that deprivation of liberty should be regarded as a sanction or measure of last resort, because there are substantial financial, social and ethical costs entailed in the use of imprisonment. In the UK a court is required not to pass a custodial sentence unless the offending was so serious that no alternative sentence can be justified and, in that event, the custodial sentence passed must be for the shortest term that is commensurate with the seriousness of the offending. In practice, it is not always easy for the judge or magistrate, guided by the Sentencing Guidelines Council, to weigh up the seriousness of the offence. In addition, parliament has not been content to leave it to the judges to evaluate seriousness, and to impose the appropriate sentence of imprisonment. Parliament has required judges to give weight to the particular ingredients of an offence, almost always with the consequence that sentences have been increased. Are prison sentences being imposed when they should not be?

Answers to prison overcrowding are complicated by the politics that surrounds crime and punishment, as each party tries to prove it is ‘tough on crime, tough on the causes of crime.’ There is, however, a danger that being ‘tough on crime’ means, simply, more use of imprisonment. There is a widespread belief that there is a connection between the rate of crime and the sentencing structure i.e. that the criminal justice system (and sentencing policy) is a means of controlling the crime rate. There is little evidence to support this view, but it leads to a public demand for tough sentences.

Those who believe that the solution to the problem of street crime and prison overcrowding is just to build more prisons need to consider that this response is in danger of ignoring one of the most vital humanitarian questions: how can we make the punishments we impose instructive rather than damagingly dehumanising? Insisting only that crime should be punished may mean that there is a failure to see that the wrong sort of punishment does nothing to correct anti-social behaviour and may well be degrading, so making re-offending more likely.

There needs to be an informed campaign about the huge social and financial burden of prison
as a form of punishment. A cost-benefit analysis would show it is not always worthwhile to keep people locked up for extended sentences. The average cost of keeping a person in prison for a year is thought to be £40,992; for what type of crime is custody too expensive an option? Research by the Ministry of Justice shows that a short prison sentence does not serve as a deterrent; in this case imprisonment would not seem to be cost-effective.

In social and ethical terms: for how long should an offender be imprisoned to be punished sufficiently? When is the protection of the public not put at risk by the release of an offender? Are we punishing in a way that is at the expense of rehabilitative opportunities?

Simply building more prisons might divert limited funding from education and support programmes, would not address the problem of old prisons which are now failing health and safety regulations, and would probably result in a parallel increase use of prison sentences. The experience of England and Wales over the last 20 years, and internationally, shows that new capacity will not reduce overcrowding.

‘Locking them up’ cannot be the only aim of criminal justice; punishment must be balanced with rehabilitative opportunities. Being ‘tough on crime’ requires wise and reasoned responses, not those which give merely visceral satisfaction.

Levels of crime and reoffending need to be reduced. As crime is sometimes a function of poor socialisation, due to poverty or poor family relationships, it is important to improve social functioning. Punishment alone may well cause further damage to the vulnerable. Will the day ever come when rival parties cease competing to be seen to be ‘tough on crime’ in simplistic terms, and devote as much attention to addressing the causes of crime?

Alternatives to prison
a) Community Orders
The Criminal Justice Act 2003 requires that if the seriousness of the offence is such that a non-custodial sentence can be justified, such a sentence must be imposed in preference to imprisonment. In practice there is quite a wide border-line area where it is open to the court to choose between sending the offender to prison or dealing with him/her in some other way.

Community Orders, non-custodial sentences such as unpaid work, or the curfew monitored by electronic tagging, are desirable alternative punishments to short terms of imprisonment, as they are more economical, a form of restorative justice, and rehabilitation is more likely. They are also punitive and give a degree of protection to the public from anti-social behaviour.

However judges, magistrates, the public and the media need to believe more in the efficacy of non-custodial sentences; at present this is not the case; is this perception well founded? Research done in the Thames Valley, sponsored by the Esmee Fairbairn Foundation, indicates that the average level of attendance for offenders sentenced to unpaid work is no better than 60%. A report published by HM Inspectorate of Probation in 2006 found that there were wide variations in the quality of case management of unpaid work across the country and not all of the projects provided the positive benefit to the offender that was intended. Increases in community orders have not been accompanied by necessary resourcing, resulting in severe capacity problems in many areas.

