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The Truth about Prisons and Probation

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We trained hard—but it seemed that every time we were beginning to form up into teams we were reorganised. I was to learn later in life that we tend to meet any new situation by reorganising, and what a wonderful method it can be for creating the illusion of progress while actually producing confusion, inefficiency, and demoralisation.

Petronius.

Whether or not this was correctly attributed to Gaius Petronius Arbiter (there are other, more modern, attributions), it could be a conclusion with which the Directors of Prisons and Probation over the last 30 years would readily agree. Petronius, out of favour with Emperor Nero, anticipated his likely fate by committing suicide. Many Directors of Services and some ostensibly independent Chief Inspectors of Prisons, who spoke out, privately or publicly, about the effects of Government policies, were either sacked or forced to fall upon their metaphorical swords.

Over the last three years we have tried to understand how and why our prisons and probation services have lurched from one crisis to another since the roof-top protests and riots at Strangeways and elsewhere in 1990 until the General Election in 2019. In the research for our book *The Honest Politician's Guide to Prisons and Probation*¹ we interviewed all surviving Home Secretaries (David Waddington, who was Home Secretary at the time of the riots predeceased our research) and Justice Secretaries who had overall responsibility for prisons and probation in each of the governments: Conservatives from 1990 to 1997, New Labour until 2010, the Coalition until 2015 and the Conservatives again from 2015 to 2019. We also interviewed many of their Junior Ministers who had delegated responsibilities in these areas. Our aim was to discover, from their own words, what they thought they

brought to the task, why they did what they did and their reflections on how and why it worked or failed to work. To find out about the effects on the prison and probation services we interviewed most of the Director Generals or Chief Executives of the Prison Service, the National Offender Management Service, and Her Majesty's Prison and Probation Service as well as several Chief Inspectors of Prisons and Probation. Finally, to enable us better to understand the sentencing policies in relation to prisons and probation, we interviewed the four most recently retired Lord Chief Justices.

In the limited confines of this paper we concentrate more on the effects on prisons, with the intention of writing more on the impact on probation elsewhere, and we can discuss just a few of the matters that have led us to our conclusions. All quotations, unless otherwise stated, are taken from our interviews.

Setting the Scene

Our story begins with the remarkable consensus among politicians, practitioners, penal reformers and academic commentators that had been generated around the report on the riots at Strangeways and elsewhere by Lord Woolf. Kenneth Baker, who had succeeded David Waddington as Home Secretary, embraced the report with enthusiasm. His White Paper *Custody, Care and Justice*² was intended to 'chart the direction of the prison service for the rest of the century and beyond'³. Unfortunately, the White Paper failed to endorse Woolf's 7th recommendation — to create a rule 'that no establishment should hold more prisoners than is provided for in its certified normal level of occupation'⁴. Joe Pilling, then the Director General of the Prison Service, told us that such a rule was 'an indispensable precondition of sustained and universal improvement in prison conditions' — a view which we think was shared by all of his successors. Woolf's 6th recommendation for a national system of legally enforceable accredited standards, was also 'conveniently shelved' according to Peter Dawson, now

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1. King, R. D. and Willmott, L. (2022) *The Honest Politicians Guide to Prisons and Probation*, London, Routledge
 2. Home Office (1991) *Custody, care and justice: the way ahead for the Prison Service in England and Wales* (Cm 1647) London, HMSO.
 3. Hansard, HC 25.9.91
 4. Woolf Report (1991) *Prison Disturbances April 1990*, Report of an Inquiry by the Rt. Hon. Lord Chief Justice (Parts. I and II) and His Honour Judge Stephen Tumim (Part II) Cm 1456, London, HMSO. Para 1.167

the Director of Prison Reform Trust following a distinguished career in the Home Office, including periods as an operational prison governor and sometime member of the Prisons Board. Richard Tilt, the first prison governor to become Director General of the service, told us that although senior managers argued '*long and hard*' for a code of standards they '*were always blocked by the Treasury*' for whom it offered too many hostages to fortune. The consensus did not last.

The killing of Jamie Bulger in February 1993 by two ten-year old boys (shamefully tried in an adult court amid a blaze of publicity) was, in the words of Peter Lloyd, Junior Minister at the time, '*the shadow that eclipsed much of the Woolf agenda*'. Prime Minister John Major delivered himself of the statement that '*society needs to condemn a little more and understand a little less*' and future Prime Minister Tony Blair coined his mantra '*tough on crime ... tough on the causes of crime*'. But no Minister or Opposition spokesman made it clear that such events were extremely rare and that the risks of becoming victims of serious crime were low. Instead, as Ken Clarke who succeeded Baker as Home Secretary and was later in charge again as Lord Chancellor and Secretary of State for Justice, put it to us, ministers on both sides of the political spectrum '*played to the gallery*' and raised completely unrealistic expectations of what a criminal justice system could do. He particularly had in mind his own successor at the Home Office, Michael Howard, and David Blunkett, the second New Labour holder of the post — but there were certainly others. High profile crimes, especially if committed by offenders under supervision by the probation service, produced knee jerk responses to increase the length of sentences, reduce the time spent on parole, or to impose ever more stringent conditions attached to community sentences. Over the period covered by our review the prison population increased from some 42,000, which most well-informed observers regarded as already too high, to over 80,000 and the probation service was substantially changed from a helping profession to become an arm of law enforcement.

