

# Offender Tracker Funds: to reverse the punitive sentencing trend

Rod Morgan was this year's speaker at the CCJS Annual General Meeting. He anticipated the Government's recent plans for changes to prisons and probation and spoke of his concern with the burden of cases and prisoners that are 'silting up' the system. His proposal to help alleviate this growing problem is outlined here.

In a fuller version of this piece I have documented in some detail what I term the sentencing drift of recent years. That is, the more punitive trend. The courts making proportionately less use of fines and greater use of more interventionist community orders and custody. More offenders are getting mired deeper and deeper in the penal system for doing less and less. The consequence is that, in a period when the incidence of crime has fallen, and the number of defendants coming before the courts has remained more or less constant, we have a record high prison population, overcrowded prisons and a growing probation caseload silted up with low risk offenders.

The reasons for this trend are many and complex. Rehearsing them would reveal profound differences of opinion. One thing is certain, however. The situation in which we find ourselves satisfies no one.

The public lacks confidence in the system. The Prison Service lacks operational room for manoeuvre and cannot undertake the work which, under other circumstances, it would like and is capable of doing with the most persistent offenders which whom it has to deal. The Probation Service is overloaded and faces a funding crisis. Sentencers are not convinced that the sentences available to them are executed so as effectively to reduce the likelihood of re-offending. The Government is not persuaded that the penal system is as efficient as it should be. And serious analysts of the system are not convinced that the public is as well protected against the risks of being repeatedly victimised as they have a reasonable right to expect.

Meanwhile the 'law and order' budget grows apace. The situation is not sustainable. We are not where practically everyone would like us to be. What then should we do? What planning and managerial mechanisms might we adopt in an attempt to move us closer to where most people might agree we would rather be?

Parliament has just approved a whole raft of new legislation with a bearing on sentencing and penal policy, in particular the *Courts Act* and the *Criminal Justice Act 2003*. These statutes contain provisions which could exacerbate the punitive trend or, given strong political leadership and supportive allocations of resources, might arrest it and return us to positive territory.

I would like to suggest a planning framework within which progress might be better assured. My proposals are grounded on evidenced assumptions spelt out more fully on the CCJS website. In brief,

they are as follows:

The incidence of crime is largely determined not by penal policy but broader socio-economic and cultural factors. To the extent that potential offenders are deterred, it is the likelihood of getting caught and not the punishment subsequently imposed that is the principal factor. Fines are among the most effective of penalties. Involving low risk (of re-offending) offenders in penal programmes runs the risk of increasing their likelihood of re-offending, whereas the effectiveness of programmes involving medium and high risk offenders is more promising. Marginal increases or decreases in the average length of custodial sentences exercises little or no influence on reconviction rates and prisons are very unpromising environments within which to achieve positive influence. Sophisticated opinion research demonstrates that the public is not significantly more punitive than current sentencing policy and is not wedded to a particular philosophy: they want re-offending to be reduced.

Likewise sentencers. They want the sentences they impose to be efficiently executed and they would like to be persuaded that those sentences are effective in reducing re-offending. The Government wants all concerned to have greater confidence in the system and for it to work cost-effectively.

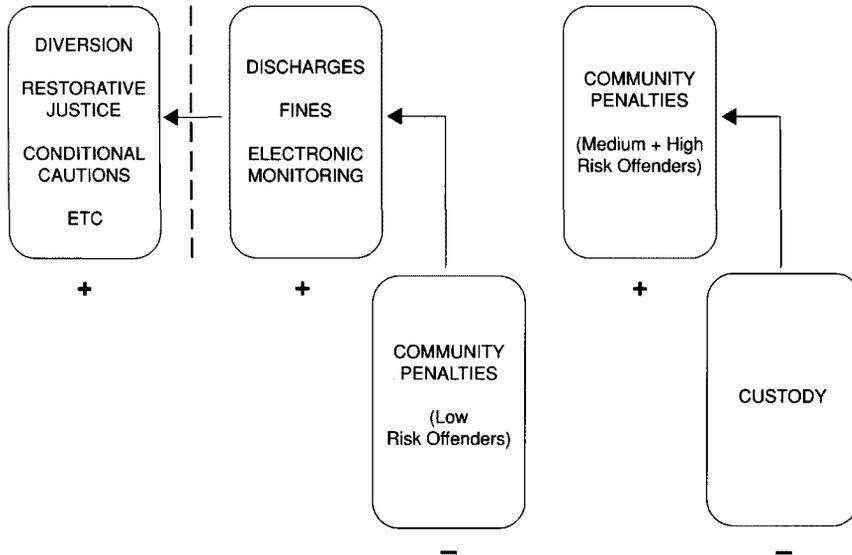
Let us on this basis create an over-arching agency with control of the pooled funds currently expended on all offender interventions from police cautions to lengthy imprisonment. That is, let us devise a purchaser-provider split. Let us further divide up what we currently do to offenders into five groups as in the figure opposite.

