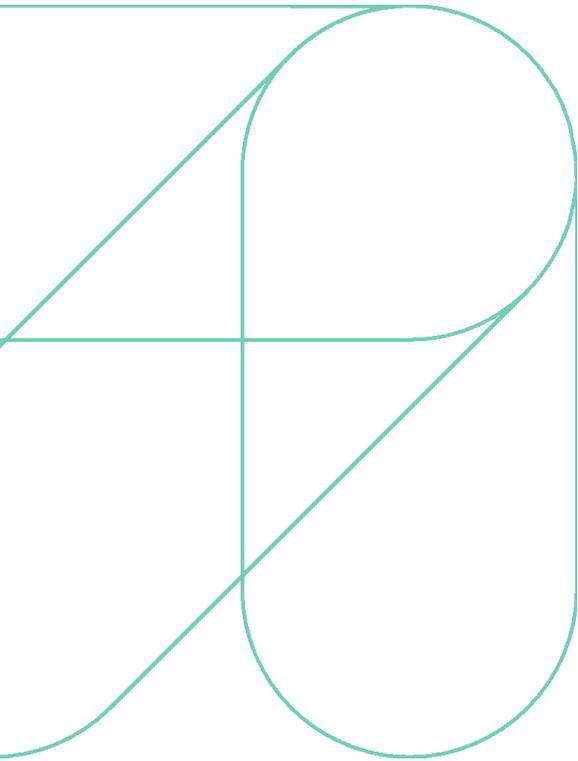


govern^{up}



Examining the case for justice devolution

A research paper by Harvey Redgrave



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PREFACE

GovernUp is an independent research project set up in 2014.

GovernUp brings together senior politicians of all parties, former civil servants, Whitehall advisers and business leaders to consider the far-reaching reforms needed in Whitehall and beyond to enable more effective and efficient government. GovernUp is working to:

- Produce a rigorous body of evidence to identify the strengths and weaknesses of the current system of government;
- Generate radical but workable solutions to the long-term challenges that require reforms; and;
- Shape public debate and build a new cross-party consensus on reform, based on the conclusions of our research.

This research paper

This research paper was authored by Harvey Redgrave, Director of Strategy and Insight at [Crest Advisory](#). As one of the UK's leading experts on crime and justice policy, Harvey brings a wealth of experience from a decade spent working in government and parliament. Prior to joining Crest he was most recently Head of Home Affairs Policy at the Labour Party. Before that he was Deputy Director at the Prime Minister's Strategy Unit where he ran the home affairs team and led several major strategic reviews on behalf of a series of UK Prime Ministers. GovernUp's justice devolution project has been supported by the Hadley Trust.

Advisory Board

GovernUp's Advisory Board consists of senior politicians of all parties, former civil servants, Whitehall advisers and business leaders. Members of the Advisory Board offer their expertise and insight to inform GovernUp's work. They have no responsibility for the project's governance, nor do they necessarily endorse the proposals of GovernUp, its research projects, or discussion papers.

GovernUp

Further information about GovernUp, including research papers produced by the other research projects and a list of members of the Advisory Board, can be found at www.governup.org. GovernUp is an initiative of the Project for Modern Democracy, a company limited by guarantee no. 8472163 and a registered charity in England and Wales no. 1154924.

FOREWORD

Since it was founded, GovernUp's research programme has explored how the civil service can be reformed to deliver better government, at less cost to taxpayers. Many of those themes of accountability, devolution and transparency also apply to wider public services, and the criminal justice system is one area where serious policy discussion is needed on how big reform agendas like devolution should apply.

Devolution itself is not a new concept in criminal justice. Five years ago Parliament legislated to create elected Police & Crime Commissioners (PCCs), and earlier this year, 41 individuals were elected by millions of voters in the second set of elections to this new office. PCCs were the flagship element of David Cameron's ambitious police reform programme, and they are now the most tangible legacy of the Coalition Government's drive for public service devolution, embodied in the 2011 'Open Public Services' White Paper.

This reform made the police democratically accountable but it also curtailed the top-down role of the Home Office and created the pressure for further devolution. Their democratic mandate gave PCCs real soft power, both to convene many of the most important local agencies to address shared problems, but it has also encouraged many to start challenging the performance of not only the police, but also the wider justice system.

This is where this new GovernUp report begins. While PCC leadership has improved policing and delivered better value for money, victims of crime are still being let down. Harvey Redgrave explains how the current justice system is failing and reminds us that despite the reforms to introduce PCCs, compared to many similar countries the justice system in England and Wales is highly centralised, slow and expensive, not to mention heavily reliant on prison.

This report rightly argues that we should not pursue devolution for its own sake - it must be a means to an end. It makes the compelling case that devolution, in its many forms, will help to improve the justice outcomes that matter most - preventing crime and reducing reoffending by giving local areas the tools and the incentive to invest upstream rather than just managing the costs of failure.

There are two main drivers for justice devolution. First, this report highlights the inescapable fact of the earlier reform: PCCs were accountable for police performance, but the crime in their communities - not to mention many social harms - could not be solved by the police alone. To make real progress, PCCs have to make good on the "And Crime" part of their job description - by improving services for victims, youth justice, and the performance of the prosecution, courts and probation services.

And second, the big fiscal reality for the next decade and beyond makes devolution the best answer to some of these intractable problems of rising complex crime demands and shrinking budgets. We cannot continue to rely on national reform programmes and extra spending to improve performance, and budget reductions since 2010 have brought us to the limit of what government departments can deliver in the way of easy savings. Redgrave argues that if we want to make justice swifter and finally tackle our high rates of reoffending, we need a radical shift in power to the local level. This is where the solutions and the innovation will be found to cut costs and improve services, not in Whitehall.

For this and other reasons, the devolution agenda now has a momentum of its own. And there is a consensus emerging in government that PCCs are capable and credible agents, not just for overseeing the police, but in having a broader set of powers to improve the criminal justice system. The recommendations in this report set out what these new powers should be, and why it is now important to take justice devolution to the next level.

This report is therefore timely. We know that the Government elected in 2015 previously committed to devolve more powers to PCCs, starting with fire services and moving to greater devolution of other justice services, alongside the Treasury-led devolution agenda for Metro-Mayors. And joint work between the Home Office and Ministry of Justice began in 2015 to scope out what further responsibilities PCCs could be given. Extra momentum came with the justice devo-deal that Michael Gove oversaw between the MoJ and Greater Manchester in July this year, which led to a memorandum on devolving a host of powers to the GMCA under the newly elected Mayor after 2017, including custody budgets.

In response - and some anticipation - other PCCs have now pushed their own case and several are exploring what devolution might mean for them, outside the urban areas with mayoral deals. This report is right to argue that devolution will take different forms in different areas and it is likely that the more mature arrangements in London and Manchester will set the pace. However, the recommendations in this report provide a framework for justice devolution right across England and Wales.

There are clearly policy and implementation challenges with devolution. How do you safeguard judicial and prosecutorial independence? How do you build the capability of local areas to take on more powers? What is the right commissioning arrangement for small populations like young offenders or female prisoners who are widely dispersed? What model works best where services like health and skills do not sit together under a single mayoral figure?

All of these issues need resolving over time, but as this report sets out, with the creation of PCCs and new elected mayors, we have the right model of accountability in a single executive figure to help drive reform locally and bring the justice system together. This is the real opportunity with devolution - to reshape services locally so they better serve victims, witnesses and offenders, and make the whole criminal justice system more accountable to the public who pay for it.

The Rt Hon Nick Herbert CBE MP

Co-Chair, GovernUp

SUMMARY

At the heart of this paper is a simple proposition: in a world of shrinking budgets, local leaders must be empowered to join up services in order to deal with the root cause of crime, rather than managing its consequences.

Long term social and demographic shifts in our society mean that, whoever the government of the day happens to be, the criminal justice system (CJS) is facing a permanent reduction in public funding, with any spare or additional resources likely to be directed towards health and social care in future. In such a world, it is no longer enough to improve efficiency of individual criminal justice agencies. The aim must be to rewire the system entirely so that the pipeline of offenders is smaller and can be more intelligently managed.

Yet currently, the CJS is unable to meet this challenge because of an overly centralised and siloed model of delivery, which stifles joint working and innovation. As this report will show, pockets of good practice exist, but they are not systematically embedded. Too much time and money is spent managing failure, rather than dealing with problems at source. And agencies are not incentivised to work together in building services around the needs of victims and communities.

This report advocates a rebalancing of power between central government and local areas on criminal justice policy. We are not in favour of justice devolution for its own sake, but instead argue that it needs to be part of a coherent vision and strategy for reform. That does not mean prescribing what reform should look like in all areas. By definition, devolution will occur at different speeds, and in different ways. But neither should it mean a complete free-for-all: powers ought to be devolved for a purpose, in the service of a broader vision for change. We recommend that devolution is designed in order to foster:

- services built around the needs of victims and communities;
- stronger local leadership and accountability;
- investment in prevention, rather than paying for the costs of failure;
- joined up and innovative solutions for reducing crime.

As such, we recommend a number of areas ripe for full devolution to police and crime commissioners (PCCs) and directly elected mayors:

- youth justice;
- the adult prison budget for short sentenced prisoners;
- witness services.

There are a number of areas where we recommend a greater degree of co-commissioning:

- prosecution priorities;
- management of magistrates' courts;
- management of prolific offenders;
- out of court disposals.

We also argue that there are a number of areas where devolution is *not* appropriate. These include:

- the high secure prison estate;
- management of offenders serving long custodial sentences;
- management of Crown Courts.

A key criterion for these reforms is the existence of strong governance and democratic accountability. The choices that are made about the direction and shape of criminal justice policy - about what threats to prioritise, about how and where to deploy resources and about the solutions that are implemented - are acutely political and deserve to be the subject of public scrutiny and debate.

Crime is not a single event, but a journey for offenders (and victims), with different points at which agencies can potentially intervene. Many of the levers for reducing crime lie outside the CJS, with health, education, employment and housing services. The focus of this report thus extends beyond reform within the CJS - looking at the relationship between criminal justice agencies and other local public services in tackling the underlying causes of crime and making communities safer.

JUSTICE DEVOLUTION AT A CROSSROADS

This section explores the recent history of justice devolution within England and Wales and seeks to assess the current state of the debate, in light of a rapidly changing political landscape.

Justice devolution: a recent history

In recent years, the twin themes of English devolution and justice reform have proved to be a major source of political energy for Conservative politics - forming the centrepiece of the government's 2016 Budget and Queen's Speech.

It is important to be clear about what 'justice devolution' actually means in this context. As Sir Richard Leese, leader of Manchester City Council, told the Lords Constitution Committee in early 2016: "*we have started using devolution as a catch-all phrase for a number of things*".¹ For the purpose of this project, we use the typology outlined in Box 1 below.

Box 1: Typology of devolution

Devolution	Decentralisation	Delegation
Devolution of a bespoke set of powers (e.g. over youth justice) and budgets to a defined area, normally under the control of a PCC or mayor	Greater local say in the commissioning and implementation of national services (e.g. co-commissioning of victims' services; a say over local appointments; more flexibility over agency budgets)	Local areas playing a role in a function previously exercised by the centre

The shift toward a more localised justice system can be traced back to reforms instigated by the coalition government. In 2012, a series of 'justice reinvestment pathfinder pilots' were established by the Ministry of Justice (MoJ), which sought to test the extent to which local partners could be financially incentivised to collaborate in reducing 'demand' on the prison system. The MoJ also devolved the youth secure remand budget to local authorities as a way to incentivise them to invest in higher quality alternatives to custody. The results of these reforms were broadly positive: the numbers in youth secure remand fell and the pathfinders appeared to demonstrate substantial reductions in demand. However, it should be noted that evaluations were not conclusive as to the nature of causality (other changes to the sentencing framework

¹ See Q194 for full evidence

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/constitution-committee/the-union-and-devolution/oral/26416.html>

may have been more significant). Moreover, some of the stakeholders involved have critiqued the design of the pilots, specifically that both the metrics and payment regimes established by the MoJ were overly complex and thus provided insufficient incentive to encourage local agencies to invest or to make substantial changes to practice that weren't already being planned.²

Subsequently, following the May 2015 General Election, the government's focus shifted from national pilots to the negotiation of bespoke 'devolution deals' with city regions led by directly elected mayors. George Osborne used his 2016 Budget to announce further justice devolution in Greater Manchester, Lincolnshire and Merseyside. This culminated in the announcement of a new 'justice devolution deal' for Greater Manchester in July 2016, holding out the possibility of the directly elected mayor for Greater Manchester taking on responsibility for youth justice, offender management and services for witnesses.

Alongside these individual deals, national policy has generally been supportive of further devolution. In Autumn 2015 the then Home Secretary Theresa May announced new legislation to enable PCCs to take control of fire services, with promises of further powers to follow.³ In spring 2016, David Cameron became the first serving Prime Minister to make a prisons speech in over 20 years, equating prison reform as the 'great progressive cause in British politics' - and putting the empowerment of prison governors at the centrepiece of his government's Queen's Speech.⁴

Box 2: The key justice devolution deals

The story of justice devolution in Greater Manchester
Greater Manchester's first devolution deal was signed in November 2014, and its remit has since been extended three times to include more areas. The deal centred around a new system of governance for the area, one that will devolve specified powers to both the Greater Manchester Combined Authority (GMCA) and a new, directly elected mayor. In July, the MoJ and GMCA jointly signed a 'memorandum of understanding' agreeing to progress justice devolution.
Issues under consideration The scope of the 'memorandum of understanding' includes: <ul style="list-style-type: none">• developing further freedom in the commissioning of offender management services, alongside the National Offender Management Service (NOMS);• considering options to devolve custody budgets attached to female offenders, young offenders, and those sentences to less than two years in prison to GMCA;• linking adult education and skills training provision in the community with education provision in prisons;

² Wong et al, 2013a, Local Justice Reinvestment Pilot: Final process evaluation report, Ministry of Justice Analytical Series, London: MoJ

³ Theresa May, Enabling closer working between the Emergency Services, January 2016, see <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-26/HC-WS489>

⁴ David Cameron, Prison reform: Prime Minister's speech, February 2016, see <https://www.gov.uk/government/speeches/prison-reform-prime-ministers-speech>

- developing plans for a more devolved youth justice system;
- exploring options for regional GPS and sobriety tagging pilots;
- gaining greater flexibility over victims' funding;
- developing plans for the local courts estate to make justice more efficient and effective.

Agreement so far

The new mayor will:

- take on the role of the PCC;
- take on powers over fire services in Greater Manchester.

The government will continue to support the Justice and Rehabilitation Executive Board, created by Tony Lloyd, the interim mayor, to provide leadership of the local justice system and stronger performance oversight with more joined up services to more effectively drive rehabilitation and justice outcomes.

Still on the agenda

Working with the government to turn the Memorandum of Understanding into a blueprint for justice devolution in 2017-18

Opportunities

Greater Manchester has well established governance structures (including a Justice Reinvestment Executive Board), clear accountability (with a directly elected mayor) and recent experience of devolution, providing a good platform for justice devolution.

Risks

There is a risk that the aspirations and principles set out in the MoU are yet to be matched by real tangible change, which will lead to a loss of momentum.

The story of devolution in "Greater Lincolnshire"

"Greater Lincolnshire" is made up of ten local authorities, and, with the support of the Greater Lincolnshire Enterprise Partnership, proposed the devolution of a range of powers from central government to a Greater Lincolnshire Combined Authority (GLCA) and a newly elected combined authority mayor.