Alternatives to prison
b) Fines
The 2003 Act prohibits the imposition of a Community Order unless the offence is serious enough to warrant it, and this involves the court having regard to whether a fine can be justified. In the decade between 1992 and 2002 there was a 92% increase in the imposition of custodial sentences, an 82% increase in the use of community sentences, but a steady decline in the use of fines. These trends have continued. Why?
Perhaps there is a perception that there is no point imposing a fine because they are not enforced, which was true at one time, but need not be the case today. With the use of technology the enforcement of fines is greatly facilitated. For a fine to be effective it should have regard both to the nature of the offence and to the means of the offender. Although a fine is relatively cheap to enforce, it is not much use if the offender is on income support, nor does it achieve anything by way of rehabilitation.

**Private and voluntary sectors**

Probation must focus on quality and consistency in the delivery of community penalties, and need to be more confident in arguing the case for community penalties at every level, from individual practitioner to corporate governance. However immense public protection challenges pose a corrosive, inexorable demand on an overworked probation staff. What is to be done about this problem?

Both the private and voluntary sectors could have much to offer statutory agencies in the area of community-based supervision. By working more in partnership the statutory agencies could be allowed to concentrate on those elements of their core business while specialist supervision is provided by others. Amongst other things, the private and voluntary sectors could:

- supervise attendance and reporting against resettlement plans
- meet offenders at the point of release from custody or on entry to the scheme
- maintain contact with remands/custodial offenders
- recruit, train and deploy mentors
- organise restorative conferences where these may be appropriate
- facilitate access to specialist intervention providers, and
- set up recording and reporting processes to main stake holders

The use of restorative justice approaches, where victims and their supporters meet with offenders and their supporters in conferences managed by independent facilitators have had proven success. Victims’ satisfaction levels with the process are many times higher than with the conventional criminal justice system.

Mental health problems lead to criminal acts, but many offenders have problems with literacy and numeracy, or have been addicted to drugs and alcohol. Many have suffered from an abusive or inadequate family background. Such offenders do not take readily to rehabilitation, yet it can make an enormous difference if there is an identifiable individual taking a personal interest in the progress of the offender. As public sector organisations are overstretched, it often falls to voluntary sector organisations to give individual mentoring, as well as providing drug and alcohol treatment, or assistance with finding accommodation and employment for ex-offenders. However, each voluntary sector organisation needs funding from the public or private sector, and to obtain this organisations need to show they are cost-effective. Arguably, if voluntary sector organisations have a significant impact they can produce huge savings to society by reducing re-offending.

**Female prisoners**

While women constitute only a small fraction of prisoners (about 5%) it seems perverse that their numbers should contribute to the crisis of overcrowding. Most offences committed by women tend to be non-violent, associated with child rearing or relationships with violent men. Research shows that woman offenders tend to be single parents brought up in care, to have suffered mental illness, drug abuse or abusive relationships. Instead of prisons women need institutions which have an educational function, with an emphasis on child rearing and life skills.

Female foreign national offenders are generally poor, badly educated single mothers in their late twenties or mid-thirties. They offend as a means of coping with their poverty, desperation and need. Some are coerced or deceived into carrying drugs. Yet they are currently subjected to harsh sentences, perhaps longer than that given to a professional drug baron, based on the quantity and quality of the drugs they carry. The purpose of such sentences is supposed to be ‘deterrence’ but research shows that long sentences do not deter, only education campaigns do
so. To correct this erroneous policy the government and judicial system needs to:

- reduce the length of sentences and allow for mitigating circumstances to be considered.
- fund and pursue enlightened educational public information campaigns, which are far more effective in terms of prevention than punishment.
- when there is no security risk, passport fraud should be decriminalised to reduce overcrowding.
- the Government needs to come to agreements with countries abroad, so women serve part of their sentences in their own countries.

**Mental Health**

The Chief Inspector of Prisons recently estimated that 41% of those held in prison health care centres should have been in secure NHS accommodation. Prison is not the right repository for many whose mental condition is the cause of their offending; they need to be given appropriate treatment and cared for in a manner which prevents them from re-offending. Diversion schemes would cut out the need for mentally ill offenders to spend time in remand prisons before they go to hospital, would increase identification of mental illness, and deal with minor as well as more serious offenders.

To prevent re-offending it may be necessary to expand in-patient care beyond injections to a look at personality factors, good quality community care, housing away from criminogenic surroundings, protected work schemes and Multi-Agency Public Protection Arrangements (MAPPA) which support the assessment and management of the most serious sexual and violent offenders. A new agency has been established recently to assess threats made to public figures by accessing the health and criminal records of those making the threats.