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Sentencing Policy, State Relations and the Ratchet Effect

The starting point for our attempt to understand the truth about prisons and probation is the interdependent relationships across the Executive, Parliament, the Judiciary and the Press. It is within this increasingly fragile constitutional milieu that sentencing policies are initiated, debated, enacted, brought into force, interpreted and amended *ad infinitum*. It is a process in which the executive, often responding to headlines in the tabloids, and sometimes to 'celebrity' victims, has sought to by-pass or ignore the other pillars of the state. At times the very basis of our democracy

was put under stress. At times the Executive used so-called Henry VIIIth powers — clauses in an Act enabling Ministers to amend the legislation unilaterally through Statutory Instruments, making it much harder for Parliament to give effective scrutiny. At other times they failed to consult the Judiciary on constitutional changes, particularly under New Labour, regarding the role of the Lord Chancellor. Conservative Liz Truss, during her short time as Lord Chancellor in 2016-17, was slow to uphold judicial independence when Judges were attacked by the *Daily Mail* in banner headlines as 'ENEMIES OF THE PEOPLE'⁵. In the period under review we have seen both

a marked decline in the restraining influence of expert career civil servants, as Ministers preferred to listen to the advice of their political special advisors (SpAds), and the loss of a more independent role of the old-style Lord Chancellor. What has emerged is not a criminal justice policy with a well thought through philosophical underpinning and based on evidence, but an ad hoc series of reactions to events. These have had a ratchet effect on sentencing and thus on the structure and size of the prison population, and on the nature of probation work and the size of their caseloads. Rather like global warming it will require a clear recognition of the folly of existing policies if it is to be reversed. As Peter Dawson put it in regard to the length of prison sentences '*you can push it up but it's very hard to pull it back down*'.

5. *Daily Mail* 4th November 2016. The occasion was when the Appeal Court, comprising LCJ Thomas, Master of the Rolls, Sir Terence Etherington, and Lord Justice Sales, had just upheld Gina Miller's contention that the consent of Parliament was necessary to trigger Article 50 to exit the European Union. The article was written by James Slack, later to become an official spokesman for Theresa May.

The last attempt at developing a coherent sentencing policy was initiated under Douglas Hurd who was Conservative Home Secretary from 1985 to 1989, after Home Office research had seriously called into question the effectiveness of deterrent sentencing. Hurd's Green Paper⁶, which eventually led, in modified form, to the CJA 1991, was intended both to reduce the use of imprisonment and enhance the role of probation, albeit with what probation expert, Professor Peter Raynor, described to us as *'a bit of cosmetic rebranding'* as punishment in the community. It was also proposed to restore an effective system of fines, the use of which had declined dramatically, to be called *unit fines*, which would be linked

to the ability to pay. It was anticipated that the proposals might reduce the prison population by some 4,500 to make it roughly consistent with the available accommodation. This was somewhat undermined during the passage from Bill to Act, by David Waddington's insistence that prisoners should serve at least half their sentence rather than a third before becoming eligible for parole. Ken Clarke's CJA 1993 further contributed to reversing the impact of the CJA 1991, by his about turn which abolished unit fines, and his overturning of

Hurd's policy that previous convictions should not be counted in the determination of the seriousness of the current offence — in both cases, it must be said, aided and abetted at that time by members of the judiciary.

However, it was Michael Howard who introduced the most radical changes of policy. He told us that the advice from his officials to manage expectations *'wasn't advice I was disposed to take'*. Nor did he take Peter Lloyd's advice, that trying to extend the sentences of Bulger's young killers *'would be overturned by the European Court of Human Rights'*. His *'Prison Works'* speech to the 1993 Tory Conference and his insistence on *'austere regimes'* and that *'prisoners should not enjoy privileges as a matter of right'* sent a quite different message to prison staff, from that offered by Woolf, though he told us *'that was never my intention'*. Howard's Criminal (Sentences) Act 1997 activated the ratchet effect by the introduction of automatic life sentences and mandatory minimum sentences — which were eventually brought into effect by Jack Straw, despite the large majority that New Labour had following the general election.