Issues under consideration

Described by the MoJ as "ambitious", GLCA's initial ask sought:

- transfer of the commissioning of prison services to local political control;
- transfer of the administration of Her Majesty's Courts and Tribunals Service (HMCTS) and the MoJ estate to be delivered by local authorities in the area.⁵

Agreement so far

A commitment to work, with the consent of all local partners, towards:

- a co-commissioning arrangement for services for Greater Lincolnshire offenders serving short sentences (and commissioning of offender management services more widely);
- more local flexibility, innovation and coordination with other local services;
- linking adult education and skills training provision in the community with education provision in

⁵ See www.lincolnshire.gov.uk/home/greater-lincolnshire-proposals-for-devolved-powers-from-government/127203.article

<p>prisons;</p> <ul style="list-style-type: none"> • greater local input into the provision of court services to ensure access to justice is maintained across the area; • exploring options, through the Youth Justice Review, for a more devolved youth justice system.
<p>Still on the agenda</p> <p>Most of the deal to date, relating to justice, agrees to develop proposals, consider greater future devolution and engage with the combined authority. What justice devolution will actually look like in Lincolnshire by 2017 remains unclear.</p>
<p>Opportunities</p> <p>The combined authority has a clear vision for what it wants to achieve and is very ambitious about devolution.</p>
<p>Risks</p> <p>Devolving powers to the combined authority will not necessarily increase accountability, given the absence of a directly elected mayor and/or single PCC willing to own the reforms. Moreover, there are concerns that Lincolnshire may lack the capability/capacity to embrace justice devolution.</p>

This ‘deals-based’ process has attracted some criticism, however. In particular, concerns have been expressed that the speed and ad hoc nature of the process is not just undemocratic, but risks creating a complex patchwork of governance and accountability arrangements that would make little sense to the residents of those areas.⁶ Tensions have begun to surface between the combined authorities (often driven by officers) and elected politicians. In the West Midlands, the elected PCC expressed fears that the devolution deal being proposed amounted to a local authority ‘power grab’ with the city mayor being denuded of meaningful power.⁷ In the East of England, MPs openly questioned the logic of a deal that brought together Cambridgeshire, Peterborough, Norfolk and Suffolk.⁸

Moves towards greater justice devolution have also been complicated by other policy changes taken in isolation. Chris Grayling’s ‘Transforming Rehabilitation’ reforms in 2014 have arguably led to a *centralising* of power within probation, with services for low risk offenders commissioned nationally and the remainder nationalised through the National Probation Service (NPS). The interviews we have conducted with PCCs and senior justice leaders as part of this report reveal that the new structure for probation risks reinforcing, rather than breaking down silos - between ‘Community Rehabilitation Companies (CRCs)’ who are now managed and rewarded on a separate basis, and the rest of the CJS. Moreover, the decision taken in 2011 to streamline the Crown Prosecution Service (CPS) from 43 areas into 13 has made partnership working with the police more difficult as they are no longer coterminous with police force boundaries.

⁶ House of Lords Committee on the Constitution; ‘The Union and devolution’ (May 2016)

⁷ See <http://www.westmidlands-pcc.gov.uk/media/428160/pcc-consultation-response-to-mayoral-wmca-proposals.pdf>

⁸ See <http://www.cambridge-news.co.uk/backlash-devolution-concept-east-anglia-mayor/story-28952856-detail/story.html>

Despite these teething problems, there remains considerable support for the idea of justice devolution, particularly amongst PCCs. Indeed many of the PCCs we have spoken to as part of this project have expressed a desire to emulate the progress that has been made in Greater Manchester.

Facing the future

Post-Brexit, with a new Prime Minister and Justice Secretary in place, the future of justice devolution (and reform more broadly) looks less certain. Whilst certain institutional features of the current landscape, such as the existence of PCCs, will certainly remain in place, decisions are yet to be taken on the overall scope, shape and pace of reform.

Certainly, given the often ad hoc and piecemeal approach to justice devolution taken by the previous government, there is now a case for ministers to take stock and ask some fundamental questions. What is the purpose of reform? What should it look like? How are we going to make it happen? More specifically, how should PCCs' role evolve over time? Similarly, if devolution settlements are going to continue to be built primarily around an economic logic (i.e. 'travel to work areas') to what extent does it make sense to include criminal justice reform within the scope of those deals? This paper attempts to answer each of these questions in turn.

We argue that whilst there is a need for the process to be more democratic and strategic, justice devolution remains our best hope of improving outcomes for victims and communities, by ensuring services are in a position to cut crime at source, rather than managing its consequences later on. The next section of this paper sets out the case for reform.

WHY DEVOLVE?

Criminal justice devolution ought not to be an end in itself. There are many areas where centralised decision making is legitimate and justified. It was the penal reform lobby in the 19th century, which pushed for centralisation of the prison system, on the basis that only greater national coordination could drive up standards and make prisons more humane places. On issues like prison escapes and managing sex offenders, there is little doubt that centralisation has played a part in improving performance, and there is little appetite either within government or amongst the public to devolve criminal procedure or sentencing.

Moreover, looking to the future, there may well be areas where greater consolidation is necessary. For example, the changing nature of crime, with criminals increasingly operating across geographical boundaries and exploiting new technologies, may require the police to reconfigure the way they are structured. It will no longer make sense to have 43 armed response and surveillance teams: an aggregation of these kinds of specialist capabilities is virtually inevitable if the police are to be able to respond to the nature of today's threats.⁹

However, it is possible to identify two specific areas where an overly centralised and siloed system is holding back the ability of the CJS to meet people's needs. These can be broken into two discrete issues:

- a. The ability of criminal justice agencies to intelligently manage demand and stimulate innovation
- b. The links between criminal justice agencies and local citizens

Criminal justice demand

As a country, we are safer overall than we were 20 years ago. Traditional volume crimes, like burglary and car theft, have fallen dramatically. And though some of that fall appears to have been displaced by a rise in online offences, crime is now much lower down the list of public priorities than it used to be.¹⁰

⁹ See <http://www.npcc.police.uk/ThePoliceChiefsBlog/SaraThorntonBlogItstimeforasharingeconomyinpolicin.aspx>

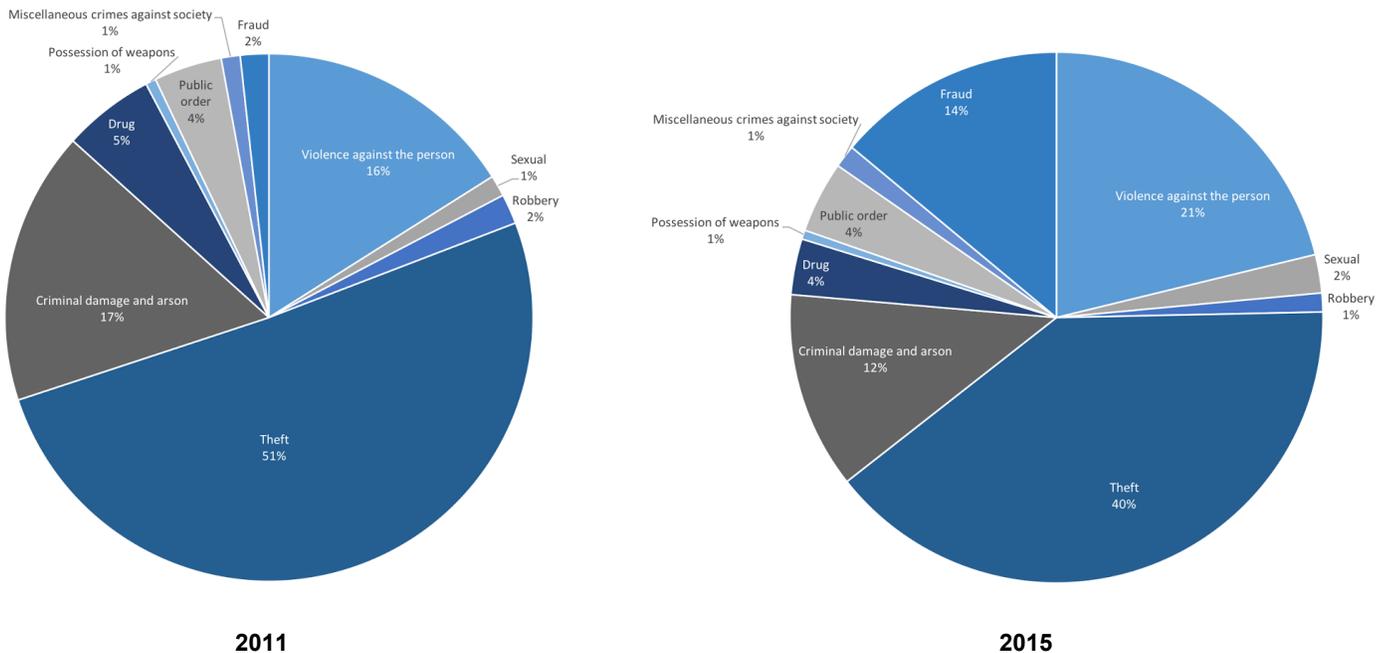
¹⁰ Economist/Ipsos Mori Issues Index, March 2016, accessed online 25 March 2016: see <https://www.ipsos-mori.com>; In March 2016, public concern about crime reached the lowest since records started in 1991, with just eight per cent of the public identifying this as one of the biggest issues facing Britain

However, the CJS has not been able to cash those gains and remains under pressure. According to most key measures, performance is either flat or getting worse and huge amounts of public money are being spent on managing failure, rather than transforming lives.

And things are about to get harder: criminal justice agencies are facing a further squeeze on funding, at a time when demand on their services is rising. As a result of the 2015 Spending Review, the MoJ will have to find 15 per cent worth of savings (£600m) over the Parliament.

This is at a time when services are already struggling to cope with increased caseloads - from the growing backlogs in our Crown Courts, to our overcrowded prisons - following a recent spike in recorded violence and sexual offences. The fact that crimes such as violence against the person, fraud and sexual offences are now a higher proportion of total recorded crime (see below) implies a rise in workload for agencies across the CJS. That is because such crimes, whilst they may be relatively low in volume, are more time-consuming and therefore costly to resolve than traditional volume crimes, such as theft. For example, according to the College of Policing, rape offences have increased by 36 per cent over the last ten years and their contribution to the total 'cost' of crime has gone up from 6 per cent to 12 per cent.¹¹

Breakdown of total recorded crime by offence, 2011 compared to 2015¹²



Squaring the circle - of growing pressure with reduced funding - will necessitate action to understand what drives demand and deal with it at source. The different agencies that make up the CJS are already stretched; most of the straightforward cost efficiencies have already been

¹¹ College of Policing: Estimating demand on the police service (2015). See http://www.college.police.uk/News/College-news/Documents/Demand%20Report%2023_1_15_noBleed.pdf
¹² ONS, (April 2016) Crime in England and Wales, year ending December 2015, Appendix tables, T.A4

achieved. Simply cutting funding from existing services will risk a deterioration in public safety and performance.

But currently the scope for more intelligent demand management is limited by a heavily centralised and siloed model of service delivery, which hampers performance at every point of the 'offender journey' - from an offender's initial contact with the CJS through to the way they are rehabilitated. Our analysis below suggests there are three points at which opportunities to manage demand effectively are being missed:

1. Preventing the flow of people into the CJS
2. Bringing offenders to justice
3. Reducing the cycle of prolific offending

The next section explores each of those in turn.

1. Preventing the flow of people into the CJS

The source of demand

Crime creates the majority of demand for criminal justice services. To state the obvious, fewer crimes means fewer criminals entering the CJS. Preventing crime thus reduces demand.

A small proportion of people - with chaotic and complex lives - drives a significant amount of crime and therefore demand on the CJS.¹³ For example, West Midlands police told us that just 6 per cent of the force's area accounts for around 22 per cent of all crime, and a much higher level of serious crime.

These individuals tend to be in contact with a range of different public services from an early age, and suffer from overlapping and complex social problems. A study by the Lankelly Chase Foundation in 2011 found that at least 58,000 people suffered from 'severe and multiple disadvantage' (SMD), involving a combination of homelessness, substance abuse and offending behaviour.¹⁴ In the UK, the majority of those facing SMD are in contact with, or are living with children; research shows that they are also more likely to have experienced the trauma of neglect, poverty, family breakdown or disrupted education as children.¹⁵

¹³ See Prime, J., et al. (2001), Criminal Careers of those born between 1953 and 1973. Home Office Statistical Bulletin 4/01. London: Home Office; and Budd, T., et al. (2005), Offending in England and Wales: First results from the 2003 Crime and Justice Survey. Home Office Research Study 275. London: Home Office

¹⁴ Lankelly Chase Foundation (2015), Hard Edges: mapping severe and multiple disadvantage in England

¹⁵ Ibid.

Overlap of SMD disadvantage domains, England: 2010-11¹⁶



The failure to intervene early on in dealing with these problems represents a huge waste of human potential and imposes significant costs to the taxpayer. It has a devastating impact on future generations - damaging the development of children and fuelling the conveyor belt of crime. And the costs are enormous, not just in terms of incarceration and police call outs, but visits to A&E, lost productivity and children in care.¹⁷ Research by the Early Intervention Foundation estimates that the cost to the state of late intervention is as high as £16.6 billion, £5 billion of which is criminal justice costs.¹⁸

Of course crime is not the only source of demand on the CJS. A report by the Independent Commission on Mental Health and Policing has indicated that responding to the needs of individuals with mental health needs can account for up to 20 per cent of police time. In many cases, this stems from a failure to provide support from health and social care agencies, before crisis point has been reached.¹⁹ Of all the detentions under section 136 of the Mental Health Act, in 36 per cent of cases individuals were taken to police cells, not a place of safety with trained health professionals.²⁰

Limitations of the current system

In recent years, the flow of people into the CJS appears to have slowed down. Since 2008 there has been a dramatic fall in both the numbers of 'first time entrants' (FTEs) and young people in custody.²¹ We do not know definitively what has caused this fall, but it is notable that the decline

¹⁶ Lankelly Chase Foundation (2015), *Hard Edges: mapping severe and multiple disadvantage in England*

¹⁷ The Lankelly Chase research (*Hard edges*) estimates that those accessing the criminal justice or substance misuse services cost £4.3 billion a year. Accumulated individual 'lifetime career' averages are also stark – ranging from £250,000 to nearly £1 million in the most extreme cases for the most complex individuals

¹⁸ Spending on late intervention, Early Intervention Foundation, 2015

¹⁹ As estimated by Metropolitan Police Service police officers specialising in mental health, for the Independent Commission on Mental Health and Policing Report, 2013

²⁰ College of Policing, *Estimating demand on the police service*, 2015.

²¹ MoJ, *Criminal Justice Statistics quarterly: December 2015*, First time entrants statistics, May 2016; MoJ, *Youth custody data*, youth custody report: April 2016, June 2016, Table 2.3

corresponds precisely with the decision (by the then Labour government) to drop its controversial ‘offences brought to justice’ target, which many had suspected of driving the police to arrest higher numbers of young people.

However, whilst the fall in FTEs suggests a welcome shift in police behaviours, it is too soon to say whether or not this represents an underlying trend i.e. a reduction in youth crime. During our conversations with local police and justice practitioners, the view was expressed more than once that whilst the police were increasingly turning a blind eye to indiscretions by juveniles, the same people were simply re-emerging later on, often as more serious or prolific offenders. It is notable that over the same period that FTEs have fallen (2008-2015), youth reoffending has risen steadily, particularly amongst 10-14 year olds (though this may simply be a function of the fact that as the cohort reduces, the most serious/difficult offenders are left).²²

Reoffending rate and number of offenders in cohort, years ending December 2003 to March 2014²³



There is evidence of unmet need earlier on (i.e. pre-contact with the police) with only a minority of children identifiably at risk of offending receiving an appropriate intervention. For example, it is widely known that children who suffer neglect, domestic abuse or sexual abuse are more likely to go on to offend themselves. Yet a Her Majesty’s Inspectorate of Constabulary (HMIC) report published in 2015 reported that of the 1.8 million children thought to be living with domestic abuse and the 74,000 who were victims of child sexual abuse under 16, at its highest, there were less than 53,000 children for whom there was a protection plan in place.²⁴ HMIC’s conclusion was that “*the vast majority of children known to be at risk of abuse and neglect are not in the child protection ‘system’*”. And in some areas of the country, the picture is worse. For

²² MoJ, Youth Justice Statistics 2013/14, Youth Justice Board, January 2016

²³ Ibid., p.66

²⁴ HMIC (2015), In harm’s way: the role of the police in keeping children safe, July 2015

example, in South Wales only 9 per cent of public protection notices submitted to social services from the police meet the threshold and have any action taken.²⁵

Similarly, despite strong evidence that parental or sibling criminality can be a risk factor for crime, there is currently very little provision for children of prisoners. Children with a parent in prison are three times more likely to be involved in offending - 65 per cent of boys with a convicted father will go on to offend themselves.²⁶ Previous government reports have estimated that up to 200,000 children may be affected by parental imprisonment every year.²⁷ Yet no official record exists of these children as neither the courts, schools or local government routinely ask about them (and children are unlikely to reveal themselves for fear of social stigma) - meaning they are denied crucial, timely support.

