# The role of the Justice Select Committee

## **Elfyn Llwyd** reports on the evidence-led scope of the committee

Until the May 2015 General Election, I was a member of the House of Commons Justice Select Committee at the House of Commons. For those who may be unfamiliar with parliamentary Select Committees, the Justice Committee is one of a number of so-called departmentally-related committees, each of which is charged by the House of Commons with monitoring and reporting on the work of a government department, in our case the Ministry of Justice. The Committee I sat on had 12 members from different parties, some of us, including myself, are lawyers and others take pride in not being lawyers. Our membership encompassed a wide range of views on criminal justice policy. We decided our own subjects of inquiry and invited written and oral evidence before reporting our views, often making recommendations for government action to which the government is generally required to respond within two months.

I would like to start by making a general point, which is that successive governments have had a tendency to rush to legislate when up against a perceived problem. Indeed, I remember asking Tony Blair if he would provide a weekly *aide-memoire* in the House of Commons Library so that members could be informed of new offences created. That is perhaps an example of hyperbole to which politicians frequently succumb but I think you get the gist of what I am saying.

The Committee's remit does not include policing, which is the responsibility of the Home Office, and hence the Home Affairs Committee. Of course, there have been significant developments in policing too, which are set out in the Centre for Crime and Justice Studies' report, *The coalition years: Criminal justice in the United Kingdom, 2010 to 2015*. The Justice Committee has considered the role of Police and Crime Commissioners in the context of local crime reduction partnerships, and of course they now have a very important role to play in the commissioning of victims' services, including widening access to restorative justice initiatives for those victims that wish to participate in them.

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In most of the Committee's work during the last parliament, questions about the effectiveness and value for money of expenditure on the criminal justice system were inextricably linked to judgements about the justification for the legislation, policy and programmes which they being pursued, and of the quality of the delivery of services. The context of austerity and budget cuts did not prevent the Committee from asking searching questions about the scale and advisability of the cuts which had been proposed and introduced by ministers, about the adequacy of the evidence base which had been used as a basis for spending decisions, and about the impacts, both intended and unforeseen, of cuts which had been made. This included major inquiries into the Probation Service, women offenders, older prisoners, crime reduction policies (which included an examination of the government's *Transforming Rehabilitation* programme as it unfolded), and into prisons planning and policy.

I would also like to note that although criminal justice is currently the responsibility of the United Kingdom Government, the Welsh Government has significant responsibilities towards crime reduction, particularly in the areas of health, education, housing and substance misuse. On a matter very close to my heart, the Silk Commission – which conducted a year-long inquiry into the powers of the Welsh Assembly – concluded that control over youth justice and many policing powers should be devolved to bring them into line with other services. Other parts of the justice system, including the court service, sentencing, legal aid, the CPS and judiciary, could follow in future, subject to a review which should take place within ten years. In relation to policing, Silk concluded that powers relating to arrest, interrogation and charging suspects should not be devolved unless criminal law was too. He also believed there was a 'persuasive case' for devolving the prison service. I shall return to the latter issue more broadly in due course.

I have long argued that the time has come to devolve criminal justice and policing to Wales and to set up a



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distinct justice system for Wales. I would say that wouldn't I, but the truth is if you practice law in Wales, as I do, and you are not *au fait* with the *corpus juris* of Welsh law you would already be unable to practice. This is particularly true of criminal law, family law, environmental law, administration and constitutional law.

Others have argued that it is somehow too soon for this to happen, and the Silk Commission opinion and the respective governments say that we should revisit this issue in ten years. The difference between us therefore is that I say the time has already come. It is rather strange that Wales has its own legislature but no distinct justice system to service it. I believe it is unique in the world for this reason, and this mismatch will have to be rectified in due course. If you look at the distinct criminal justice system in Northern Ireland, I believe we could tailor a system for Wales which would meet its needs.

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Also there are those who argue that this going to cost a lot of money, I would merely say that the criminal justice system in Scotland is cheaper than in England and Wales. Incidentally, there is also a considerable potential economic benefit for Wales in securing a distinct system and thereby encouraging specialists within Wales on various aspects of Welsh law, and those practitioners of course would also be able to practice elsewhere in the United Kingdom as well.

## Prisons

The Welsh Affairs Committee published a report in March 2015 on current and future provision for Welsh prisoners, which included consideration of the creation of 2,100 new prison places in the form of Wrexham prison, due to open in 2017. The Committee believed that it was important that lessons were learnt from the opening of HMP Oakwood and proposed that Wrexham should be opened slowly and steadily. They said a successful opening should not be put at risk by pressure to realise the new capacity too quickly.