Like Michael Howard, David Blunkett disdained the advice of his officials, whom he regarded as *'floating above things. It was never clear whether you're talking to people who have a clue.'* He told us that his mentor, Roy Jenkins, the Labour Home Secretary whose CJA 1967 introduced parole, told him *'don't believe you can have any influence over the level of crime ... I just didn't agree with that at all'*. He went on to make much the same mistakes that Michael Howard had done, albeit in spades. His CJA 2003 introduced indeterminate sentences of Imprisonment for Public Protection (IPP) which were to be imposed, ostensibly, on grounds of serious *future* risk regardless of the seriousness of the

current offence, and with release dependent upon demonstration by the perpetrator that the risks had been reduced. Blunkett told us that this had been *'a blot on my copy book'* but he blamed the judiciary for the way in which they interpreted it, producing a thousand such prisoners in the first year when he had intended it to apply to only a few. After the House of Lords had overturned the Home Secretary's powers to set tariffs for lifers, Blunkett enshrined new minimum terms for different types of murder in legislation. These were set out in Schedule 21 of the Act and were very much higher than those

proposed by Lord Woolf, then Lord Chief Justice. It was an even bigger blot on his copy book. Given his escalation of the length of prison sentences it is perhaps surprising that he was also committed to the idea of capping the prison population, and had an agreement with the Lord Chief Justice and the Lord Chancellor which he hoped would stabilise the prison population with a cap at 80,000 by tweaking the Sentencing Guidelines. This was to be enshrined in his Offender Management and Sentencing Bill, but the sentencing provisions were dropped by his successor Charles Clarke during the protracted journey through Parliament and was transformed into what eventually became just the Offender Management Act (OMA) 2007.

When Jack Straw, who had begun as New Labour's first Home Secretary, returned as Lord Chancellor in 2007 there were 6,740 lifers in prison, by far the highest number in Europe, plus 3,386 serving IPP sentences and it was clear that they could not receive the supposedly risk-reducing interventions required for them to be released on their tariff dates. His Criminal Justice and Immigration Act 2008 introduced a new

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6. Home Office (1988) *Punishment, Custody and the Community* (Cm 424) London, HMSO

seriousness threshold for IPP sentences and stipulated that if the new conditions were met the Courts *may* rather than *must* impose the sentence. After the 2010 election Ken Clarke found himself again in command having been told by Cameron *'that he wanted a liberal Justice Secretary but he didn't want anybody to know that'*. Clarke was shocked that the prison population had doubled since he was last in charge and he was keen to try and reverse that situation. He planned to cope with the cuts imposed by Chancellor of the Exchequer, George Osborne, by reducing the prison population through his Legal Aid and Sentencing of Offenders Bill, and he worked closely with senior judges in drafting its provisions. He also signalled his intention to protect the independence of the Judiciary as Lord Chancellor. Clarke got his proposals for abolishing IPPs, reserving indeterminate sentences for those posing extreme risks, and the abolition of minimum sentences through the Cabinet Committee — but then Prime Minister Cameron got cold feet. According to Clarke, Cameron *'was terrified that we were going to be seen as soft on crime ...and I'm afraid David got it all thrown out'*. Not quite all, in fact, because the proposal to abolish IPPs survived to become law — but it was not retrospective and large numbers of such prisoners were left in prison beyond their tariff dates. Cameron insisted on adding the word Punishment to the title of the Bill, and including more mandatory minimum sentences, the effect of which Clarke managed to neutralise by careful drafting.

Clarke was the last Minister prepared to argue an intelligent case for reducing the prison population, and during his time in office the numbers in prison were at least stabilised. His successor, Christopher Grayling, was not interested in reducing the prison population. His Offender Rehabilitation Act of 2014, however, which extended post release supervision for a period of 12 months to all prisoners, not only greatly increased the case-loads for probation officers but also put pressure on the prisons since many more offenders were potentially liable to recall for breaches of conditions. After the 2015 general election, Michael Gove became Lord Chancellor. He told us that whilst in office he *'swerved'* the inconvenient truth that we send too many people to prison — *'a far higher percentage of our population than similar developed nations'*. Liz Truss, who followed Michael Gove,

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thought it would take a *'brave politician'* to take those issues on board and both she, and the politicians who preceded and followed her, largely repeated a constant — but fanciful — refrain that the only way to bring the prison population down was through rehabilitation programmes which would reduce reoffending. David Gauke, the last of our politicians who held the office of Lord Chancellor during this period, and his Prisons Minister, Rory Stewart, were prepared to contemplate the possibility of legislation to limit the use of short sentences of imprisonment, but these would make very little difference to the size of the prison population.

When we discussed these matters with the Lord Chief Justices they were very nearly unanimous in their condemnation of much that had happened. Harry

Woolf not only wrote the famous report but went on to become Lord Chief Justice from 2000 until 2005 during which time Jack Straw, David Blunkett and Charles Clarke were Home Secretaries. He subsequently campaigned to take the politics out of prisons. He was not consulted about the changes to the role of the Lord Chancellor which also meant that he and his successors became the Head of the Judiciary. He told us that *'sentence inflation has been the most serious problem'* in driving up the prison population *'without producing any corresponding benefit'*.