**What needs to be done?**

Although the Sentencing Guideline Council and the Court of Criminal Appeal set out sentencing guidelines for the use by lower Courts, there are limits as to the extent that they can affect the use and rate of imprisonment. Only the Government, as reflecting public opinion, can make a significant difference to that. So long as the popular press is seen as reflective of public opinion this will be difficult. Surveys show that if you give members of the public full information they are no more penal that the judges, and often less so. Education of the public and Parliament is essential so that sentencing policy is evidence rather that prejudice based.

At this conference there was no unanimity as to what should be done about prison overcrowding, but a number of different ideas were put forward. Among the ideas that were suggested as a result of the small group discussions were the following:

**What do the Criminal Justice Alliance and other organisations need to do?**

- Work collaboratively to improve the quality of non-custodial sentences as an effective means of both punishment and rehabilitation.
- Gather evidence to support the argument that non-custodial sentences can be effective in punishment and rehabilitative terms, and more economical than short-term prison sentences.
- Utilise cost-benefit research and humanitarian argument to inform the public about the negative consequences of prison overcrowding and the worth of alternative forms of punishment.
- Utilise cost-benefit research and humanitarian argument to convince political parties to establish a consistent approach to the problem. Securing agreement to a ‘truce’ is important as the problem cannot be solved if crime and imprisonment are political footballs.
- Alternatively, or in addition to the above, there could be a major media campaign by the Criminal Justice System on one or two issues, so politicians can take measures that are effective in reducing the use of custody without them being seen as going soft on crime. Issues to be targeted might be the treatment of foreign nationals, those with mental health problems, or women.
Leaders and senior managers in the Criminal Justice System, including members of regional Criminal Justice Boards, need to be able to engage with the media directly, to show leadership.

The Alliance and others should do all they can to make greater use of volunteers for mentoring schemes etc. This is cost effective, engages members of the public and helps to establish positive relationships with offenders.

Recommendations for government and opposition:

- Tackle the causes of crime by giving greater support to parents, children and communities, as well as increasing investment in education, health and social care measures.
- Invest in community based sentences, to save money on imprisonment and ensure the effectiveness and credibility of alternatives to custody.
- Work more with private and voluntary sector organisations to ensure Community Orders are effective.
- The role of the Sentencing Guidelines Council should be strengthened to set punishment levels in line with available resources.
- Give courts a budget for sentencing, and the cost details of sentences. Oblige courts to operate within budgets. Budgeted funds then go to the agency incurring costs on implementing that prisoner’s sentence.
- There should be more repatriation, the speedier deportation of foreign nationals, and some document offences should be decriminalised.
- Aim to divert the mentally ill from the criminal justice system at the earliest stage, whenever appropriate to do so.
- Review and reduce the use of Indeterminate Sentences for Public Protection, Anti-social Behaviour Orders, Restraining Orders, Violent Offender Orders. Decriminalise offences where possible. IPPs should be applied to fewer offences, and have a longer minimum tariff. Only those over 21 who commit genuinely dangerous offences should be given an indeterminate sentence, in accord with their original purpose.
- Giving the Parole Board greater independence might give it more confidence and discretion. There needs to be better assessment of the risk prisoners pose, arguably older prisoners, who pose a low risk, should be released.
- Increase the use of fines, making them means related. More rigorous enforcement of fines can result from new systems and technology.
- The Ministry of Justice should establish a new Restorative Justice Board to drive forward restorative justice programmes, to set standards and monitor outcomes.
- Raise the age of criminal responsibility. Move responsibility for Youth Justice to the Department for Education and Skills, as it is pursuing a broader range of outcomes for children than the focus on punishment inherent in the adult justice system.
- Give probation and the courts greater discretion and limit recalls to prison where there is a clear risk of serious harm, rather than for technical breaches of probation and parole conditions.
- Harmonise targets across the Criminal Justice System. Discontinue any targets that can be achieved by getting people into the Criminal Justice System, for example, Offences Brought to Justice, or, more subtly, education targets and budgets that are relieved of pressure when an individual moves into the CJS. The Ministry of Justice, in line with other government departments, should aim for fewer targets and targets that work across government departments.

Cumberland Lodge is most grateful to Geoff Dobson, Prison Reform Trust, Tim Moulds, Criminal Justice Alliance and HH Judge Daniel Pearce-Higgins, QC for their assistance in planning this event.

Summary written by Sandra Robinson, Director, Conference Programme
Email: Sandra@cumberlandlodge.ac.uk

Cumberland Lodge, The Great Park, Windsor, SL4 2HP
Tel: 01784 497781