The Justice Committee's own report on prison policy also published in March 2015 comprised an extended critique of the effects of spending reductions on prison safety. We pointed out that the policy of replacing older establishments with newer ones was being implemented in a way that resulted in the creation of large, multi-purpose prisons like Wrexham, while questions arising from available evidence on the relationship between the size and effectiveness of institutions did not appear to have been addressed by the government. We argued that reconfiguration of the estate provided an opportunity to build smaller, more specialised, establishments, for young offenders and female offenders, for example. We also raised the question of whether building large new prisons would allow the government to save money, as it intended, through modernising facilities, as the savings are dependent on the closure of older and less efficient institutions. The prison population projections are such that this is not currently a realistic prospect, perhaps undermining the school of thought that one can build a way out of a prisons crisis.

Lord Woolf, the former Lord Chief Justice, said in March 2015 that the crisis in prisons was as bad then as it was in the 1990s when he published his report on the Strangeways prison riot (see Joe Sim in this issue).

The Committee did not consider the relative merits of public and private prisons, but found that there were grave concerns about safety across both parts of the prison estate. In 2012, the planned prison privatisation programme was discontinued and replaced with a benchmarking programme under which the public sector would deliver better quality services with a lower cost base. The period in which this had been implemented coincided with a rapid deterioration in standards of safety and levels of performance.

Most concerning to the Committee was that since 2012 there had been a 38 per cent rise in self-inflicted deaths, a nine per cent rise in self-harm, a seven per cent rise in assaults, and a 100 per cent rise in incidents of concerted indiscipline. We concluded that the rapid deterioration in outcomes was not related to benchmarking *per se* but stemmed from staffing shortages and the raft of policy reforms that had been implemented at pace over the previous two years, which had reduced the quality of relationships between prisoners and staff. Policy decisions had been taken both to save money, and to increase the credibility of prison regimes in the public eye. As Lord Toby Harris was conducting an independent inquiry into deaths of young adults in custody, which should have resonance for safer operation of the whole prison estate, we did not make detailed recommendations on these matters. We did conclude however that given the size of the prison population, and the likely need to continue to make financial savings in the medium term, there was a real danger that savings and rehabilitation could become two contradictory policy agendas. The question of the sustainability of the system cannot continue to be ignored.

## Probation

The landscape of probation services has changed fundamentally over the course of this parliament. Probation Trusts which, it is generally agreed, were performing well for those offenders they were responsible for, have been replaced by a National Probation Service, and community rehabilitation companies, some of which are private providers. In the Committee's view many of the principles, set out in our 2011 Report on the role of the Probation Service, remain valid criteria against which to assess subsequent reforms. We argued then that there needed to be a better and more seamless

approach to offender management, with local commissioning and closer integration of prison and probation services to meet the needs of individual offenders.

On the controversial question of payment by results, which has become the cornerstone of the future delivery of probation services under the *Transforming Rehabilitation* programme, we considered that it could provide a mechanism for putting the system on a sustainable footing over the longer term by shifting resources away from incarceration to rehabilitation, and concluded that the concept should be tested before being rolled out nationally.

We considered the *Transforming Rehabilitation* reforms as details of them emerged during the course of 2013. Although we had differing views about the role of the private and voluntary sectors in probation we very much supported the aims of providing rehabilitative services to short-sentenced prisoners and of joining up the provision of those services before and after a prisoner's release. At the same time we set out a series of safeguards we expected the Ministry of Justice to adopt during procurement and beyond. This was particularly important given that probation services were to be split between two agencies, which stakeholders in the system considered to be extremely risky, a model which had not been tested. We sought to ensure that these safeguards were adhered to as the competition proceeded through ongoing correspondence with Ministers and officials. In particular, we wished to see the government being more transparent about some of the risks of the programme and how they would mitigate them, and more detail about the nature of the competition for the contracts for community rehabilitation companies.

My own view is that it was not necessary to involve private providers, and that the remit of the existing Probation Trusts should have been extended to cover the under 12 month cohort.

## Justice reinvestment

Although the Justice Committee has not considered constitutional questions about devolution *per se*, it had a long-held view that crime reduction was likely to be more effective if there was greater local control over the custody budget. Currently the system seems to treat prison as a 'free commodity', while other interventions, for example by local authorities and health trusts, are subject to budgetary constraints and may not be available as options for the courts to deploy. If a judge sentences an offender to imprisonment, there is no question about availability. The van will be waiting outside the court, ready to make the journey to prison. The same is not always true of community sentences. Too often sentencers are told that particular options are not available because of funding constraints, or they may simply be uncertain about what is available. This fact distorts the way in which sentences are made and requires a radical rebalancing of resources.

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A series of justice reinvestment pilots – incentivising local partners to adopt approaches reducing demand on the criminal justice system and therefore the cost of the imprisonment, as the most costly element of the system, an approach which had been recommended by our predecessor Justice Committee at the end of the last parliament – commenced in 2010. These projects were promising. They resulted in significant reductions in demand on the adult and youth justice systems and about £8 million in combined payments under the payment by results mechanism adopted. Youth justice policy has been heavily influenced by a justice reinvestment approach, and partly as a result the number of young people being held in custody has halved. There must be important lessons to be learnt from this for the adult system. Indeed, there have been calls for similar approaches to be adopted for female offenders and youth adults. The Ministry of Justice is in the midst of a stocktake of youth offending teams to review whether they remain fit for purpose. It will be important for the Justice Committee in the new parliament to consider closely any proposals for reform which result from this.