Despite pockets of innovative practice, early intervention remains marginal, rather than systemic: as a country, we are still missing opportunities to stem the flow of people into the CJS. There are two fundamental reasons.

First, because the system provides no incentives or clarity of mission for intervention at the point where it would have its highest impact on a life of crime. There is a range of circumstances in a young person's life which significantly enhances that child's risk of being involved in offending later on, including when a child:

- is excluded from schools;
- is persistently truanting;
- is found drinking or using drugs;
- is found behaving anti-socially;
- has parents who are involved in drugs, domestic abuse or crime.

Yet such circumstances rarely trigger a formal response coordinated by the local authority that ensures support is provided to the young person and/or their family. Instead a young person has to commit several acts of crime or anti-social behaviour before they are referred for help, by which time it is harder to turn their behaviour round.

Second, because local public services are not configured to provide joined up solutions. In particular, the current system for dealing with vulnerable children has created a silo scenario in many areas of the country. Children who are in need of care and support come under the auspices of the local authority, whereas once a child ends up in the CJS, they tend to be perceived as an issue for youth offending teams (YOTs), meaning that they are assessed and case managed through a different, parallel system. A number of PCCs we spoke to have also expressed frustration at their inability to join up criminal justice and health services, for example,

²⁵ Unpublished research by the Early Intervention Foundation

²⁶ Social Exclusion Unit (2002), Reducing re-offending by ex-prisoners. London: Cabinet Office

²⁷ MoJ (2012), Prisoners' childhood and family backgrounds. London: MoJ

to enable earlier identification of risk, with many not even invited to participate on the relevant health and wellbeing board.

Various attempts have been made to join services up at the centre, including work on gangs, violence against women and troubled families, but have tended to rely on tightly defined national commissioning structures. The nature of the complex problems faced by participants on the Troubled Families programme means that it is very hard to measure precisely what progress they have made, and which services are responsible, raising concerns about the suitability of payment by results as a model for this group, with a risk that outcome payments do not properly reflect what local areas have actually achieved.²⁸ Moreover, an increasing number of local areas believe the rigidity of national eligibility criteria has left a significant number of individuals and families unable to meet the threshold for support, although they still drive a significant proportion of public sector demand.²⁹

2. Bringing offenders to justice

The source of demand

The delivery of effective justice requires a system whereby criminal behaviour is dealt with robustly and fairly, with sanctions that are swift and certain, whilst ensuring victims receive closure.³⁰

Currently, however, the process of bringing offenders to justice takes too long. The average time taken from offence to completion has been steadily rising since 2011 - now standing at 168 days.³¹ And the data looks even worse for more serious and complex crimes like sexual offences (536 days) and fraud (625 days).³² This is leading to a growing backlog in the Crown Court. There are now over 54,000 outstanding cases waiting to be heard in the Crown Court, up 75 per cent since the year 2000.³³ The current backlog of trials would take a year and a half to clear from this point were there to be no further cases sent for trial during that time.

²⁸ NAO (2013), Programmes to help families facing multiple challenges. London: The Stationery Office

²⁹ Interview with GMP Assistant Chief, Rebekah Sutcliffe, Police Professional, Oct 2015, accessed online 21.01.2016, see www.policeprofessional.com/news.aspx?id=24688

³⁰ Swift and certain, Policy Exchange (2014), see

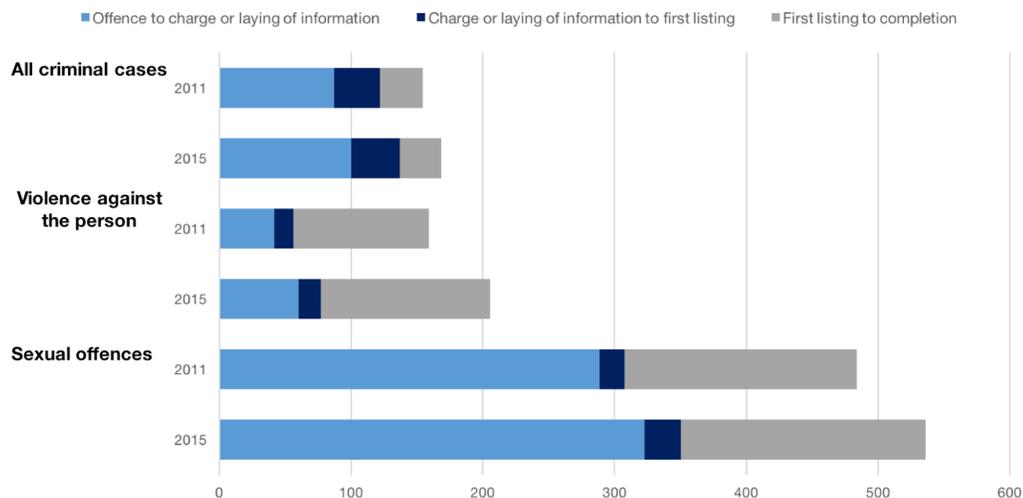
<http://www.policyexchange.org.uk/images/publications/swift%20and%20certain.pdf>

³¹ MoJ (2015), Criminal court statistics quarterly: October to December 2015, Table T1. London: MoJ. Also see 'Waiting for Justice', Victim Support (June 2015)

³² Ibid., Table T6

³³ Victim Support (2015), Waiting for Justice: how victims of crime are waiting longer than ever or criminal trials, June 2015

Average number of days taken from offence to completion for selected offences and all criminal cases, England and Wales 2011-15³⁴



The stage taking the longest time on average (100 days) is from offence to charge, which is driving demand across the system. Indeed inefficiencies at this stage are cancelling out improvements in the way magistrates are processing cases (with processing times having fallen by 8 per cent since 2011).³⁵

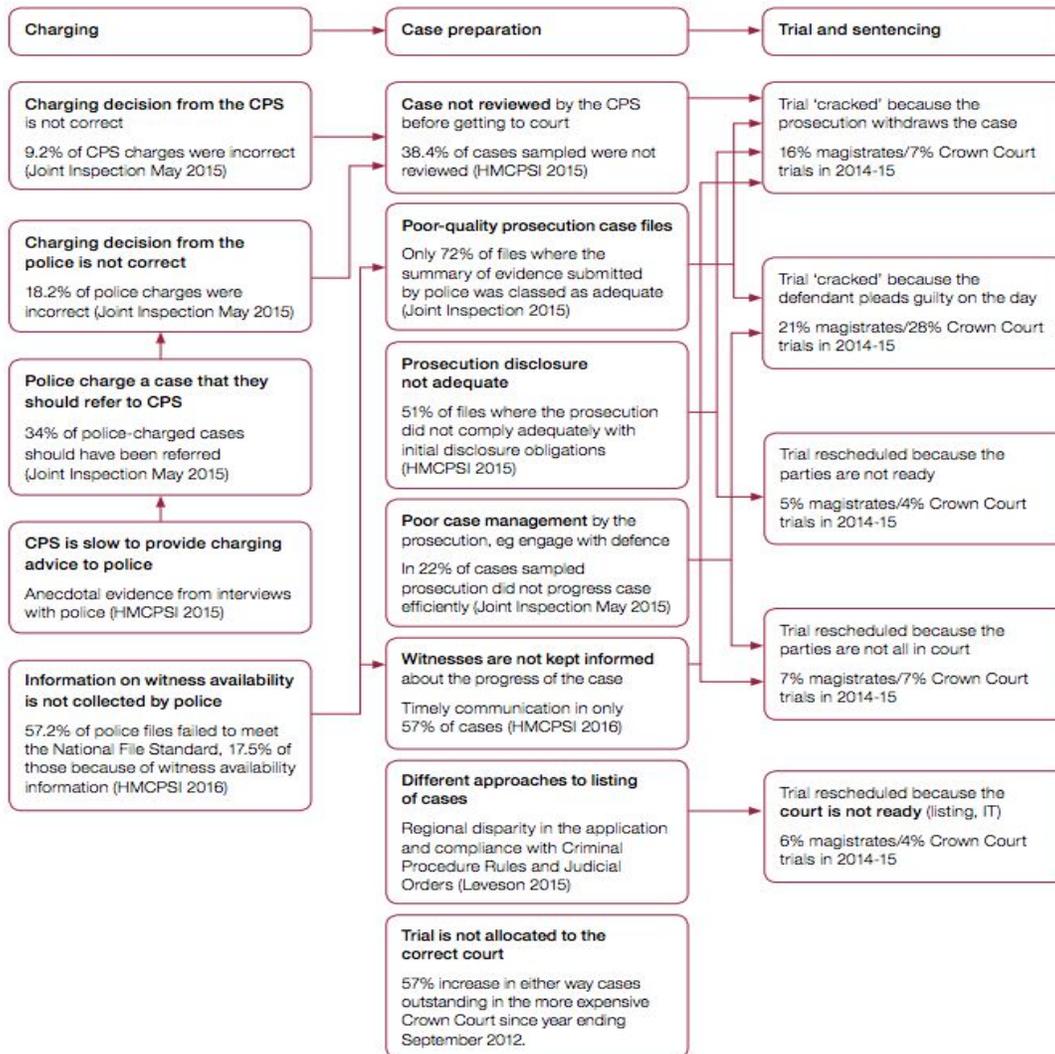
There are multiple sources of delay (some of which are beyond the scope of this paper), but from our conversations with PCCs, it appears that a major factor is the inefficient and siloed nature of the relationship between the Crown Prosecution Service (CPS) and the police.³⁶ A National Audit Office (NAO) report published in 2016 highlighted some of the systemic problems underlying these failures.

³⁴ MoJ (2015) Criminal court statistics quarterly: October to December 2015, Table T1. London: MoJ

³⁵ Ibid., Table T2

³⁶ Lord Justice Leveson, Review of efficiency in criminal proceedings 2015. p.20; NAO, Efficiency in the Criminal Justice System, p.24

Inefficiencies at different stages of the Criminal Justice System³⁷



Incorrect charging decisions are a particularly strong driver of demand.³⁸ A 2015 inspection found that 15.6 per cent of cases charged by the police had insufficient evidence or were not in the public interest to prosecute.³⁹ 22 per cent of dropped prosecutions destined for the magistrates' courts and 31 per cent for the Crown Court were dropped in 2014-15 because of issues that should have been apparent at the charging stage.⁴⁰

Such process problems early on create unnecessary work later down the line. A bad charging decision affects the whole life of a case in the CJS - time spent by the CPS and police investigating and building cases on inappropriate charges wastes precious resources. Incorrect

³⁷ NAO, Efficiency in the criminal justice system, March 2016, p.25, Includes evidence from Leveson, Joint inspection

³⁸ Leveson review, principle 'Getting it right first time', para. 25

³⁹ HMCPSP and HMIC joint report (2015), Joint Inspection of the provision of charging decisions, May 2015, p.27

⁴⁰ Evidence from a Freedom of Information request to the CPS. HMCPSP defines these categories as 'Conflict of Evidence, Legal Element Missing, Caution more Suitable, Inadmissible Evidence'

charging also causes an increased likelihood of cracked trials in the courts.⁴¹ So it is in everyone's interest that decisions are got right first time.

Limitations of the current system

The current process for bringing offenders to justice is failing because of an inability to manage demand at the 'front end' of the investigation process. There are three key reasons.

First, the CPS is struggling to cope with reduced resources. Of all the criminal justice agencies that have faced cuts, the CPS has perhaps struggled the most. In a report earlier in 2016, the Public Accounts Committee (PAC) highlighted the impact of prosecution cuts, which in some areas was leading to the CPS having difficulty finding counsel, or to CPS-chosen barristers returning cases to the CPS at the last minute.⁴² A joint inspection report in 2015 also found that CPS local areas managed to provide timely advice (21 - 28 days) in only two thirds (63.9 per cent) of cases.⁴³

Second, poor communication and siloed working practices between the CPS and police are affecting the quality of the case file prepared pre-trial. Incomplete/inadequate case files submitted by the police are either costly for the CPS to complete or mean prosecutions have to be dropped. In 2014-15, 9.5 per cent of all dropped prosecutions post charge (6,794 cases) were the result of unavailable statements, exhibits or other evidence.⁴⁴ These represent a significant waste of resources in the system.⁴⁵

These problems have been exacerbated by the government's decision in 2011 to restructure the CPS (from 42 areas to 13), which has reduced coterminosity with police force areas and made joint working more difficult. CPS areas now have to work with multiple forces, all of which might have different IT operating systems, making it difficult to collate casework.⁴⁶ Moreover, co-location between prosecutors and police - a frequent feature of successful cooperation - has been abandoned almost everywhere as being too costly, or because teams have been relocated following the reorganisation.⁴⁷ (Previously, co-location had been encouraged since the Glidewell Report in 1998 as a way to build police-prosecutor relationships, and ensure good charging decisions and file preparation.)

Third, the centralised nature of the CPS means there is little incentive currently for the Chief Crown Prosecutor to respond to local priorities. The local Chief Crown Prosecutor answers upwards to the Director of Public Prosecutions and not to locally elected PCCs - even when the

⁴¹ Leveson review, 2015, p.20

⁴² PAC report, 'Efficiency in the Criminal Justice System', May 2016

⁴³ HMIC, Joint inspection (2015) Witness for the Prosecution: Identifying victim and witness vulnerability in criminal case files, p. 37

⁴⁴ Evidence from a Freedom of Information request to the CPS

⁴⁵ In 2012 Policy Exchange estimated that more than 88,000 dropped criminal cases in 2011/12 cost the taxpayer over £25m, see Sosa, K., In the Public Interest: Reform the Crown Prosecution Service, 2012

⁴⁶ HMCPSI and HMIC joint report (2016) Delivering Justice in a Digital Age: a joint inspection of digital case preparation and presentation in the criminal justice system, April 2016

⁴⁷ HMCPSI and HMIC (2015), Joint Inspection of the provision of charging decisions, para. 1.4

matters at stake, for instance, which cases have been dropped for what reasons, are principally a local matter, directly affecting victims of crime.

Thus far, the government's attempts to address delays in the investigation and charging of offenders have involved sticking plasters, rather than dealing with the root cause of the problem: a system that is overly centralised and siloed. In 2015 the government began rolling out the long awaited shift to a digital case file system. However, a quarter (26 per cent) of the digital files submitted by the police to the CPS in the original ten pilot areas were rejected at initial screening.⁴⁸ Of those files accepted, missing information required the equivalent additional time of 3.5 prosecutors to get the cases 'trial ready' compared to when telephone charging advice was given.^{49,50} Digitisation will only work if the fundamental relationships are fixed. As the PAC has pointed out, currently *"the system is administered by different parts of government with different budgets and pressures and decisions taken by one part can create inefficiency and increase costs in other parts"*. If prosecution resources are cut in isolation, it can mean that police officers end up having to wait too long for charging decisions, which in turn leads to incorrect decisions and backlogs in the courts.⁵¹

3. Breaking the cycle of prolific reoffending

The source of demand

Aside from policing, the biggest single drain on criminal justice resources comes from the cost of prison, which represents the lion's share of the MoJ's annual budget.⁵² The prison population has grown rapidly and consistently since 1993, driven by harsher sentencing, with more people going to prison for first offences and for longer. There are now double the number of people behind bars than there were two decades ago.

Most of this growth can be explained by sentence inflation at the more serious end of offending, particularly violence and sexual offences. Whilst the costs of incarcerating these people is high, society rightly demands that people who commit serious offences and are a danger to society are punished and incarcerated for a long time. In other words, this is a cost that society is currently prepared to pay.

Yet leaving aside the growing stock of serious and violent offenders, there remains another significant source of demand on the system - that caused by low-level, repeat offenders serving short custodial sentences.

⁴⁸ HMCPSI and HMIC, Joint Inspection of the provision of charging decisions, p.36

⁴⁹ Ibid.