Moreover, he was disappointed that *'the Sentencing Council (which succeeded the Sentencing Guidelines Council) is failing to realise that if you raise the sentence in one part of the system, you're going to raise it across the board'*. He had *'huge respect for David Blunkett'* but thought he had got things *'very sadly wrong'* over IPP sentences and again when he imposed mandatory minimum terms *'to stop the European Court from impinging upon his rights as Home Secretary.'* He was aghast at the way politicians *'had demoralised the probation service to a terrible extent'* but he thought that David Gauke and Rory Stewart *'had recognised that there is a crisis'* and he hoped that they might be able to do something about it.

Nicholas Phillips was Lord Chief Justice from 2005 until 2008 and he saw the transition from the Home Office to the Ministry of Justice, during which time Charlie Falconer, the last of the old-style Lord Chancellors was succeeded by the first of the new, Jack Straw. In 2017 Phillips opened a speech in the House of

Lords⁷ as follows: *'My Lords ...we send far too many people to prison for far too long; far longer than is necessary for rehabilitation and far longer than is needed for an effective deterrent'*. He went on to say we need *'leadership and courage on the part of Government. The aim should be, for a start, to halve the number of those in prison. IPP prisoners should be released. Old men who no longer pose a threat should not be held in expensive custody. Most importantly legislation should reverse the trend of requiring ever longer sentences.'* He told us that *'sentence length is not really critical in deterring crime. Basically, people commit crimes because they think they are not going to get caught. There is no point in locking up ... youths who stab people ... for 10 or 20 years for a two-minute loss of temper'*. He was completely opposed to the introduction of statutory minimum sentences and Blunkett's sentences of IPP and told us that *'It's never been our justice system that you keep someone in prison who has committed a comparatively minor offence if you decide he's a risk to society. Give them a chance to re-offend and then lock them up for their re-offending, or give them a chance not to re-offend and let them be free.'* Lord Phillips had famously donned the hi-vis jacket to do a day's incognito community payback to

show that it was not a soft sentence, but he was also prepared to argue that what did it matter if it was soft *'so long as it worked'*.

Igor Judge served as Lord Chief Justice from 2008 until 2013 and overlapped with Jack Straw, Ken Clarke and Chris Grayling as Secretaries of State for Justice. He was critical of the sheer volume of criminal justice legislation, and especially *'the great Daddy of them all'* Blunkett's CJA 2003 which had no fewer than 1,169 paragraphs. Over the last few years *'something like 3,000 pages of primary legislation had been produced annually, and in addition laws are made by some 12,000 -13,000 pages of delegated legislation'* (Judge, 2017)⁸. How much, he wondered, *'has been read, just read, let alone scrutinised, by how many of us in Parliament in advance of the enactment coming into force?'* He was particularly scathing about the Henry VIIIth powers which empowered Ministers *'to amend, repeal, revoke or otherwise modify'* a Statute and

which had become *'commonplace'*. In theory such Statutory Instruments are scrutinised by the Delegated Legislation Committee but the average length of DLC debates in 2013-14 was just 26 minutes and the shortest 22 seconds. However, he defended the right of judges to impose short sentences, and departed from his fellow Chief Justices, albeit in part playing the devil's advocate, by questioning whether there was any way to determine whether the number of people we sent to prison was too high or too low. He also told us *'we've got this difficult balance to strike, so that the court is not exercising private revenge'* whilst recognising that women victims may feel that what they *'have gone through isn't really worth very much'*.

John Thomas succeeded Igor Judge as LCJ and served in that role until 2017 whilst Chris Grayling was still in office as Lord Chancellor to be followed by Michael Gove, Liz, Truss and David Lidington. He drew our attention to how little discussion there had been between the Home Office and the Judiciary at the time of Blunkett's CJA 2003 compared to the many exchanges with Ken Clarke at the time of what became the Legal Aid, Sentencing and Punishment of Offenders Act 2012. He told us that reducing the use of short sentences *'would address a bit of the problem but not very much*

of it ... the real problem is the great length of sentences and we have pointed this out, and pointed this out, and pointed this out'. He singled out the CJA 2003 with its starting points for fixing minimum terms in mandatory life sentences for condemnation. But whereas minimum sentences usually leave the judge some discretion because of *'exceptional circumstances'*, the Sentencing Guidelines *'are driven by the statutory maxima ... and the maxima are too high'*. He told us that *'politicians are unwilling to reduce maximum sentences'* or to deal with the residual IPP problem of reversing the burden of proof about risk before release on parole. This was on the ostensible ground that it would interfere with the independence of the Judiciary — a claim Thomas dismissed as *'absolute nonsense'*. The only way forward would be for a courageous Government *'to reduce maxima and be quite prepared to say this is our policy ... bringing the sentence level down. My own view is that the prison population ought*

7. Hansard 7.9.17

8. Judge, Lord (2017) *A Judge's View on the Rule of Law*, Annual Bingham Lecture, 3rd May 2017.

to come down first to 60,000 and I hope ...back to 40,000.

