# From knowing to doing: Reflections on how to influence criminal justice policy

**Frances Heidensohn** offers reflections on influencing criminal justice policy.

How to use the findings of research to change criminal justice policy was one of the earliest concerns of my career. In the late 1960s, having written a couple of articles on female offending, which were partly based on work I was doing in various penal establishments for women in England, I was disappointed to find that when the plans for the new Holloway Prison were announced, they did not draw on any research basis. Yet, the proposals marked a significant departure from the current system. Paul Rock confirmed this gap when he examined all the files of the Holloway Redevelopment Project and interviewed its members in the 1990s (Rock, 1996). He suggests that the existing research was inadequate but records that no one even thought of commissioning any and that officials proceeded confidently in the belief that they knew what needed to be done.

Forty years ago, I was an optimistic Fabian, believing that well-presented findings from research, as well as cogent intellectual arguments, could be used to challenge criminal justice policies and change them. Baffled and appalled by the plans for the new 'therapeutic' Holloway, I joined a group campaigning against the redevelopment and helped draft a pamphlet called 'Anti Holloway'. We also met Home Office staff to put our case, all, of course, futile actions, except that my education in the policy process and how to have some effect on it, progressed rapidly as a result.

During the 1970s, I spent 5 years as a civil servant; among my tasks was running seminars on key issues of current social policy for senior officials, and we employed many academics, as well as government social scientists, to present their research. This gave me incomparable insights into how government works, which have guided me ever since. One of the first lessons to be learned about influence is the difference between insiders and outsiders and the advantages and disadvantages of each position. When I came back to academic life, I took on a series of policy-related public service posts to maintain my contacts and skills. These began with roles in the NHS and have more recently included judicial appointments and the Sentencing Advisory Panel

Of course, I have not been alone in my ambitions to alter criminal justice policies, nor in reflecting on how these might be achieved. The Festchrift for Roger Hood (Zedner and Ashworth 2003) took as its theme the relationship between criminological research and the development of policy, because this topic has been such a key feature of his work. Hood believes criminology should inform policy making, despite his caution that there can be costs, as well as benefits, incurred in the pursuit of relevance: the loss of independence being only one. Having reflected on these matters over three decades, he is pessimistic in his later writings, asserting that 'the gulf between criminological research and penal policy has become yet more acute' (Hood, cited in Zedner and Ashworth, 2003).

Since my earlier, naive days, I have continued to research and write on several topics, hoping to influence and change at least the ways in which some issues are thought about. I have also been involved in aspects of policy making; here I want to consider one body, the Sentencing Advisory Panel, and how research has been used to inform its draft guidelines and what its impact has been. (I have been a member of the SAP since it began in 1999. The views expressed here are my personal reflections and are not intended to represent those of any other member of the Panel.) The 1998 Crime and Disorder Act created the SAP to assist and advise the Court of Appeal in the promulgating of sentencing guidelines. This was the arrangement until the 2003 Criminal Justice Act, under which the Sentencing Guidelines Council was set up with powers to issue guidelines. The SAP, with its mixed membership of sentencers, criminal justice professionals, academics, and lay people, has continued in existence and follows broadly the procedures developed since its inception in producing draft advice, except that this now goes to the SGC (which has a judicial majority in its membership.)

As the current chair of the SAP notes 'the process of formulating guidelines is an intensive and lengthy one'. The Joint Annual report identifies six stages (although the web site gives eight). Once a subject for a guideline has been agreed, the Panel's work, supported by a Secretariat of full-time staff (members of both the SAP and the SGC are part time) usually involves several tasks. These include collecting all the appropriate material: sentencing statistics, relevant Court of Appeal decisions, and legislation. Sometimes, as with the Sexual Offences Act 2003, major legal changes have been made by parliament; with others, there will be


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existing Court of Appeal judgments to consider.

It is at this stage (or occasionally, earlier) that the Panel may commission empirical research to help its deliberations. This has been a rarely used power: of some 25 sets of advice (some topics, e.g. reduction of sentence for a guilty plea, have been revisited), research has been commissioned on just five: domestic burglary, rape, theft from a shop, causing death by driving offences, and calculating fines. The studies of burglary, rape, and death by driving looked at public attitudes to sentencing for these offences, using a range of methods: sample surveys, focus groups, and interviews with victims. In a sense, they were an aspect of the consultation process which the Panel also carries out for each guideline. The theft from a shop project examined factors associated with sentencing for this offence, and the fines calculation study used workshops to test different scenarios. Perhaps the most notable example of the 'impact' of empirical findings was in the report on rape, which showed that all those who took part strongly believed that no distinctions should be made in the sentencing of 'stranger' or relationship rapes. After considerable discussion, this was incorporated into the Panel's draft and also into the ensuing Court of Appeal guideline.

Once the Panel has agreed draft guidelines, these then are published for a 3-month period of public consultation. After this has closed, all the responses, from statutory and other consultees, are considered and analysed and further drafts produced, the final product eventually being offered to the SGC. (There are then further stages, which I omit here for reasons of space.)

The process of producing draft guidelines is complex and reflexive, and takes time. It occurs within a framework of legislation and key principles. Research can only play a small part in these formulations, although it can, as noted above, sometimes have a notable impact. Sources other than the Panel's own commissioned studies can also have an effect: the formulating of a grading system by researchers at the University of Cork was adapted for use in the advice on sentences for offences involving the use of child pornography. Sentencing guidelines are exactly what they say, a means to an end to achieve consistency and clarity in sentencing; they are not an end in themselves.

What lessons can be drawn from this experience and from much wider observations of research and the criminal justice system? First, direct research related outcomes can be achieved. Arguably, too, there is no necessary loss of autonomy to the researchers, who, in the case of projects carried out for the Panel, can publish their own work. However, such 'Fabian' cases are not the only ways in which criminology can have meaning and relevance. Changes in culture, attitudes, and consciousness may be more vital but can take decades. Andrew Ashworth, current chair of the SAP, proposed the founding of such a body in 1983 and saw it happen in 1999. The principles of gender neutrality embodied in the Sexual Offences Act 2003 and the related guidelines are now widely accepted but are grounded in the work of socio-legal scholars over many years.

Changes in concepts and shifts of intellectual paradigms are arguably more important, and certainly more lasting, than some of the micro-effects of particular pieces of work. So, criminologists should, as Ericson insisted, develop better policy rhetoric and cultivate policy networks in order to increase their influence.

Contrast the example with which I began, of the lack of any research basis for the plans for the new Holloway Prison, with the situation summarised in the 2007 Corston Report on vulnerable women in the criminal justice system (Corston, 2007). Corston claims that we already have all the research on the topic needed to formulate new policy, and proposes regime changes which show marked influences from feminist criminology. Not that this means that true change has yet happened.

To end on a cautionary note: criminologists should perhaps like everyone else beware of what they wish for. Having major impact may not always be the best outcome. There is a view that the much greater post-feminist focus on female offenders has not been a blessing, that it has indeed produced a Pandora problem of letting too many ideas escape which have had the unintended consequences that more women are now criminalised and sent to prison (Heidensohn, 2006). ■

*All the guidelines, consultation, and research papers from both the Council and the Panel can be found at the joint website (http://www.sentencing-guidelines.gov.uk).*

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## References

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