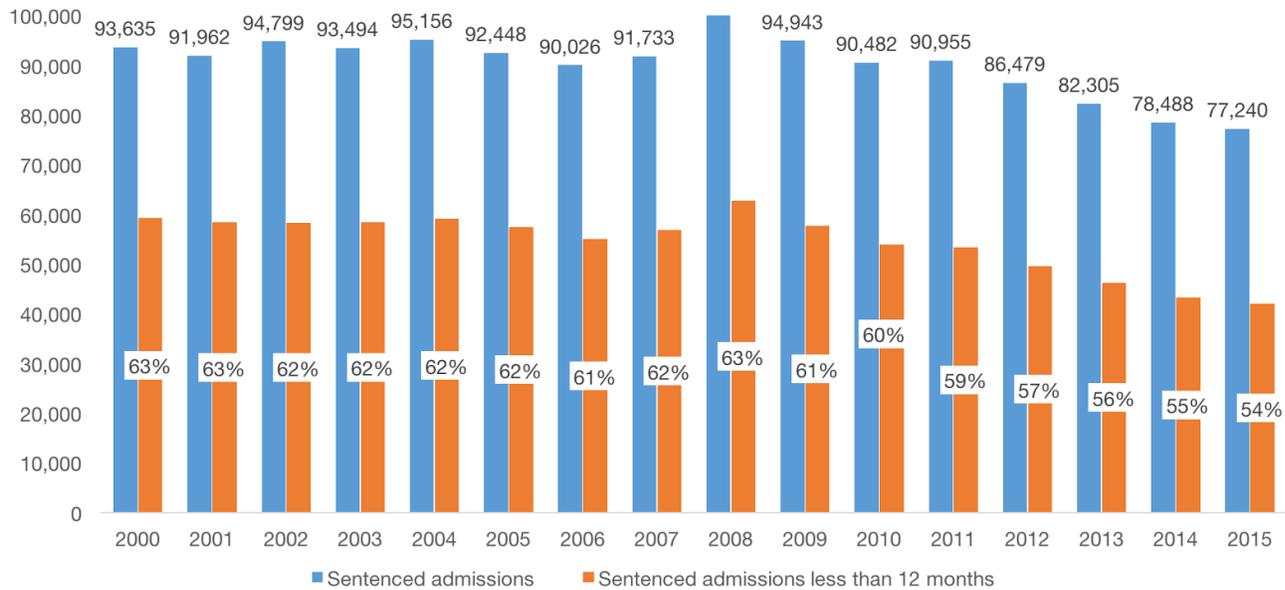
⁵⁰ HMCPSI and HMIC, Delivering Justice in a Digital Age, para 5.25

⁵¹ HMCPSI and HMIC, Joint Inspection of the provision of charging decisions

⁵² MoJ (2015), Annual Report and Accounts 2014 to 2015, Expenditure Tables 1-8

While offenders incarcerated for less than 12 months make up less than 10 per cent of the prison population (6,119)⁵³ at any one time, and have fallen in recent years, they still account for the majority of annual ‘churn’ in the prison population. In 2015, just over half (54%) of people entering prison under sentence were serving a sentence of 12 months or less - and as a result, placed huge pressure on the prosecution, courts and probation services. Using the average cost of a prison place per year (£36,000)⁵⁴ as a guide, we can estimate the annual costs to the taxpayer at some £220m in prison costs alone, though there will also be additional costs to the rest of the CJS and society at large, for example, in terms of lost economic output.

Short sentenced admissions to custody (less than 12 months) as a proportion of total custody admissions: 2000-2015⁵⁵



Most of these offenders pose little danger to the public. Amongst this cohort of offenders, the largest group of offences are theft and summary non-motoring offences (which include TV licence evasion and less serious criminal damage).

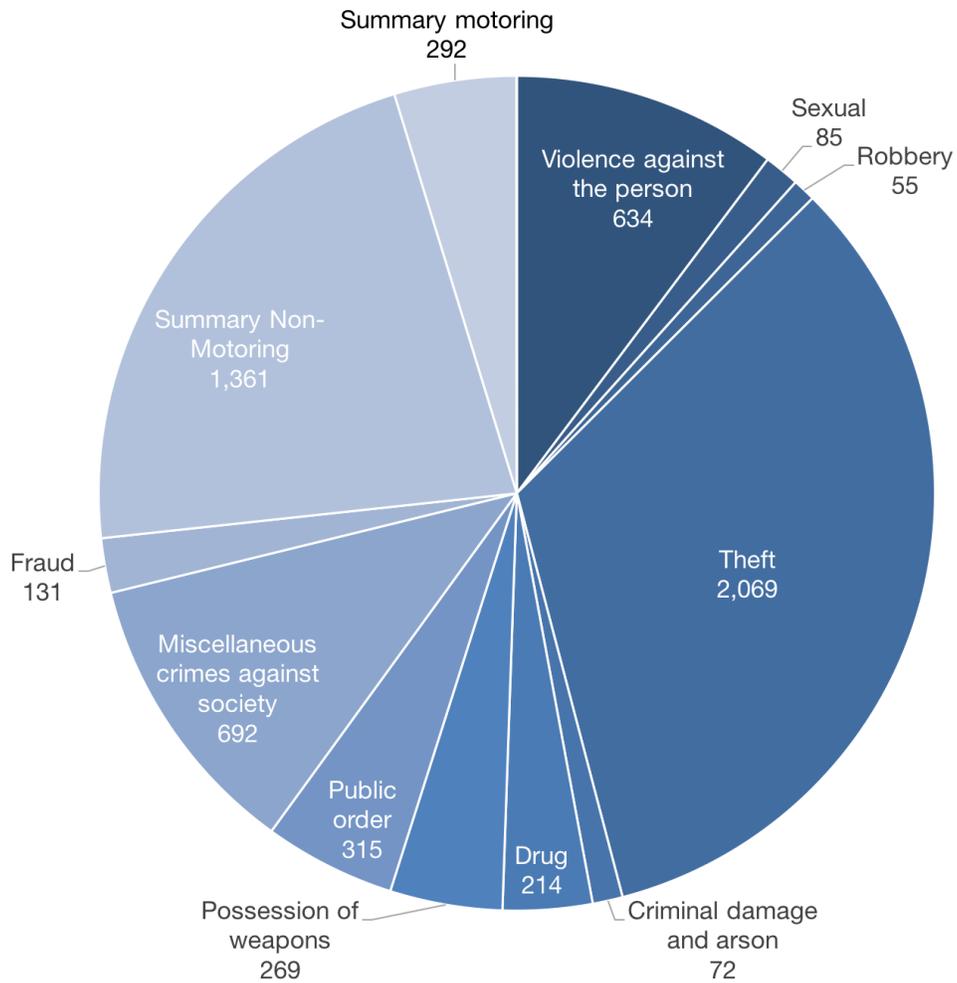
⁵³ MoJ (2015), Offender management statistics quarterly: July to September 2015, Prison Population: 31 December 2015, Table A1.1

⁵⁴ MoJ (2015), Costs per place and costs per prisoner, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471625/costs-per-place.pdf

⁵⁵ Ibid.



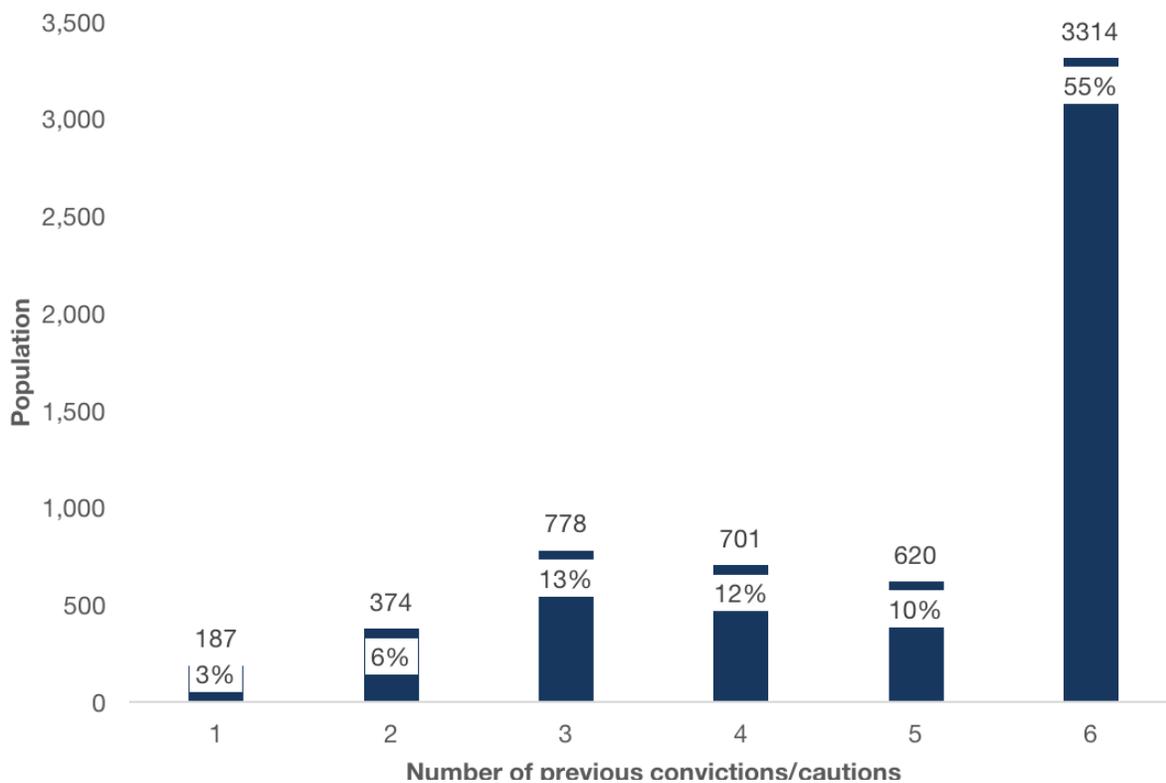
Prison population under immediate custodial sentence serving less than 12 months by offence group⁵⁶



Unlike serious and violent offenders, the short sentenced population has not been driven by a conscious harshening of sentencing. Indeed the decision to lock such people up will often make sense when viewed in isolation. MoJ data shows that more than half of these people are prolific offenders and will have already been through the courts multiple times before they are sentenced - often leaving the judge a sense that they have little option but to impose a short custodial sentence, if only to provide victims a degree of respite (albeit temporary).

⁵⁶ MoJ (2015) Prison Population: 31 December 2015, Table, A1.5.

Adult male population serving less than 12 months by number of previous convictions in 2015⁵⁷



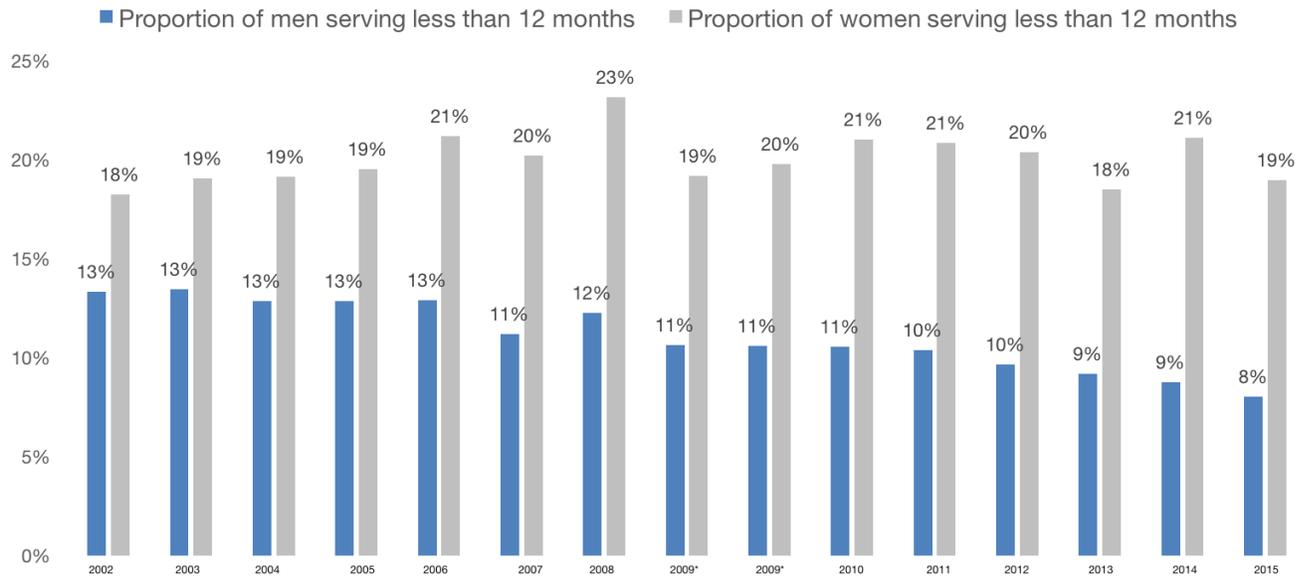
Yet when viewed in aggregate, the fact that so many of these people are incarcerated for short amounts of time is a wasteful use of an expensive resource. Such offenders are likely to spend most of their time inside idle, rather than undertaking purposeful activity, since governors have little incentive to get them on to costly rehabilitative programmes and even if they did, they would be unlikely to finish them.

The problem is even worse amongst women offenders. Whilst the female prison population is much lower than the male population (3,822), a much higher proportion of them tend to be serving short sentences for non-serious offences.⁵⁸ One in five women in prison are serving a sentence of 12 months or less - this compares to less than one in ten men and, unlike for men, the trend is heading in the wrong direction. The net impact of this spreads wider than just the individual women themselves - to their children and children's children.

⁵⁷ MoJ (2015) Prison Population: 31 December 2015, Table, A1.5

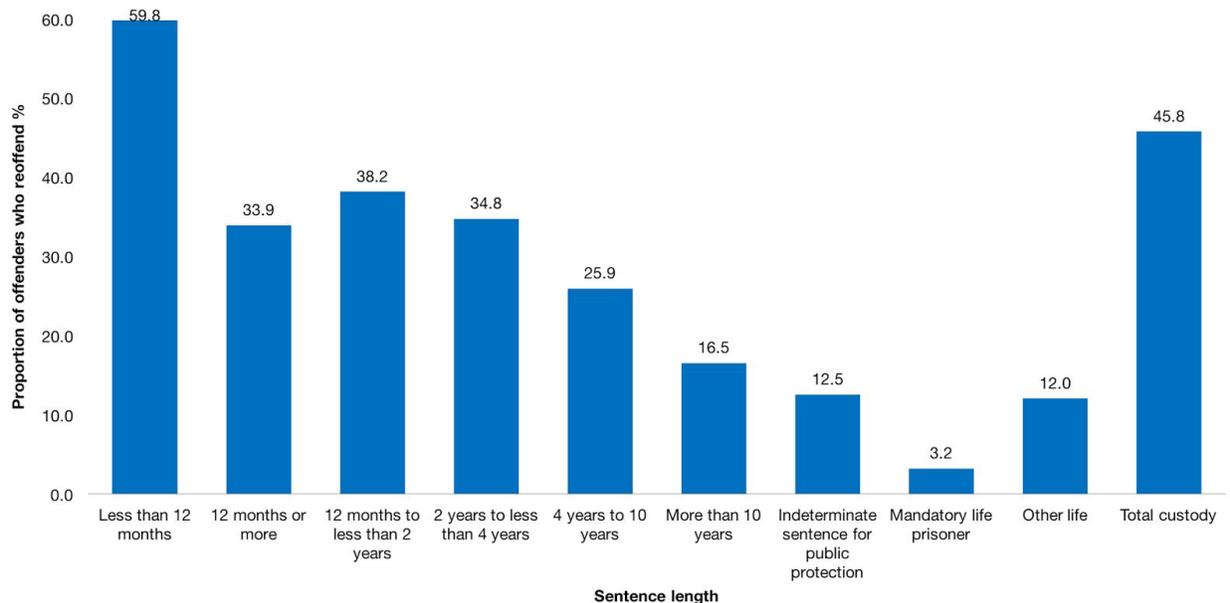
⁵⁸ MoJ (2015) Prison Population: 31 December 2015, Table A1.1

Percentage of male and female prisoners serving sentences of 12 months or less, 2002-2015⁵⁹