It is extraordinary that the Executive and the Judiciary in a democracy should be at such odds with each other.

The Problem of Ministerial Churn and Getting Proper Advice

Ministers spent an astonishingly short time in office — on average just 22 months, some 10 months shorter than the average served by ministers in the 30 years before 1990. Most had no prior experience of the field, although Jack Straw and Ken Clarke had two bites of the cherry — first as Home Secretary and later as Lord Chancellor and Secretary of State for Justice. This political churn need not have contributed to the crises had there been consistent support for well-planned policies — but that did not happen, although there was sometimes continuing support for ill-planned policies that left Directors of Prisons and Probation struggling to make them work. No Minister had a handover package from their predecessor nor passed one on to their successor. Most Ministers thought it would be desirable if they had the opportunity to spend longer in office to see things through, and if not, that there should be a systemic way of ensuring continuity. David Blunkett put it as follows: *'Ministers don't have a proper induction and they rarely speak to the person who has just done the job. The person who moves on has either just been sacked and is grumpy or has just been promoted and no longer cares. What we need is a proper portfolio with induction and handover every time someone changes — even when it is a change of Government.'* Andrew Selous, Junior Minister under both Chris Grayling and Michael Gove, thought that ensuring continuity of policy should be a responsibility of the Cabinet Office.

As things were, new Ministers, like Chris Grayling, one of the longest serving Ministers, and Michael Gove, one of the shortest serving, felt free to pursue policies which they had applied in other settings, respectively in the work programme at Work and Pensions and academies at Education, regardless of their

appropriateness to prisons or probation. Interesting innovations — such as problem-solving courts modelled on Red Hook in New York and judicial monitoring of sentences — hardly got past the pilot stage. Other Ministers — like Liz Truss or Rory Stewart — felt free to spend much of their time interfering in operational matters. Ministers sometimes had a specific brief from the Prime Minister, although under Tony Blair it was more a question, as one of our respondents put it, of *'always managing towards the Fuhrer ... everybody knew what he wanted'*.

The short terms in office for Ministers were to some degree matched by the increased mobility of career civil servants between departments, which may have reduced their capacity to give sound advice based on their knowledge of departmental history. One shortcoming of our research has been that we did not manage to extend our interviews to include departmental career civil servants in policy rather than operational roles. However, there certainly seemed to be a process of life mirroring art as new Ministers approached their civil servants in much the same way as Jim Hacker regarded Sir Humphrey Appleby in the 1980s sit-com *Yes, Minister*. They often paid less attention to the advice of their officials preferring to listen to their so-called 'special advisors', who shared the same ideas and whose advice served

mainly to enhance Ministerial hubris. David Faulkner, the distinguished senior civil servant who was widely regarded as the architect of Douglas Hurd's Green Paper that led to CJA 1991, late in his retirement, urged his successors to find their voices and speak out.

Organisational Change: Agency Status — HMPS, NOMS, HMPPS — and Austerity

Woolf's report made no recommendations on the organisation of the prison service because Waddington had already announced changes to the Prisons Board, the introduction of Area Managers, and a proposed move of Headquarters from London to the Midlands. Consideration was given as to whether the prison service should become a Next Steps Agency⁹. Next Steps Agencies¹⁰ were intended to create an arms-length distance between Ministers, who were

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9. Lygo Report (1991) *Management of the Prison Service*, London, Home Office

10. Fulton Report (1968) *The Civil Service*, Report of the Committee 1966-68, Vol. I, Cmnd 3638, London, HMSO; Ibbs Report (1988) *Improving Management in Government: The Next Steps, A Report to the Prime Minister*, London, HMSO.

accountable to Parliament for policy matters on the one hand, and operational managers who could be held responsible for any failures (though rarely in practice for operational successes). In return for carrying operational responsibility managers would have autonomy for running their operations within broad policy guidelines, but also the ability to speak out publicly when held to account for their activities. Woolf was critical of the many organisational changes that *had already taken place and concluded that 'the one thing that is not needed is more change'*¹¹. But Woolf had identified that a lack of trust had developed between operational governors in the field and a remote headquarters organisation. He wanted to see the Director General of the Service having real operational experience and to show leadership by speaking out on behalf of the Service, which would fit very well within the agency model.