One of the main limitations of the model adopted by the Ministry of Justice under the government's approach to payment by results under the *Transforming Rehabilitation* programme for adult offenders is that, because of the need to fund supervision and to incentivise providers, savings are paid to them over a ten-year period, rather than being reinvested in early intervention, or in criminal justice initiatives further upstream in those who may ultimately be of high cost to the public purse. In the Committee's view the climate of austerity which prevailed during the last parliament made the case for adoption of a justice reinvestment approach more compelling.

*Making sentences more punitive does not mean that they will necessarily be effective*

Periods of austerity can provide an opportunity to make radical policy change. Not having done so in relation to penal policy has been a wasted opportunity for reform.

## Criminal legal aid

On criminal legal aid, a consultation launched in November 2010 proposed the introduction of price competitive tendering from 2012. In 2011, the Committee examined

 

these and other legal aid proposals and concluded that there was potential for the government to devise longer-term options for reform, rather than concentrating on simple options, such as reducing scope. The Committee was struck by the evidence of the Director of Public Prosecutions that cost savings could be achieved by greater efficiency in the courts, which in turn depended on all the agencies concerned working together more effectively. Reducing spending on legal aid may have financial implications – and indeed may inflate costs – in other parts of the legal system. During our prisons inquiry the Committee questioned whether the prison complaints system was fit for purpose, and adequately resourced, following the reduction in scope of legal aid for some aspects of prison law.

The Committee engaged in ongoing dialogue with the Ministry about various aspects of the criminal legal aid reforms. For example, we asked the Secretary of State why the Ministry of Justice sought not to put into the public domain an analysis it had commissioned of the sustainability of the criminal legal aid reforms. As a barrister myself, I am acutely aware that legal aid practitioners are extremely demoralised.

## Sentencing

Despite the proliferation of criminal justice acts, which we had hoped to see fewer of in the last parliament, there were few major changes to the sentencing framework. The government sought to ensure that there was an element of punishment in every community sentence, and tried, largely unsuccessfully, to place restrictions on the unnecessary use of remand. Most welcome was the scrapping of indeterminate sentences for public protection, but the residual effect of those is still being felt in the prison system.

As we noted in our probation report, making sentences more punitive does not mean that they will necessarily be effective in protecting the public by reducing re-offending. We stressed this point repeatedly, including on draft sentencing guidelines published by the Sentencing Council, in respect of which the Committee is a statutory consultee. We were concerned that guidelines can contribute to 'sentence inflation.' Because some offences have aggravating features that need to be recognised by additional time in custody, and given that there are rarely any recommended reductions in sentencing guidelines, the overall effect of guideline revision may be to increase the total amount of custody resulting from the process.

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Tough community sentences can be more challenging for the offender; indeed, when we took evidence from ex-offenders, several told us that they committed offences in order to be sent back to prison rather than have to serve challenging community sentences. Now that the *Rehabilitation of Offenders Act* has come into force, the impact on sentencing decisions of the potential draw of post-release supervision coupled with short, custodial sentences warrants careful observation.

## Conclusion

All aspects of the criminal justice process have undergone significant change since 2010. The impact of much of this is unknown, particularly in relation to the probation and criminal legal aid reforms. The Committee had extreme difficulty in obtaining estimates or figures from the Ministry showing knock-on costs associated with implementation of particular projects or programmes, which suggests that such estimates have not been made for significant policy changes.

With regard to prisons it appears to me that predicting and providing cheaper prison places to meet demands of courts is too simplistic an approach and one that is not sustainable. The government's approach to austerity measures has been to take each element of the criminal justice process alone, rather than seeking to understand the whole system, identifying where the cost drivers are, and taking action to minimise them. This is too narrow a perspective and crime reduction is viewed too much through the prism of Home Office and Ministry of Justice areas of responsibility. A broader perspective, especially in terms of adopting early intervention and preventative policies in the areas of mental health, drug and alcohol treatment, could do much to prevent people entering the criminal justice system in the first place, as well as to support those already in it. The so-called whole system approach to preventing women and girls from offending is an example of this, with the ministerial drive remaining in the Ministry of Justice rather than transferring to the Department for Communities and Local Government, as we recommended.

The Justice Committee also seeks to adopt such an approach, for example, in agreeing its reports unanimously. There is a wealth of expertise within the criminal justice community and the Committee has been fortunate to be able to draw on it during its inquiries. Indeed, I should thank those who have submitted written or oral evidence to our inquiries, and those who have suggested to us potential topics of inquiry. Select Committee inquiries are evidence-led and we especially need the experience of those people who work in the field to tell us what is working and what isn't. I hope that this symbiosis continues in the next parliament. ■

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