Offenders serving short custodial sentences also have the highest reoffending rate of any group of prisoners at 59 per cent, a figure which has remained flat for well over a decade and which drives further demand on the system.⁶⁰

Adult proven reoffending rate by custodial sentence length (2013-14)⁶¹



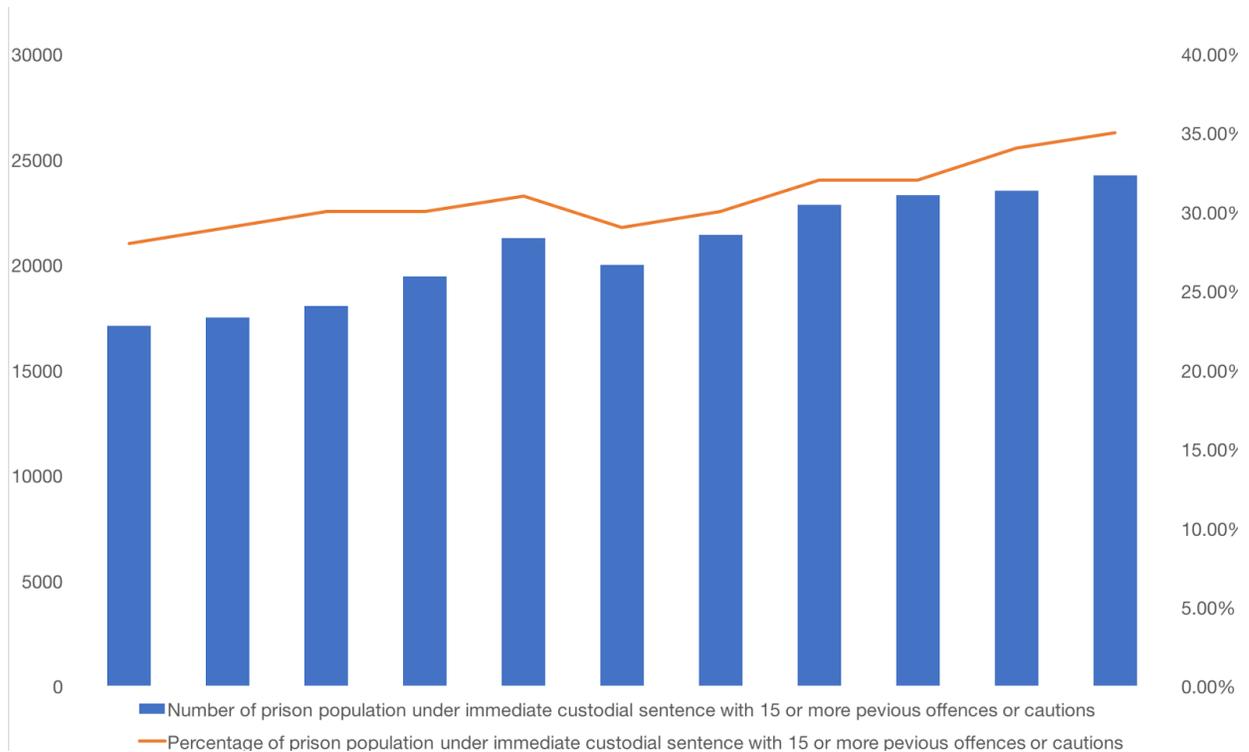
⁵⁹ MoJ (2015), Prison Population: 31 December 2015, Table A1.1. * There are 2 figures for 2009 due to changes to data recording.

⁶⁰ MoJ (2016), Proven Re-offending Statistics Quarterly Bulletin, April 2013 to March 2014, England and Wales

⁶¹ MoJ (2016), Proven Re-offending Statistics Quarterly, January 2016, Table C2a

Moreover, the burden of prolific offending on the CJS appears to be getting worse. Since 2005 the number of prolific offenders (defined as offenders having with at least 15 previous convictions or cautions) has increased by 26 per cent from 114,782 to 144,795 - and there are now more prolific offenders in prison than at any time in the last ten years. MoJ statistics show that one in three adults convicted of indictable offences in 2015 had long criminal records compared to just over a quarter ten years ago.⁶²

Number and percentage of prolific offenders in prison⁶³



Limitations of the current system

Over the last 15 years there has been significant change to the way in which offender management services, i.e. probation and prison, are organised and managed. This has included attempts to integrate offender management via the creation of NOMS, and more recently, to introduce greater competition, through the outsourcing of the bulk of probation services.

Yet with reoffending rates having remained flat and prolific offending having gone up, it is clear such approaches have had limited impact. There are four reasons why the current system is unable to drive change.

⁶² MoJ (2015), Criminal Justice Statistics Quarterly Update to June 2015
⁶³ MoJ (2015), Prison Population: 31 December 2015, Table A1.18



First, because ‘new public management’ approaches, which have characterised the key reforms of the last 15 years, typically struggle to deal with complexity. Such reforms are defined by their reliance on either (a) greater central control from above, or (b) market incentives to boost competition. They are predicated on assumptions of a relatively simple world in which most problems have a small number of causes which interact in a linear fashion. Yet reoffending falls within that category of problem often described as ‘complex’ or ‘wicked’ i.e. problems which have multiple, non-linear and interconnected causes that feed off one another in unpredictable ways. To get a person who has been a prolific offender since they were 10 years old to change their lifestyle often means tackling a range of problems that cut across traditional government silos, such as mental health problems, low self-confidence, lack of skills or accommodation.

To deal with complex problems like reoffending, more personalised approaches are required. Such approaches are more likely to create public service systems that are interconnected, allowing problems to be addressed holistically. Crucially, they also enable deeper relationships to be forged at the frontline, allowing for more intensive and tailored engagement and a focus on an individual’s potential to change, rather than simply managing risk (identified as a key factor in desistance literature).⁶⁴ But greater personalisation is difficult to achieve when services are commissioned from Whitehall.

Second, because local authorities - who control many of the levers to reduce reoffending - have neither the means, nor the incentive to do so. As IPPR have argued persuasively over a number of years, the costs of prisons are largely borne by central government and there are few mechanisms for being able to shift those resources ‘upstream’ to enable local areas to invest in preventing reoffending. Indeed the incentives work in the opposite direction: if a local area were to invest in early intervention to divert people away from the CJS, the financial benefits would accrue to the MoJ (as prison costs would fall), while the local authority would end up with more people using community services, which are on their books.⁶⁵

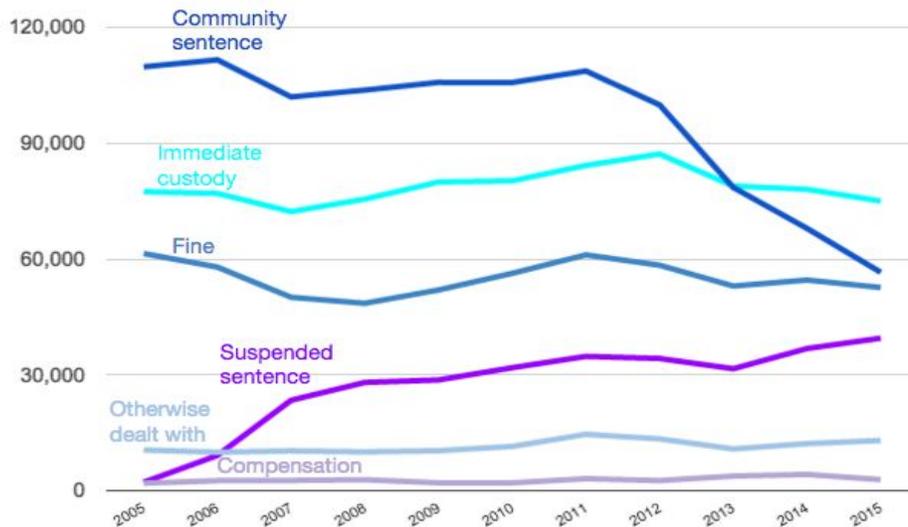
Third, whilst the police have access to a range of out of court disposals in dealing with low level, repeat offending, most of them remain ineffectual. Simple cautions and cannabis warnings involve little to no reparation on the part of offenders and little closure for victims. In 2014, the government brought forward plans to reform out of court disposals, making them simpler and more restorative, starting with a pilot in three force areas. However, although the pilot has now concluded, the government has yet to publish the evaluation or set out its intention to expand the scheme nationally. This delay has wider implications because the government factored full roll-out of the scheme (which would mean diverting many more low level cases away from magistrates’ courts) into its savings plans for HMCTS reform.

⁶⁴ See work by Chris Fox, for example, C. Fox et. al, ‘Personalisation in the criminal justice system: what is the potential?’, 2015, Criminal Justice Alliance

⁶⁵ Muir, R., Lanning, T., and Loader, I., Redesigning justice: Reducing crime through justice reinvestment, 2011, IPPR; 2010; or Clifton, J., Prisons and prevention: giving local areas the power to reduce offending”, IPPR, 2016

Fourth, despite a raft of alternatives to custody now being theoretically available, sentencers appear to lack confidence in the credibility of alternatives to custodial sentences for low level offenders. Used effectively, community sentences can be both more effective (in terms of lower reoffending rates) and cheaper than short custodial sentences. Yet over the last decade, the number of community sentences has fallen dramatically.

Sentencing outcomes for indictable and triable-either-way offences in all courts, 2005-2015⁶⁶



More broadly, the magistrates' courts are not tied into offender management or the wider goal of reducing reoffending. As a result, we are missing out on opportunities to allocate resources more efficiently across the justice system (e.g. courts might potentially allocate resources differently between custody and community supervision). Much of this is due to the lack of sentencer supervision, which can both improve the effectiveness of individual sentences (due to the incentive placed on the offender to progress) and help sentencers recognise gaps in service provision.⁶⁷

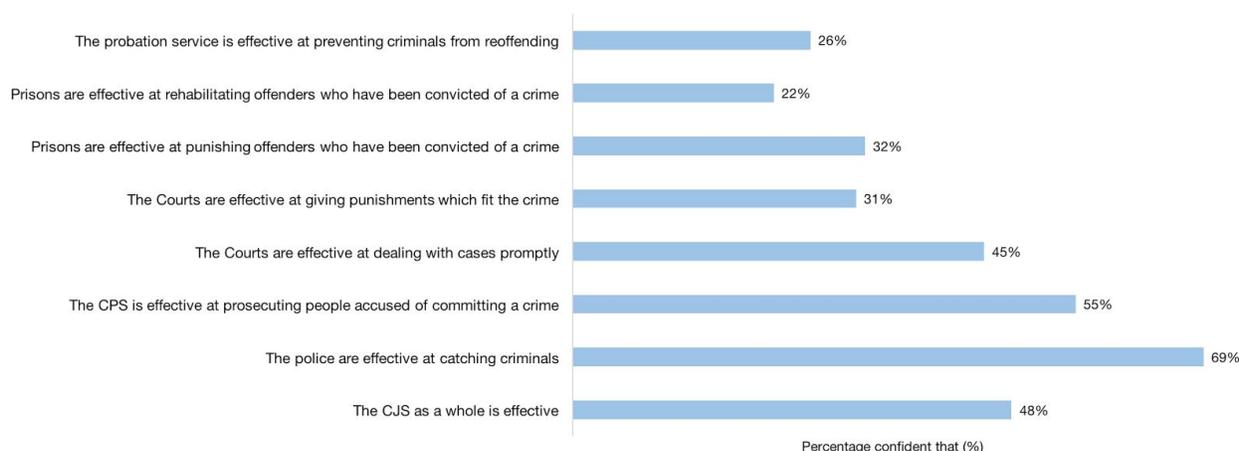
⁶⁶ MoJ, 2015, Criminal Justice system statistics quarterly: March 2015, Table Q1.1

⁶⁷ Justice Committee, Oral evidence by Phil Bowen to the Criminal Courts Enquiry, Courts and tribunals fees and charges, HC 396, October 2015, see <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news-parliament-20151/courts-tribunals-fees-charges-evidence-15-16/>; Justice Committee, Oral evidence, Penelope Gibbs, February 2014, see <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/307/140225.htm>

Criminal justice and local citizens

Confidence in the CJS's effectiveness is low. Fewer than half (48 per cent) of people think the CJS is effective. Less than a third (31 per cent) have confidence in the courts to give effective punishments; whilst only around a fifth believe prisons and probation are effective at rehabilitating offenders and preventing them from reoffending (22 per cent and 25 per cent respectively).⁶⁸

Confidence in the effectiveness of the criminal justice system, CSEW 2013/14⁶⁹

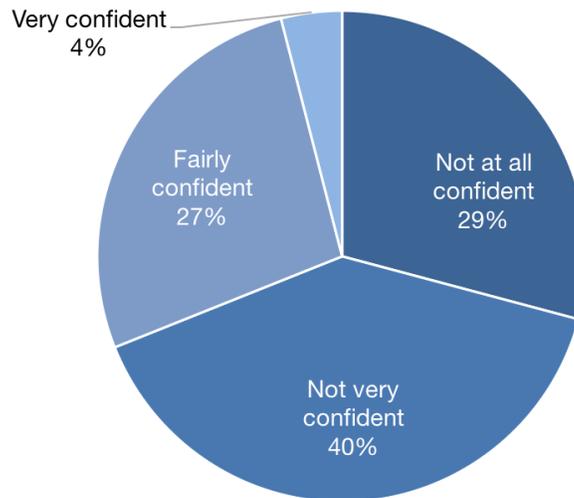


In particular, the public are not convinced that the system punishes people appropriately for the crimes they commit. For example, the 2013 CSEW analysis showed that only a third of respondents are confident that the courts hand out appropriate punishments. The same survey showed less than half had confidence in the CPS to prosecute people accused of committing a crime.

⁶⁸ MoJ (2015) Analytical Series, public confidence in the Criminal Justice System – findings from the Crime Survey for England and Wales (2013/14)

⁶⁹ MoJ (2015) Analytical Series, public confidence in the Criminal Justice System – findings from the Crime Survey for England and Wales (2013/14)

Confidence that the courts are effective at giving punishments which fit the crime⁷⁰



Part of the problem lies in the fact that the public has very little visibility of any of the major actors within the justice system. Whilst a number of people would recognise their PCC or Chief Constable, very few would be able to identify their local Chief Crown Prosecutor, Court Area Manager or Prison Governor, nor accurately understand their responsibilities. The CJS continues to operate predominantly behind locked doors and makes only limited data public. As a result, the public largely lacks the knowledge base required to be able to hold these figures to account. Unsurprisingly, these individuals tend to look upwards to Whitehall rather than downwards to citizens.

Box 3: Accountability in key criminal justice agencies

<p>HM Prison Service</p> <p>Currently, the prison service is highly centralised, with little accountability to communities.⁷¹ Nationally, the service is held accountable by NOMS, which is responsible for the running of prisons and probation services and the management of the 109 public sector prisons in England and Wales.⁷² Locally, governors are responsible for the management and security of prisons, and are accountable to the Chief Executive of NOMS, who in turn reports to the Secretary of State for Justice.</p> <p>Early in 2016, David Cameron announced that the government’s upcoming Prison Reform Bill would aim to improve the accountability and transparency of the service.⁷³ In 2016 six ‘reform prisons’ have been created, allowing their governors greater operational and fiscal autonomy whilst being required to publish key data metrics, including reoffending rates.⁷⁴ In November, a White Paper on prison reform confirmed</p>
<p>Crown Prosecution Service (CPS)</p>

⁷⁰ MoJ (2015) Analytical Series, public confidence in the Criminal Justice System – findings from the Crime Survey for England and Wales (2013/14), Confidence in different aspects of the CSEW 2013/14, Table S10

⁷¹ “Which is the best performing prison in the country? Which is the prison that is achieving the best reoffending results? The answer is we don’t know. Seriously we have no idea. This just isn’t good enough.” Rt Hon David Cameron MP, February 2016

⁷² Public sector prisons account for 109 of the 123 prisons in England and Wales

⁷³ As announced by then Prime Minister David Cameron in February 2016

⁷⁴ David Cameron, 08.02.2016, “I can announce today that we will work with prison staff to examine a new financial incentive scheme to reward staff in the best-performing prisons.”

that many of these wider proposals will be taken forward, albeit plans to create reform prisons as independent legal entities, akin to academy schools, will not be legislated for at this time.