Woolf's hopes of an end to organisational change, however, were dashed and the next thirty years saw near perpetual change. Agency status was conferred first on the Prison Service (HMPS), by Ken Clarke in 1993, who in his desire for the involvement of the private sector preferred the outsider Derek Lewis over the incumbent Joe Pilling as Chief Executive. This was despite the fact that Pilling had successfully managed the service for two years, and bridged the gap between headquarters and the field with his 1992 Eve Saville Memorial Lecture *Back to Basics*¹²

emphasising the need to treat prisoners with decency. He was also an advocate for Agency status and accepted the need for some privatisation. Pilling thus became the first to leave the job he *'most wanted to do'* unhappily. The second, of course, was Derek Lewis. Initially, Lewis, was able to run the agency largely as imagined under Ken Clarke, who was repeatedly singled out as *'a fantastic Secretary of State to work for'*, someone prepared to share responsibility and accountability with his officials. But after the escapes of Category-A prisoners from Whitemoor and later from Parkhurst, Howard, according to his Prisons Minister, Anne Widdecombe, used the lamentable Learmont

Report (1995) to *'get rid of Derek Lewis'*. Lewis was succeeded by Richard Tilt, who had spent a year as Acting Director General during a vain search for someone from the private sector to take the job on. He was the first Director General to have had operational experience as a governor, and he felt it to be his *'duty to do it'*. Tilt told us, that despite Howard's insistence on the distinction between accountability and responsibility *'Howard just couldn't cope with somebody doing something he didn't agree with... never mind the bloody Next Steps agency'*. He was the only one of our Directors, however, to leave happily and retire after three and a half years, at a time of his own choosing, having got things back more *'on an even keel'*.

After the election in 1997 Jack Straw, having argued in opposition that Howard, *'takes the credit but is free of any responsibility'*¹³, no longer allowed officials to account to Parliament and resumed that responsibility himself. He also began a push to bring the prisons and probation services closer together despite the fact that prisons were part of a large and very complex national system, whereas probation was locally based and part locally funded and managed by local committees largely composed of magistrates. The histories, purposes, philosophical underpinnings and ways of working of the two services were quite different, and indeed about the only thing that they had in common was that they dealt with some of the same offenders at

different stages of their criminal careers. By the time Straw left office, the first Director of a notionally National Probation Service, Eithne Wallis, had been appointed and the number of local Probation Committees was reduced from 54 to 42 Probation Boards coterminous with police boundaries. The police and probation services were required to manage the risk of violent and sexual offenders through new Multi-Agency Public Protection Arrangements (MAPPA). According to Sonia Flynn (nee Crozier), who was Chief Officer of Probation at the time we interviewed her, these developments, together with the removal of the requirement for offenders to consent to probation, first

Agencies were created to provide distance between Ministers, who were accountable to Parliament for policy matters, and operational managers who could be held responsible for any failures.

11. Woolf (1991) see n.4 para 12.6

12. Pilling, J. (1992) Back to basics: Relationships in the Prison Service. Eve Saville Memorial Lecture to the Institute for the Study and Treatment of Delinquency, reprinted in Perspectives on Prison: A Collection of Views on Prison Life, supplement to Annual Report of the Prison Service 1991–1992. London, HMSO.

13. Hansard HC 19.19.95

proposed by Howard, *'changed our purpose from 'advise, assist and befriend' to surveillance and protection'*.

David Blunkett, following the recommendations of the Carter Report¹⁴ introduced the National Offender Management Service (NOMS) with the ambitious aim of establishing end-to-end management of offenders under ten Regional Offender Managers aligned with the existing prison regions rather than the recently reorganised 42 Probation Boards. Carter later told us that it had not been properly thought through: *'we didn't capture the technology or that culturally the difference between the probation service and the prison service was too great'*. It was a shotgun marriage and like many such marriages it was less than a total success — despite prodigious efforts to make it work. But ministers repeatedly blamed their officials for any failures. David Blunkett told us that *'the prison service didn't want it ... the probation service liked the idea but they weren't keen on engaging'*. Richard Tilt was broadly in favour of linking the two services together and had been impressed by what he saw in Canada where such a move had been successful — but, as he pointed out, it *'took them 25 years to achieve it'*.

Agency status remained with the prison service at this time and Martin Narey, who had succeeded Richard Tilt as Director General of prisons, was first made Commissioner of Corrections by David Blunkett and then Chief executive of NOMS, whilst Phil Wheatley became Director General of Prisons. Martin Narey had bought into what he regarded as three essential elements of NOMS — making probation officers the managers of prisoners in prisons, a commitment to driving up standards of decency and dignity in public sector prisons through competition, and the capping of the prison population. Moreover, with the rank of Permanent Secretary he had a say about the direction of policy as well being a member of the Sentencing Guidelines Council which was to deliver a stable prison population by tweaking the guidelines. But relations between Narey and Charles Clarke quickly deteriorated. According to Wheatley, Clarke did not like *'celebrity civil servants'*. When it became clear that Clarke was not going to try to cap the prison population, Narey became the third Director General to leave unhappily and resigned. NOMS was reorganised, and Narey's successors at the head of

NOMS — Helen Edwards, Phil Wheatley and then Michael Spurr were not given the rank of Permanent Secretary, and the ability to speak out and make their voice heard publicly was lost.