Aspects of this diagram need explaining. First, the left hand box includes a new provision, the conditional caution, introduced by the *Criminal Justice Act 2003*, with considerable promise for diverting offenders from prosecution, represented by the vertical dotted line.

Secondly, restorative justice, use of which the British Crime Survey suggests the public would widely accept, though included in the diversionary box, could be included across the range. Thirdly, the boxes are of equal size though, in practice, they are of course highly unequal both in terms of the numbers of offenders currently falling within them and their share of the pooled budget.

Imprisonment, for example, caters for a minority of offenders, but scoops most of the overall budget. My calculations in this regard are to be found in the

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website paper: suffice it to say that approximately one third of the 200,000 offenders currently supervised at any one time by the Probation Service are low risk and the fines box to the left of them generates net revenue, though far less than it might.

Finally, I make no assumption as to what the relative size of the five boxes might or should be in future in terms of either numbers of offenders or expenditure. That is a task for the soon-to-be-established Sentencing Guidelines Council and politicians. I merely indicate by means of arrows, and pluses and minuses, what movement of offenders and resources my stated assumptions suggest we should aim for.

I want further to suggest that the overarching commissioning agency create offender tracker funds. These would operate in a manner similar to the California Probation Subsidy scheme from the 1960s onwards and the Youth Justice Board's funding of YOT ISSPs in an attempt to displace the use of custody, places for which it also purchases.

The scheme might work as follows. The commissioning agency would provide (at launch point 't' – 3 months) the newly-created Criminal Justice Boards and judiciary locally with information regarding local sentencing policy, benchmarked against the national pattern, and the penal cost consequences. Local decision makers would in effect be provided with shadow budgets. They would also be invited to come up with schemes designed, in the first instance, to develop the use of diversion-from-custody schemes, increase the proportionate use of fines and, just as importantly, collect them (an estimated 40 per cent of financial penalties are currently not collected). Those areas devising plausible schemes (characterised by consensual commitment, targets, infrastructural development proposals, etc) would be given (at point t) a financial advance to prime the developmental pump. They would also receive an undertaking that to the extent that they succeed in advancing towards their target they would be allowed to retain a proportion of the revenue generated. Their progress would then be monitored (at points t + 3, t + 6, t + 9, etc).

At the same time the Probation Service and its partner

providers would seek to reduce the proportion of low risk offenders coming on to their books and, to the extent that they succeeded, would be allowed to retain their resources on condition that they developed more intensive schemes for medium and high risk schemes. The principle would be that additional funding should follow offenders to intervention providers – police, probation and prisons, central or local state, voluntary or commercial sector – but only to the extent that the sentencing drift of recent years is reversed. The first phase should involve diversion, the resuscitation and better collection of fines and the removal of low risk offenders from probation books because these are the soft targets within the grasp of local decision makers. The schemes could also be sustainably self-funded.

The difficult nut to crack, offering the biggest prize, both in terms of resources and more effective crime prevention, is the reduced use of custody. That is, getting persistent short-term prisoners into more intensive community-based interventions which address their offending behaviour (drugs, basic skills and other programmes), subject them to more effective surveillance and offer practical problem-solving support. Reducing the prison population by a few prisoners saves little more than the marginal cost of their food, particularly when the system is overcrowded. It is only when the reduction is on a scale that permits step changes and the closure of institutions that average costs become available to community-based penal services. That, however, is the goal at which we must aim. For without it, it is unlikely that the community based providers – the Probation Service and its partners – will, during a period in which there is likely to be severe public expenditure restraint, be able to provide the quality and quantity of offender interventions which will inspire the confidence of the public and sentencers alike.

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The research behind this proposal and full text of the speech are available on the CCJS website: [www.kcl.ac.uk/ccjs](http://www.kcl.ac.uk/ccjs)