The CPS is centralised, with little accountability to local communities. The CPS itself is split into 13 regional areas, each headed by a Chief Crown Prosecutor (CCP) who holds CPS staff to account internally and is in turn accountable to the Chief Executive of the CPS and Director of Public Prosecutions (DPP). Currently, this accountability is achieved primarily through quarterly area performance reviews and biannual reviews of individual CCP performance.

Historically, there has been little appetite for devolution of prosecution functions within Whitehall, primarily for fear of blurring the lines of accountability between policing and an independent prosecution service.

HM Courts and Tribunal Service (HMCTS)

Crown Courts, magistrates' courts, civil courts and tribunals are all governed by a central agency - HMCTS - with little local accountability. The service is responsible for the administration of the courts of England and Wales, the Probate Service and tribunals in England and Wales and non-devolved tribunals in Scotland and Northern Ireland. It is made up of just under 600 courts and tribunals listed across the United Kingdom.⁷⁵

The HMCTS is accountable to the Lord Chancellor, senior judiciary and ultimately to parliament, and operates on the basis of a partnership between the Lord Chancellor and the Lord Chief Justice. Despite this arrangement it has been noted that, particularly since the courts inspectorate was abolished, "*there is no democratic or local oversight of courts and few mechanisms for scrutiny*".⁷⁶

Under the previous Justice Secretary, Michael Gove, a working group with the judiciary was established to explore how to introduce problem-solving courts but subsequently, further details on an MoJ commitment to pilot the approach have been delayed.

The National Probation Service (NPS)

Probation services, which were previously organised into 43 local 'Trusts', have undergone enormous change as a result of reforms under Transforming Rehabilitation (TR), implemented under the Offender Rehabilitation Act 2014. The net impact of these changes has been to centralise, rather than devolve power, with the nationalisation of high-risk offender management under the NPS, which is accountable to NOMS, and low to medium-risk offenders outsourced to 21 CRCs, who deliver services under contract to NOMS and are account managed by NOMS.⁷⁷

Whilst the contracts for CRCs are locked in for seven years, some PCCs and mayors have argued for a greater role in the oversight of these contracts and have urged the MoJ to grant them this delegated function.

The lack of local visibility is both a cause and a symptom of a broader problem: the system is

⁷⁵ As of May 2016 587 courts and tribunals (including related services) were listed by the government

⁷⁶ Gibbs, Penelope, Managing magistrates' courts —has central control reduced local accountability?, Transform Justice, 2013, p.18; transformjustice.org.uk/main/wp-content/uploads/2013/05/Managing_magistrates_courts.pdf

⁷⁷ See MoJ Target Operating Model for Transforming Rehabilitation, accessed online 21.06.16; www.justice.gov.uk/downloads/rehab-prog/competition/target-operating-model.pdf

not geared up to respond to victims' needs. Since 2013, PCCs have been able to commission their own victims' services using money devolved from MoJ - yet beyond that, their ability to meet victims' needs by influencing other parts of the CJS is limited.

For example, CPS performance already varies significantly across the country. The rate at which certain crimes are prosecuted differs region by region, as does the rate at which charged cases are dropped. The rate of successful prosecution outcomes also vary between regions, and between offence types. For sexual offences prosecuted in 2015, the proportion of unsuccessful outcomes - meaning any outcome other than a conviction - ranged from more than half of case outcomes (55%) in Northamptonshire to less than one in ten (8%) in Hertfordshire. Nationally, 28% of case outcomes were deemed unsuccessful.⁷⁸ This may reflect the quality of police investigations, a differing case mix, or the conduct of local Crown Prosecutors. Whatever the cause, the variation impacts on victims of crime and wider CJS performance in an area. Yet currently, no one locally is accountable for that variation in CPS performance and the data that reveals it is not routinely available to be scrutinised by PCCs. Moreover, the centralised structure of the CPS also means Chief Crown Prosecutors are unresponsive to the crime and safety priorities set by the PCC; and as a result they are less likely to collaborate with them to adopt a shared strategy to tackle a given crime or safety concern. Some PCCs are concerned that even where the police now take domestic abuse seriously, the CPS is yet to respond adequately and that not enough is being done to target serial offenders for prosecution (for fear of missing 'conviction targets'), exposing victims to greater risk of harm.

Similarly, there is ample evidence that criminal justice agencies routinely fail to meet their obligations under the Code of Practice for Victims of Crime. In particular, key entitlements such as the right for victims to make a Victim Personal Statement and to read it out at court are not delivered. Agencies are currently allowed to monitor their own performance against the Code and as yet there is no independent enforcement of it by government. In evidence to the Public Accounts Committee (PAC), HMCTS acknowledged that it had not always given the necessary focus to victims and witnesses on a national level and did not yet have a way of systematically measuring the experiences of victims and witnesses.⁷⁹ On one level this is extraordinary, yet it is perhaps unsurprising given the absence of any mechanism to harness bottom up pressure and drive changed behaviours.

This undermines the integrity of the entire system. The CJS relies on victims and witnesses reporting crime to the police, co-operating with investigations and giving evidence in court should an offence be prosecuted. Yet too often, when they do, the service they receive is not good enough. One in five witnesses can wait for four hours or more to give evidence in court and there continue to be examples of different parts of the system sending victims conflicting

⁷⁸ Four regions had no data for this offence. Unsuccessful outcomes represent all outcomes other than a conviction, comprising discontinuances and withdrawals, discharged committals, dismissals and acquittals, and administrative finalisation. Crown Prosecution Service Case Outcomes by Principal Offence Category Data, 2015, data.gov.uk

⁷⁹ Committee of Public Accounts, 'Efficiency in the criminal justice system', May 2016

information on the same case.⁸⁰ Only 55 per cent of those who have been a witness say they would be prepared to do so again.⁸¹ This raises profound questions for the future of the CJS: if victims and witnesses lose faith in the system, the system will grind to a halt.

⁸⁰ NAO (2016) Efficiency in the Criminal Justice System

⁸¹ Ibid.

LESSONS FROM THE FRONT

Lessons from abroad

A key challenge in assessing the merits of justice devolution is the lack of international research into justice *systems* - as opposed to individual programmes and interventions - which means that, unlike other fields of domestic policy (health, education, policing) the factors that comprise a world class justice system remain largely unknown and untested.

To provide some context, we reviewed the broad characteristics of justice systems in seven comparable countries and used a simple indexing system to score them by the degree of decentralisation i.e. the higher the score, the more decentralised the system. Detail on the methodology used is provided in Annex 1.

Box 4: International comparisons of justice systems

Country	Key features	Outcomes	Decentralisation score
England and Wales	CJS is highly centralised. Courts, prosecution, prisons and probation centrally administered by the MoJ.	Volume crime has fallen steadily since 1995. Prison population has grown exponentially since 1993. Current rate: 147 ⁸² /100,000. 2 year reconviction rate: 59%. ⁸³ Low levels of trust and confidence.	-6
Netherlands	CJS is highly centralised. Courts and prisons centrally funded and administered. Probation services centrally funded and administered with regional offices executing decisions. ⁸⁴	Prison population has fallen. Current rate: 69/100,000. 2 year reconviction rate used for comparison: 48%.	-5

⁸² See <http://www.prisonstudies.org/country/>

⁸³ Fazel S, Wolf A (2015), A Systematic Review of Criminal Recidivism Rates Worldwide: Current Difficulties and Recommendations for Best Practice. PLoS ONE 10(6): e0130390. doi:10.1371/journal.pone.0130390

⁸⁴ Ibid.

Finland	<p>Most of the CJS is centralised.</p> <p>Courts, prisons and probation services are centrally administered.</p> <p>Probation cooperate with local authorities and treatment services.</p> <p>Objectives of imprisonment: “according to the principle of normality, prisoners are entitled to the same services in prison as they would be as civilians”.</p>	<p>Prison population has fallen dramatically since the 1970s. Current rate: 55/100,000.</p> <p>2 year reconviction rate used for comparison: 36%.</p> <p>Notable decrease of prisoners since the 1970s.</p>	-2.5
France	<p>Most of the CJS is centralised but regional centres have some freedom over operations.</p> <p>Courts centrally administered.</p> <p>Administration/operation of prisons and probation shared between central govt and regional centres.</p>	<p>Prison population rate: 99/100,000.</p> <p>5 year reconviction rate used for comparison: 59%.</p>	-1
Norway	<p>CJS is mostly centralised with the exception of probation.</p> <p>Courts and prisons managed centrally.</p> <p>Probation and rehabilitation devolved locally, with freedom from the courts to define community sentences as well as necessary health/education services.</p>	<p>Prison population rate: 70/100,000.</p> <p>2 year reoffending rate used for comparison: 20%.</p>	0
Sweden	<p>Medium levels of central control.</p> <p>Courts centrally administered.</p> <p>Prison and probation services are integrated and managed by “The Swedish Prison and Probation Service” coordinated by 6 regional offices.</p> <p>Sweden has invested in a large number of small prisons.</p> <p>Objective of imprisonment is to prepare for a crime-free life; aims to avoid negative effects of custody.</p>	<p>Prison population rate: 53/100,000.</p> <p>2 year reoffending rate used for comparison: 43%.</p>	1.5

US	Justice devolved to state level. States responsible for sentencing, courts, prisons and probation.	Prison population rate: 693/100,000. 2 year reoffending rate used for comparison: 45%.	4
Germany	Justice broadly devolved to the Länder. Federal courts managed by the federal state, otherwise courts are devolved to the Länder. Prisons and probation service administered by Länder. Objective of imprisonment: prisoners shall be enabled in future to lead a life in social responsibility without committing criminal offences.	Prison population rate: 76/100,000. 2 year reoffending rate used for comparison: 48%.	6
* The US is not included in the comparisons below since it is not deemed methodologically comparable (due to its size/spending power)			

According to the indexing used above⁸⁵, it appears there is little correlation⁸⁶ between how decentralised a country's justice system is and the level of trust/confidence held by citizens.⁸⁷ Whilst countries with highly centralised systems (England and Wales, the Netherlands) have relatively low levels of trust, countries with more devolved systems (Germany) do little better.

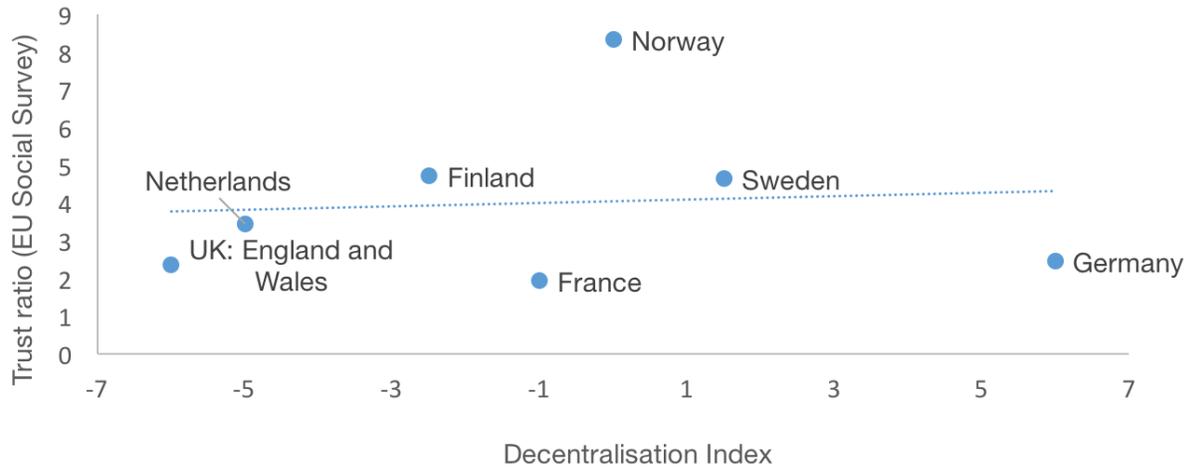
⁸⁵ As is made clear in Annex 1, the indexing system is subjective, based on some common sense assumptions about the extent to which national or local government controls different aspects of justice policy

⁸⁶ We consider the decentralisation data series to be non-normally distributed, therefore we have calculated co-variance (r^2) rather than a correlation rate

⁸⁷ Data extracted from the European Social Survey Round Five, 2010

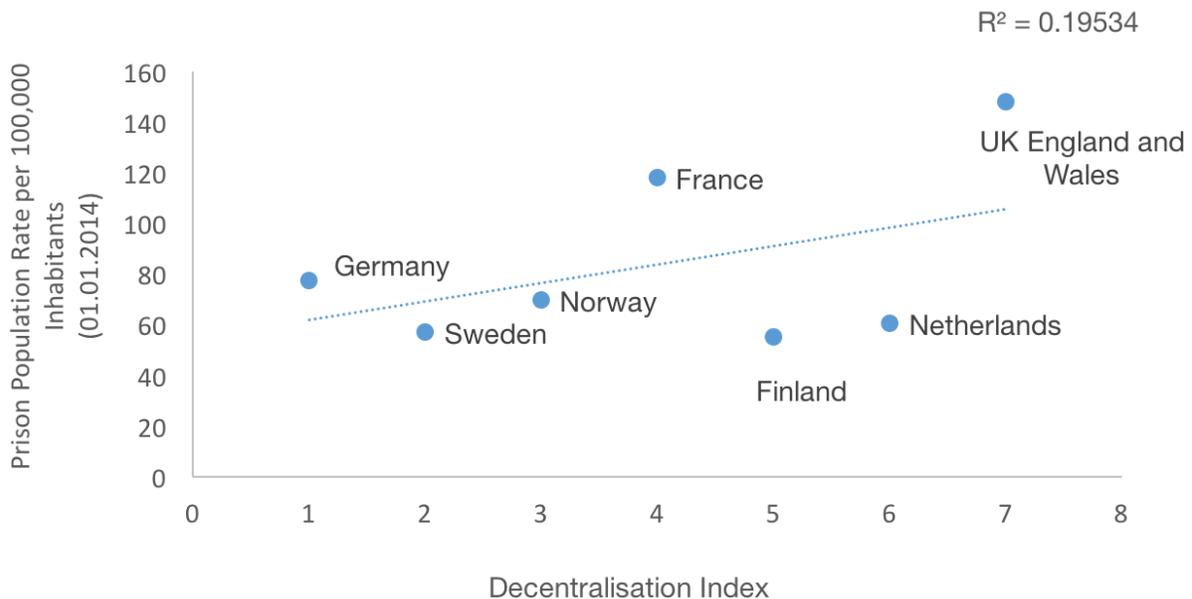


Decentralisation versus trust in the legal system



Similarly, there appears to be no correlation between how decentralised a country’s justice system is and the rate of incarceration.⁸⁸ For example, countries with highly centralised systems (England and Wales, the Netherlands and Finland) have vastly different rates of incarceration; the Nordic countries have similarly low prison population rates despite having differing levels of decentralisation.

Decentralisation vs. prison population rate



The data above is indicative only and clearly does not prove or disprove the case for justice devolution. More detailed analysis would be required to properly assess and compare the exact

⁸⁸ Data extracted from Space I, 2014/15, University of Lausanne for the Council of Europe



nature of justice systems internationally. Nonetheless, it is possible to hypothesise that other factors, for example, the level of political will and/or reforms to sentencing practice are likely to be equally, if not more, important as a driver of outcomes at the macro level.

More fruitful is an examination of the literature on social innovation and its impact on criminal justice, documented by Chris Fox.⁸⁹ As Fox makes clear, “*there is a rich tradition of social innovation in the criminal justice system*”, much of which stems from experiments taking place within devolved settings. For example:

- the idea of ‘restorative justice’ was rekindled in the West as a result of various projects, including an experimental victim–offender reconciliation programme in Ontario; the New Zealand idea of family group conferences; Canadian First Nations’ healing circles and various less visible African restorative justice institutions;
- the concept of ‘community justice’ originates from experiments initially trialled within US states, such as community policing and problem-solving courts - at the heart of these reforms was a desire to improve public confidence by strengthening the connection between local communities and the key agencies of the CJS;
- the ‘justice reinvestment’ movement was made possible by innovative use of new technology and social media (in this case the rise of personal computing and Geographical Information Systems). Generally, justice reinvestment appears to work best when it is applied at a local or regional level. Rob Allen, one of its principal proponents, has suggested: “*inherent in the concept of justice reinvestment is a greater emphasis on local ownership of those in trouble with the law and the development of local solutions*”.⁹⁰

As Fox points out, it has often been a characteristic of social innovation that change agents are located in local communities, or if in large organisations, at the service delivery level. It is thus reasonable to conclude that the promotion of social innovation within justice is likely to occur more naturally in decentralised, rather than highly centralised systems.