When Jack Straw was back in charge as Lord Chancellor, now with prisons and probation under the Ministry of Justice, he took a much more 'hands-on' approach than when he had been at the Home Office. Eithne Wallis had been replaced briefly by Steve Murphy as Director of Probation (under David Blunkett) and then by Roger Hill who became the longest serving Probation Director. The OMA 2007 had redefined the relationship between probation and ministers and Probation Boards became Trusts with whom the minister *may* choose to contract services. Straw put

increasing pressure on those Boards reluctant to change by threatening them with privatisation. In 2008 Agency status was transferred from the prison service to NOMS. It was a collaborative venture between Ministers and Directors, in a further attempt to make NOMS work. The separate roles of Director General of Prisons and of Probation soon ceased to exist. The new model was for the publicly run trusts or new functional Directors of Offender Management (DOMs) at a regional level, to commission

services. Both Phil Wheatley and Michael Spurr believed it enabled them to get a managerialist grip on probation as they had on prisons under marketisation.

The new arrangements hardly had time to come into effect before a new era of austerity was dawning in the wake of the banking crisis. NOMS was required to make ever increasing savings. The situation with regard to the increasing prison population was already dire. John Reid who was, briefly, the last Home Secretary to have responsibility for prisons, and Charlie Falconer, even more briefly as a transitional Lord Chancellor, told us they had to set up a special unit, working around the clock in shifts, trying to find places for the latest arrivals from the courts, whilst prison vans circled the M25 waiting for places to be found. *'By the end of the Blair era'* Wheatley told us *'Ministers pushed very hard for prisons to pack all comers in like sardines.'* When Phil Wheatley and Michael Spurr, then his Chief Operating Officer, told Straw that they had achieved all the economies they could, without endangering safety, Straw refused to accept that and effectively forced them into the first version of benchmarking. Wheatley

By the end of the Blair era' Wheatley told us 'Ministers pushed very hard for prisons to pack all comers in like sardines.'

14. Carter Report (2003) *Managing Offenders, Reducing Crime*. The Strategy Unit.

told us this left the prisons *'in a very unstable place'*. When Wheatley thereafter took a firm line saying that *'HMPS would not hold more prisoners than we could safely accommodate'* he was given to understand that unless he became *'more corporate'* his contract would not be renewed and he resigned — the fourth to leave unhappily. Michael Spurr took over as the *'safest pair of hands'*.

When Ken Clarke was first to agree the 23 per cent cuts demanded by George Osborne he planned to make the savings through reducing the prison population — but that was scuppered by David Cameron's intervention. The immediate effects of the cuts which were based on a prediction of the future size of the prison population, were limited to reductions in central management. But they were enough to bring about the demolition of the collaboratively agreed regional model of NOMS. A revised model of NOMS removed the regional layer of management. Roger Hill, told us that when one saw the combined budget for the two services there was little room for manoeuvre as far as probation was concerned because most costs were already fixed. Hill was unable, for technical reasons concerning pensions, to apply for a post in the new arrangement and became the fifth Director to leave unhappily telling us it was *'one of the worst days'* of his life.

Enter Chris Grayling. He began with what Crispin Blunt, who had been Ken Clarke's Prisons Minister, described to us as a *'Faustian pact'* with the POA to exchange the scrapping of Ken Clarke's proposal to put nine prisons out to tender in exchange for ever deeper benchmarking. Michael Spurr, forced to choose between the prospect of further privatisation and accepting more cuts chose the latter as the lesser of two evils. He oversaw the introduction of the Prison Unit Cost (PUC) programme and the Voluntary Early Departure Scheme (VEDS). Between them they delivered lower savings than privatisation but delivered them more quickly. Grayling told us that he was pleased to have closed more prisons than anyone else, but according to Michael Spurr these were small *'high-quality'* prisons and he replaced them with cheap prisons, larger and *'harder to run'*. His contracting out of highly complex facilities management was a policy earlier rejected under New Labour. Nick Hardwick, then Chief Inspector of Prisons, told us that it was only *'with*

the loss of experienced staff that safety issues started to go through the roof and that this was not due to poor performance by anyone but political decisions about resources.' Grayling made it clear to Hardwick that he would have to re-apply for his post at the end of his contract if he wanted to be reappointed — and that his chances were not good. Hardwick resigned rather than go through that process again. Grayling's impact on probation was in some ways even worse. Privatising aspects of probation work was based on an ill-founded notion of risk, with the National Probation Service dealing with high risks and 21 Community Rehabilitation Companies dealing with low risk cases.