Box 5: Justice reinvestment: the US experience

Justice Reinvestment (JR) originated from the ‘million dollar blocks’ analytical model developed by the Justice Mapping Centre in New York. The model highlighted city blocks where the administration was paying more than one million dollars on incarcerating the inhabitants, often more than the administration was spending on any kind of social support.⁹¹ These blocks were almost all in the most socially and economically deprived areas of the city. The aim was to prevent criminality by focusing investment on the causes of crime rather than on reacting to it.

(continued on following page)

⁸⁹ Fox and Grimm, ‘The role of social innovation in criminal justice reform and the risk posed by proposed reforms in England and Wales’, *Criminology and Criminal Justice* (2013)

⁹⁰ Allen, R, *From Restorative prisons to justice reinvestment*, 2007, p.7

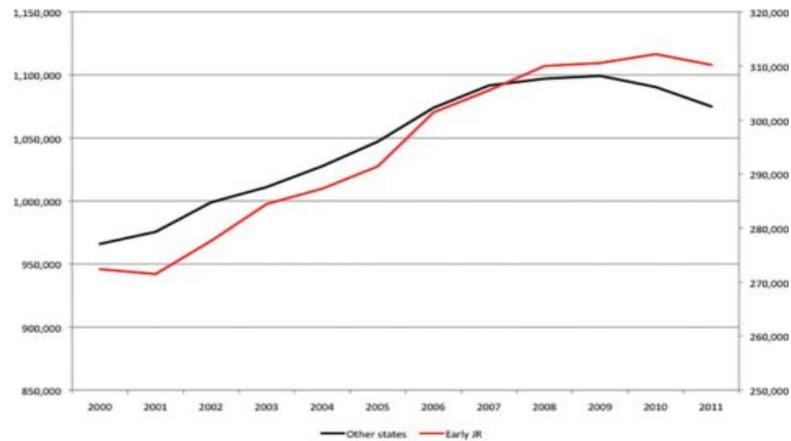
⁹¹ Presentation by Chris Fox, Manchester Metropolitan University (2015)

(continued from previous page)

In the US, JR has become an umbrella term encompassing a number of data driven policies designed to reduce costs through practical ‘what works’ solutions, to then provide funds to reinvest in improving public safety. The focus for reinvestment has proved controversial. There are effectively three models for investment: community, law enforcement, and treatment.⁹²

The success of JR is most regularly judged in relation to prison rates, for the relatively simple reason that without a reduction there are no savings to reinvest.⁹³ If measured in this way, JR has not been a straightforward success; states that were early adopters of JR (pre-2008) have not seen statistically significant reductions in prison populations when compared to other states.

Early JR vs other State prison populations 2000-2011⁹⁴



However, this is arguably an unfair standard by which to judge JR, given many of the early adopters were states where the upward pressure on prisons populations was greatest. For example when evaluating JR reforms in Texas causality is fiercely contested. In 2007 the prison population in Texas was projected to grow 17,332.⁹⁵ The state enacted a package of JR reforms to avert the anticipated growth, including reinvesting \$241 million dollars to expand substance abuse and mental health treatment facilities.⁹⁶ As a result, the prison population stabilised and the state made budgetary savings of \$210.5 million dollars in 2008/09 and additional savings of \$233 million from not having to build additional prison capacity.

More difficult is determining the ultimate cause of success, disentangling the impact of state-wide sentencing and/or parole reform from the ‘reinvestment’ part of the program. For example, the evaluation of reforms in Texas suggested that changes to parole grant rates and probation were more significant factors in stabilising the prison population than the JR legislation.⁹⁷

⁹² Byrne, J. M., (2014), The Future of Justice Reinvestment - assessing the Merits of Individual and Community Change Strategies, Victims & Offenders, 9:1, 1-5

⁹³ Austen, J. and Coventry, G., A Critical Analysis of Justice Reinvestment in the United States and Australia, 2014

⁹⁴ Source: Bureau of Justice Statistics 2013b; Austen and Coventry, A Critical Analysis of Justice Reinvestment. It is worth highlighting that only four states in the US have significantly reduced prison populations (NY, NJ, CA, MI) and that these came about through sentencing and parole grant rate reform

⁹⁵ In Austen and Coventry, A Critical Analysis of Justice Reinvestment - quoting the Council for State Governments

⁹⁶ Chris Fox presentation (2015)

⁹⁷ J. Austen and G. Coventry, A Critical Analysis of Justice Reinvestment

Lessons from home

The local landscape in England is shifting rapidly. Even over the course of this project, new experiments in justice devolution have emerged. We have spent the last six months travelling around the country talking to PCCs, prison governors, chief constables, local authorities and others to better understand the case for devolution within a UK context. Below are a series of case studies based on our field visits, broken down into the thematic areas of this report.

Preventing the flow of offenders into the CJS

Surrey: an integrated and restorative Youth Support Service (YSS)

In 2010 Surrey County Council undertook a comprehensive report into the number and characteristics of vulnerable young people within the county. It identified that one in ten young people in Surrey were having vulnerabilities which could affect successful transition into adulthood.⁹⁸

The local authority made two strategic decisions. First, that they would move to a more localised outcome-based approach to commissioning services. Second, that they would develop non-siloed services for young people with youth justice involvement. Delivering youth justice differently through a fully integrated and holistic youth support service (YSS) was seen as the way to improve outcomes for vulnerable young people across the county.

In 2012 the traditional YOT was disbanded and its functions were incorporated into a wider YSS. The YSS's work is based on a multi-agency strategy to reduce offending by looked after children, supported by an inter-agency protocol, a steering group and regular forums for practitioners, as well as an extensive, multi-agency training and development programme on restorative practice, including training for foster carers.

The approach comprises local teams who provide in-house services to young people who are in the CJS, either formally or informally, and, regardless of entry point and problem receive continuous provision from the same people. This case management approach ensures youth support officers can work with young people on an individual basis to identify their needs, which informs an action plan and interventions. The introduction of the Youth Restorative Intervention (YRI) and joint decision-making by the YSS and Surrey Police has also made up part of this transformation.

Outcomes have been impressive:

⁹⁸ Surrey County Council, 'One in ten', June 2010

- Surrey County Council and Surrey Police have reduced the numbers of looked after children in the CJS year on year since 2011;
- Surrey has the fewest first time entrants in England and Wales - the number of youths coming into the system is down about 93 per cent, from 2000 to 150 (unpublished);
- An independent evaluation⁹⁹ found that £3.41 has been saved for every £1 invested in the YRI and concluded that it reduced the unnecessary criminalisation of young people, reduced reoffending, provided better interventions for victims, improved victim satisfaction and reduced costs to the YJS.

Greater Manchester: justice and rehabilitation public service reform

With declining resources and a changing, more complex, cohort of individuals putting pressures on different points of the CJS, Greater Manchester Combined Authority identified the need for a new approach to reducing complex dependency. The keys to success were identified as twofold. First, choosing interventions which had the strongest evidence base, both in terms of impact and cost-effectiveness. Second, that individual interventions were integrated with the delivery of all public services, particularly targeted services, so that families could get the right intervention and services in the right sequence at the right time.

The key to doing this was thought to be integration of both the commissioning *and* delivery of services around the individuals in the context of their family at the neighbourhood level. It was recognised that interventions with complex families at neighbourhood level could not be successful without taking into account the needs of the neighbours and the surrounding neighbourhood. Therefore there was a need to focus on both sanctions and support.

It was hoped that by tracking investment made by different agencies in complex families to the impact - in terms of reduced demand and, therefore, spending - they would create the evidence needed to then decommission what was not working. Devolution was envisaged as a way to get the relevant funding streams across services into a single pot so that the necessary decommissioning and then commissioning could happen.

Under the leadership of the PCC-come-mayor, Tony Lloyd, Greater Manchester has established integrated teams of public service professionals (or 'multi-agency hubs'), comprising police, social workers, health workers and charity staff, responsible for identifying a core of complex families and individuals and developing joint action plans for dealing with their problems. The reforms also involve upscaling initiatives such as Intensive Community Orders (ICO) - intensive rehabilitation and support of prolific offenders in the community - in partnership with the NPS and local CRC; and the design and implementation of a whole system approach for women offenders.

It is too soon to be able to assess the outcomes of this work, but the early signs are promising.

⁹⁹ Mackie, A. et al, Youth Restorative Intervention Evaluation, September 2014

For example of the 702 women offenders who have been referred to alternative provision, 77 per cent have been assessed and 57 per cent have a support plan in place.

Bringing offenders to justice

Sussex: video enabled justice

In Sussex it was identified that cases were taking longer to be processed, with the average wait for cases to complete in magistrates' courts up 7 per cent since 2011, not only affecting judicial outcomes but eating up resources to cope with these inefficiencies.¹⁰⁰ In Sussex, the average amount of time wasted for a police officer per court attendance is five and a half hours - cutting this time would free up resources significantly.¹⁰¹

Lord Leveson's review of efficiency in the CJS concluded pre-trial and case-management hearings are effectively administrative procedures that could be expedited via video technology.¹⁰² A virtual court, which establishes a video link between defendants detained in police custody and in courtrooms, could reduce the time between custody and first hearing from hours to minutes. Transporting defendants who are detained in prison is a time-consuming and risky operation that could be avoided by police to court video links, as could the expense attached to running court custody facilities.¹⁰³

With two years worth of funding from the Police Innovation Fund, a London, Surrey, Kent and Sussex Partnership, spearheaded by Katy Bourne, will trial video enabled justice (VEJ) remand hearings and summary trials, as well as the use of victim/witness and police officer live links. Nearly 14,000 agents are expected to operate on the scheduling system every day, with responsibility for management of proceedings given to a 'VEJ Director'. They will ensure end users are comfortable, reassured about the process and ready to participate when a free slot in the scheduling system emerges.

Reducing the cycle of prolific reoffending

West Midlands: integrated offender management

West Midlands Police (WMP) identified that 6 per cent of the force's area accounted for around 22 per cent of all crime and a much higher level of serious crime. It was clear who and where the current and future client groups were drawn from, yet the system provided no incentive or clarity of mission for intervention at the point where impact would be maximised.

WMP concluded that there needed to be a shift away from the traditional 'detect and react'

¹⁰⁰ Mosseri-Marlio, W., Pickles, C., The future of Public Services: digital justice, February 2016, Reform

¹⁰¹ Accenture and Sussex PCC, unpublished research, 2015, via Reform 'Digital Justice', p. 2

¹⁰² The Rt Hon Sir Brian Leveson, *Review of Efficiency in Criminal Proceedings*, 2015

¹⁰³ See http://www.reform.uk/wp-content/uploads/2016/02/Digital-Justice_WEB.pdf p.4

model of criminal justice toward a more 'predict and prevent' ethos. They also knew that with the most intractable offenders, more intensive case management was needed. They decided therefore to invest in a dedicated police-led programme of integrated offender management (IOM), working alongside the probation service.

IOM has taken place in the West Midlands since 2007, when WMP was chosen as a pilot force, and in 2011 the force invested more heavily in offender management units as part of its preventative policing strategy. As a force, WMP monitors 7,500 offenders and directly manages 3,500 of which only 1,000 are with the CRC and NPS. They choose to do this because it works and because it reduces demand across the system, not because they are statutorily obliged to do so.

Outcomes have been impressive. West Midlands has the lowest crime of all the major cities as well as the lowest adult reoffending rates in the country.

Chelmsford: cross-service approach to reducing reoffending - offenders with complex and additional needs (OCAN)

Significant gaps in provision for offenders were identified across Essex, particularly for vulnerable offenders, offenders with learning difficulties, and those with mental ill health. There is a strong and recognised link between substance misuse, mental ill health, learning disabilities/difficulties and offending in terms of:

- an increased likelihood of committing a range of crimes, from acquisitive offences (drug misuse); violent crime (alcohol, mental health); sex offences and arson and reoffending;
- their prevalence in offending populations (an estimated 25-65 per cent of offenders have mental health issues; 50 per cent have substance misuse issues; and 30 per cent have learning difficulty needs).

By integrating health and criminal justice funding streams, vulnerable offenders can receive a more seamless, end-to-end service.

In response, commissioners in Essex sought to commission a fully integrated care navigation service for individuals with complex and additional needs who are in contact with the CJS. Integration in this context will occur in two ways:

1. Integration of community and prison provision, with a service able to work effectively with people pre-, during and post-custody
2. Integration across traditional user cohorts, which will include Mental Health, Substance Misuse, Physical and Sensory Impairments, autism spectrum disorders, learning disabilities and learning difficulties, such that services will be based on individual need rather than cohort label

Learning the right lessons

A number of lessons emerge from the international evidence and these domestic case studies.

First, devolution should be focused on joining up services around the (often low level) repeat offenders who drive a majority of demand. There is little appetite, either amongst local leaders or indeed the public, to see powers and responsibilities for incarcerating serious, high-harm offenders devolved to the local level. Partly this is because of the economies of scale and operational sense in maintaining central coordination. But it is also because there is a far lower degree of tolerance for variance in outcomes with regards to the way these offenders are punished and managed. In contrast, local areas are in a much better position to take risks, innovate and align services for repeat offenders, who are often in and out of prison and in touch with a wide variety of local services (health, housing, employment etc).

Second, the ability to co-commission services and pool budgets is key to success. As the case studies above illustrate, there is much that local leaders can *already* do, within the constraints of the current system, provided they have the vision and leadership to drive change. Yet a common feature in our conversations with local leaders was the frustration that even where local participants shared a vision for reform, many of those sitting around the table did not have the flexibility to pool budgets and/or that central government had not loosened their grip on the way funding was allocated. Whilst PCCs have some flexibility in how policing resources are spent, collaboration often breaks down because court managers, chief crown prosecutors and prison governors are unable to 'unlock' portions of their budgets to fund joint working and/or innovative reform.

Third, robust governance and accountability arrangements are crucial to embedding reform. The most powerful examples of devolution are where there is a single political lead, able to coordinate and commission services across a relatively well defined and bounded area (for example, in Greater Manchester).

Fourth, whilst justice devolution does appear to foster a greater degree of social innovation, it is not, alone, a guarantor of better outcomes - the level of political will and/or available resources and reforms to sentencing are equally important. For example, international comparisons do not suggest that devolved systems are any more likely to deliver lower prison populations, higher trust, or lower costs than more centralised systems. The Nordic countries, which are often held up as beacons of progressive practice, have highly centralised systems.

Fifth, devolution should be a means to achieving a vision, not the vision itself. Devolution works best where both central and local agencies share a vision for what can be achieved and are responding to a clearly defined need. Local agencies should only seek new powers,

responsibilities and flexibilities once they are clear about the broader vision and strategy for reform.

RECOMMENDATIONS

Justice devolution is at a crossroads. Following a period (between May 2010 and Summer 2016) in which the direction of reform appeared relatively well established, with powers and responsibility being steadily pushed downwards, there is now a question mark about whether the new government will continue along the same lines.

We believe, in a world of shrinking resources and rising demand, justice devolution represents our best hope of improving outcomes for victims and communities, since it allows for the joining up of services around individuals, rather than forcing individuals to fit into silos. However, there are ways in which this government can and should improve the process and indeed go further than their predecessors. This will involve a different role for both central government and local areas.

THE ROLE OF CENTRAL GOVERNMENT

In recent years, justice devolution has proceeded piecemeal, without a clear vision of what either central government or local areas want devolution to deliver. This risks undermining, rather than strengthening the effectiveness and accountability of the system as a whole.

Vision and principles

The government is right not to insist on a single blueprint for justice devolution - flexibility is to be welcomed. However, nearly all the stakeholders we spoke to agreed on the need for a shared vision of what the government wants devolution to deliver, underpinned by some clear principles.

We recommend the following changes.

Recommendation 1: Vision. *The MoJ, in consultation with the Home Office, Treasury and Department for Communities and Local Government, should set out the purpose and intended evolution of justice devolution in England and Wales.*

This should clarify the government's position on appropriate governance and accountability arrangements i.e. whether and to what extent directly elected mayors, rather than PCCs, will be favoured as the likely recipient of further powers.

Recommendation 2: Principles. *As part of this process the government should agree a set of core principles to underpin the next round of devolution deals.*

Greater clarity on the principles underpinning justice devolution would help guide local areas when they seek to reach agreement with central government on individual deals, and ensure there are some common metrics against which to measure the success of the government's justice devolution agenda in the future. We suggest the below as a starting point for discussion:

Box 7: Suggested principles to underpin justice devolution

Focus on the repeat offenders who drive demand. Devolution is not appropriate in all contexts e.g. where citizen preferences tend not to vary and a high degree of standardisation is required. Central government should state clearly that the following functions/services will remain nationally administered:

- criminal procedure and sentencing;
- the Crown Courts;
- the high secure prison estate;
- management of prisoners serving long custodial sentences.

Robust governance and accountability. Devolution must strengthen, rather than undermine, democratic governance and accountability. In the vast majority of cases, that must involve devolution to a single, visible elected leader, rather than to a committee. Whether that person is a directly elected mayor or a PCC will depend on local circumstances. The mayoral model is clearly well suited to large, clearly bounded metropolitan regions (e.g. Manchester or London). In other areas, the lack of a single dominant conurbation will make PCCs more appropriate.

Go with the grain of administrative boundaries. Many of the proposals outlined below would be more easily implemented if there was greater co-terminosity between police force areas and the structures of the wider criminal justice system. At the moment, there are 42 PCCs/mayors and police force areas, 21 probation contract and prison areas, 7 NPS regions, 13 CPS areas and 7 courts regions. Government should aim to ensure that the structures of the CJS align more closely with local democratic structures. This means prioritising reforms which go with the grain of recognised boundaries, rather than adding new ones.

Local impact/value for money. Devolution deals should be underpinned by analysis demonstrating the extent to which changes will likely lead to better policy outcomes for citizens in the area in question and include a commitment to rigorous implementation and impact evaluation.

Whitehall reform

It has become steadily clear through the course of this project that the relevant Whitehall departments - MoJ, Home Office, Treasury and No. 10 - have differing visions and approaches to justice devolution, which is sowing confusion and uncertainty within local areas.

Recommendation 3: Implementation. *To embed reform, the government should task the National Criminal Justice Board with:*

- *agreeing a set of core principles to underpin the next round of 'devolution deals' (see Box 7 above);*
- *coordinating a cross government strategy for the evolution of criminal justice devolution and drive reform;*
- *reviewing emerging and existing policies and their effect on justice devolution (including the 'Transforming Rehabilitation' reforms to probation);*
- *maximising the role of mayors and PCCs as agents of change.*

Revenue-raising

Whilst our argument is that greater devolution will yield savings over the longer term, local leaders should also be given the necessary budgetary flexibility to make upfront investments, where they are needed, for example, to ensure alternatives to custody are available to sentencers.

Recommendation 4: Fiscal responsibility. *We recommend that as a quid pro quo for greater devolution of powers, the government consults on the introduction of a new 'crime and justice precept', to top up the existing police precept. This could be revenue neutral, with any increase in local taxation balanced by a corresponding reduction in the national tax take. An expanded precept would give PCCs:*

- *greater independence from central government;*
- *the ability to invest in a range of innovative prevention or enforcement activities;*
- *more flexibility in funding work across the CJS and beyond;*
- *greater local accountability for how the money was spent (voters would have a say in the size of the precept they paid).*

As an indicative example, we estimate that an increase in the current police precept of 10 per cent in an average English force (costing a Band D household around £15 per annum) would raise an additional £3.2m per annum for spending on crime/justice.¹⁰⁴

¹⁰⁴ Bedfordshire police and precept practice can be used as a proxy for an average English force as shown by House of Commons Briefing Paper 7279, Feb 2016. If the 2014/15 household precept was raised by 10%, Band D precept would be £156 + £15.65 = £172.205 per year, or £14.35 per household per month. This would raise an additional £3,213,152, allowing a total precept contribution of £35,344,672 (footnote continued on following page)

Use of evidence

If powers and budgets are to be devolved, local leaders need to be equipped with the knowledge to make informed decisions about where to deploy scarce resources. The College of Policing currently hosts the What Works Centre for Crime Reduction, which involves collaboration with academics and a university consortium. However, no such body exists in the justice field.

Recommendation 5: Evidence: *Government should establish a new What Works Centre for Justice to coordinate and strengthen the evidence base around justice policy, from the investigation of offenders through to the way they are rehabilitated.*

THE ROLE OF LOCAL LEADERS

This paper has argued that the criminal justice system in England and Wales needs to get better at identifying and dealing with demand at source, rather than paying for the costs of failure later on. However, its ability to intelligently manage demand is currently limited by a heavily centralised model of service delivery, which means:

- we are missing opportunities to stem the flow of people into the CJS;
- victims are having to wait too long for offenders to be brought to justice;
- offenders are not being adequately rehabilitated and thus being endlessly recycled through the system.

Preventing Crime

Too often the scope of justice reform has been confined to agencies within the CJS - yet many of the levers for preventing crime lie outside the system, with health services, schools and within local authorities.

We recommend the following changes.

Recommendation 6: Youth justice. *Full devolution of youth justice powers (and budgets) to combined authorities with directly elected mayors or PCCs, enabling local areas to strip away the separate architecture for young offenders and put in place a single, integrated service for vulnerable young people. We are not in favour of devolving youth justice directly to local authorities for the simple reason that doing so would risk youth justice budgets being swallowed up by local government, already struggling with cuts to its revenue grant.*

(footnote continued from previous page)

www.bedfordshire.pcc.police.uk/DOCUMENT-LIBRARY/Finance/Financial-Documents/Council-Tax/Council-Tax-Leaflet-2015-2016-Updated.pdf

Recommendation 7: Secure accommodation. Enable combined authorities with directly elected mayors or PCCs to bid for responsibility for commissioning of secure accommodation for under-18s, rather than simply purchasing what is available from the Youth Justice Board. This would enable mayors or PCCs to commission secure facilities closer to home, avoiding the need to incarcerate young offenders in Young Offender Institutions miles away from where they live.

Recommendation 8: Child protection. Enable combined authorities with directly elected mayors to reconfigure child protection services, for example, by ensuring co-location of local police child abuse teams with children's social care and/or by establishing multi-agency safeguarding hubs.

Recommendation 9: Early intervention. New statutory obligations on PCCs and mayors to work with the relevant local authority in order to 'secure the sufficient provision of local early help services for children, young people and families' where risks are clearly identified. This would ensure an appropriate family and/or parenting intervention is made available for children who:

- are excluded from schools;
- are persistently truanting;
- are found drinking or using drugs;
- have parents or siblings convicted of a crime.

Bringing offenders to justice

Whilst few would advocate a return to the days of police charging, there is a strong case for greater local oversight of the CPS within a devolved justice system. First, because local prosecution performance already varies, which itself warrants stronger local scrutiny; second, because the CPS' isolation from local criminal justice governance means it is accountable upwards to Whitehall, rather than to local communities, and; third, because the CPS is unresponsive to CJS priorities set by PCCs, even though their role is critical to the effectiveness of the CJS as a whole. The government should empower PCCs and combined authorities with directly elected mayors to drive improvements in the way offenders are investigated and charged. We recommend the following changes.

Recommendation 10: Local prosecution priorities. Require local Chief Crown Prosecutors to work with the PCC in agreeing local prosecution priorities - as part of the crime and policing plan.

Recommendation 11: CPS budgets. Enable PCCs or combined authorities with directly elected mayors to bid for the management of the CPS budget. This would give them a direct

lever with which to encourage closer working between the police and CPS, whether through pooled budgets, co-location and/or joint teams. Whilst the local Chief Crown Prosecutor would be more bound into local CJS outcomes, CPS independence would be preserved: prosecution decisions would continue to follow the Code for Prosecutors and the local Chief Crown Prosecutor would be answerable for prosecution decisions to the Director of Public Prosecution and the Attorney General.

Recommendation 12: Justice outcomes. *Encourage PCCs to agree joint outcomes for the CJS at a local level - covering the role of the CPS, courts, probation and prisons. This would enable the PCC to define the strategy for improving outcomes, and hold individual agencies to account for their own individual contributions.*

Recommendation 13: Justice performance. *Encourage Local Criminal Justice Boards to publish CJS-wide performance dashboards, as a way to identify key interdependencies between agencies and inject greater bottom-up pressure to improve services for victims and communities.*

Recommendation 14: Witnesses. *The government should move ahead with full devolution to PCCs over the ability to commission witness services - ensuring a more seamless service for witnesses and victims.*

Reducing the cycle of prolific reoffending

A small proportion of individuals with complex needs and chaotic lives continues to drive a significant amount of demand on the CJS. Repeated attempts to reform offender management by central government have not worked: reoffending rates have been flat for over a decade. Indeed, there is evidence that prolific offending is actually getting worse.

Some have argued that the government should transfer control of 'local prisons' to PCCs and/or mayors as a way to incentivise greater investment in community alternatives and reduce the cost of incarceration. We do not recommend this approach for two reasons. First, local areas are unlikely to have the capacity, capital resources or appetite to take on the operational management of prisons any time soon. Second, central government needs to retain the ability to move offenders around to manage offender flows (e.g. in response to national security risks, or to deal with sudden unexpected spikes in demand). We recommend the following changes:

Recommendation 15: Magistrates' courts. *Give PCCs or directly elected mayors the power to monitor court performance, as well as the ability to co-invest in court-based services and fund/manage court-based pilots of approaches like problem-solving and pre-sentence restorative justice. PCCs and directly elected mayors should also be consulted on future decisions about the configuration of the courts estate.*

Recommendation 16: Local sentencing reform. Establish a pilot to test the devolution of sentencing guidelines for out of court disposals to local magistrates' boards (on which PCCs would be given a role) - enabling local areas to scrap ineffective sanctions, such as simple cautions and/or cannabis warnings, and replacing them with a more innovative and tailored range of evidence-based sanctions, such as restorative justice.

Recommendation 17: National sentencing reform. In order to ensure that reductions in reoffending lead to a fall in imprisonment, these reforms should be accompanied by reform to the sentencing guidelines to curtail the use of short custodial sentences, specifically, the introduction of a presumption of 'Intensive Community Orders' for 18-25 year old offenders facing a custodial sentence of 12 months or less (based on the successful scheme in Greater Manchester).

Recommendation 18: Prisoner budgets. Enable combined authorities with directly elected mayors or PCCs to bid for control of the budget for prisoners serving custodial sentences of less than 12 months. This would be in the form of a block grant agreed with NOMS, covering the full cost of accommodating short-sentenced prisoners in that area over a three year period.¹⁰⁵ The mayor would be free to spend the grant on early intervention, better diversion and/or a range of alternatives to custody, but would be 'charged back' by NOMS for every adult offender who then served a short sentence. The mayor would also agree a headline target for reducing reoffending in their area. Essentially, this goes with the grain of what was agreed - in outline terms - with Greater Manchester Combined Authority as part of the justice devolution deal.

Recommendation 19: Probation. Government should ensure combined authorities with directly elected mayors and PCCs are given a greater say in the process of evaluating and overseeing CRC contracts, with a particular emphasis on ensuring they coordinate with other services, such as social care, housing and welfare to work. Over time, once the current contracts have run their course, mayors or PCCs should be given the opportunity to take over the responsibility for offender management entirely, enabling them to create a more seamless, integrated service for offenders leaving custody and serving sentences in the community.

Taken together, these reforms would provide local areas with the powers, means and incentives to improve the quality of justice services.

¹⁰⁵ The cost of prisoners can be interpreted in different ways - as the marginal cost of a prisoners, or the full cost. We argue it should be the full cost in order to drive the right behaviours

ANNEX I: DEVOLUTION INDEX

This index is built so that the higher a country scores, the more decentralised the country is. Rather than then assigning to each country a discrete rank, ratings have been kept in order to express the degree of centralisation/decentralisation in the chosen countries.

Countries	Ordinary Penal Courts Centrally Administered including Budget	(Lay) Judges chosen by local municipality	Penitentiary Administration Centrally Administered including Budget	Penitentiary Administration Region Centres execute plans	Regional Centres in charge of assessment of personal sentence plan	Centralised Probation Administration including budget	Probation Services integrated with municipal services	Centralised training	Sum/ Rating
UK	-1	0	-1	0	-1	-1	-1	-1	-6
Netherlands	-1	0	-1	-1	-1	-1	1	-1	-5
Finland	-1	1	-1	-1	1	-1	0.5	-1	-2.5
France	-1	0	0.5	0	-1	0.5	1	-1	-1
Norway	-1	1	-1	1	1	-1	1	-1	0
Sweden	-1	1	-1	-1	1	0.5	1	1	1.5
USA	1	1	1	1	0	-1		1	4
Germany	1	1	1	0	0	1	1	1	6
	-1 yes 1 no	1 yes -1 no	-1 yes 1 no	-1 yes 1 no	1 yes -1 no	-1 yes 1 no	1 yes -1 no	-1 yes 1 no	

Statistical note

The level of decentralisation of each country cannot be considered as normally distributed data, thus correlation calculations are not relevant. Therefore the strength of the relationship between two data series involving decentralisation ratings have been tested using a covariance measurement. R^2 value measures the percentage of variation in the values of the dependent variable that can be explained by the variation in the independent variable.

ANNEX II: STAKEHOLDERS ENGAGED WITH

The following stakeholders were consulted and visited during the course of this research.¹⁰⁶

Central government

- Blair Gibbs (Senior Policy Advisor, Ministry of Justice)
- Pamela Dow (Director of Strategy, Ministry of Justice)
- Phil Copple (Director, NOMS)
- Will Tanner (Special Advisor, Home Office)
- Ruth Hudson (Criminal justice reform, Home Office/Ministry of Justice)
- Helen Morris (Police Reform, Home Office)
- Max Chambers (Number Ten)
- Joe Tuke (Troubled Families, Department for Communities and Local Government)
- David Clarke (Public Service Transformation Network)

Local areas

Greater Manchester

- Tony Lloyd (PCC and Interim Mayor)
- Alison Connelly (PCC Criminal Justice Partnership Manager)
- Jennet Peters (Justice and Rehabilitation PSR lead)

Surrey

- Ben Byrne (Director of commissioning for youth support/youth justice)

Essex

- Ben Hughes (Director of commissioning for offender health/wellbeing)

Northamptonshire

- Adam Simmonds (former PCC)

West Midlands

- David Thompson (Chief Constable)
- Jonathan Jardine (Chief Executive, Office of PCC)
- Paul Betts (WM Integrated Offender Management Team)
- Rachel Jones (WM Public Service Reform Team)

¹⁰⁶ Roles accurate at the time of consultation

Sussex

- Katy Bourne (PCC)

London

- Sadiq Khan (Mayor of London)
- Sophie Linden (Deputy Mayor for Policing)
- Samantha Cunningham (MOPAC)

Lincolnshire

- Peter Wright (HMP Lincoln Governor)

Northumbria

- Vera Baird (PCC)

With special thanks to...

Nick Herbert MP (Chair, GovernUp)
Chris Salmon (former PCC for Dyfed Powys)
Chris Fox (Manchester Metropolitan University)
Nick Hardwick (Chair of Parole Board)
Phil Bowen (Centre for Courts Innovation)
Peter Dawson (Prison Reform Trust)
Rick Muir (Police Foundation)
Jonathan Clifton (IPPR)
Peter Neyroud (Cambridge University)
Savas Hadjimatheou (former Chief Executive, Probation Institute)
Chris Brace (Magistrates' Association)
Rob Allen (Transform Justice)
Penelope Gibbs (Transform Justice)
Garvan Walshe (GovernUp)
Donna Molloy (Early Intervention Foundation)
Peter Fahy (Former Chief Constable, GMP)
Gemma Buckland (Justice Committee)
Charlie Falconer (Shadow Justice Secretary)
Judge John Samuels
Tom Silva (Hadley Trust)