This split inevitably led to problems about organising contracts because it was difficult to predict how many offenders of each risk category would be coming through from the courts. But Grayling was deaf to the advice of his officials. The fact that it did not work was roundly condemned by Glenys Stacey in her role as HM Inspector of Probation. Wheatley, Spurr and Hill were agreed that a much better way of introducing privatisation in probation would have been to take one or two poor performing geographical areas and invite tenders for all, or most, of the services provided by probation officers.

Following the General Election of 2015 there was a growing recognition that cuts in resources had gone too far and tentative steps were taken to recruit new prison officers although staff numbers remained below those proposed under the PUC programme and far below those which had obtained in 2010. But still Ministers blamed their officials for failing to deliver the *'world class service'* enshrined in Framework Documents. Things were made worse by the interventions of Ministers into operational matters. First, Michael Gove indulged in his so-called Reform Prisons, based on his experience with academies whilst Minister of Education, but he had no real conception of how prisons, unlike schools, were part of a highly complex national system. When Gove tried to insist on further reductions in staff, Spurr pushed back and *'refused to take any more cuts after 2015'*. Then Liz Truss, despite her lack of any apparent relevant experience, came to believe that she knew better than her officials how to run prisons. Perhaps the most telling example of how things had changed over the period under review is that whereas Joe Pilling had

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meetings with Ministers 10 or 12 times a year Michael Spurr sometimes had that number in a week. He was summoned to *'bird table'* meetings in the morning to discuss a problem and expected to have a solution by the evening.

Liz Truss told us that she found Spurr to be too *'command and control'* but it became clear that what she really wanted was for command and control to reside firmly within the Ministry of Justice. Truss objected to all arms-length bodies (ALBs) like NOMS. She told us *'I wanted to get rid of NOMS and replace it with HMPPS... I wanted to embed it more within the Department so it was more directly accountable.'* This was in line with a 2016 Cabinet Office report on Public Bodies¹⁵ which argued for the transformation of ALBs to reduce costs and increase accountability through a reduction in autonomy and closer relationships with departments. The reinvention of NOMS as HMPPS, was not discussed in her White Paper *Prison Safety and Reform*¹⁶ but it reversed the model of agency that had aligned accountability to greater autonomy. The new model gradually removed the functions from the agency that enabled operational autonomy, including commissioning, future policy direction, setting standards and scrutinizing performance, HR, finance, procurement, IT and estates management. Spurr now had to seek *'permission to be able to run the organisation'*. Close observers, described the situation as *'wildly confusing'* with *'the Ministry of Justice... who don't really understand prisons... sucked into how can we make prisons safer'*.

Spurr told us that he was continually being required to *'brief up'* and even that his operational voice was undermined when governors were directly asked whether, *'what I was saying was right or wrong'*. Increased accountability did not translate into the power to speak out. At one point he was banned from *'engaging with the Treasury and with the Cabinet Office'*. Although technically Agency status had been transferred from NOMS to HMPPS, Anne Owers, former Chief Inspector of Prisons and now Chair of the Independent Monitoring Boards, told us *'it's not got what you would call agency status any longer'*.

The relationship between Spurr and David Lidington, who succeeded Liz Truss, was much more

cordial, however Sam Gyimah his junior minister kept a *'a very, very close watch'*. Rory Stewart, Gyimah's replacement, told us that the crisis in HMPPS arose because of its *'failure to recognise that the world had changed since 2010'* and that in continuing its attempts to rehabilitate it had *'forgotten about the basics'*. He tried to argue that Spurr and others had failed to *'push back'* against the cuts. When we suggested that all Directors were committed to the *'decency agenda'* and that some had lost their jobs for *'pushing back'*, he finally acknowledged that the main problems had been brought about by the policy makers. He thought it likely that Spurr would outlast him because of the Government's delicate position over Brexit. But Spurr was effectively forced out, the latest in a long line of committed Directors to leave office unhappily.

Conclusions

What conclusions do we draw from this sorry history? Some truths which applied at the beginning are as applicable now. First, prisons are of necessity part of an interconnected system and need to be organised in a systemic way. This could either be a national system, or regional systems but with some functions, especially high security prisons, run as a national resource. Second that Probation is primarily a local service and, in our view,

ought to be organised, and at least part funded, locally in close conjunction with the courts.

It should be obvious that prisons and probation are important public services and should be treated as such and not regarded as the playthings of here today and gone tomorrow ministers of whatever political persuasion. The proper function of ministers should be to ensure that the tasks set for those services are reasonable and achievable and that their operational officials have the resources they require to perform those tasks and to support them in so doing. There should be an enduring commitment between the Cabinet Office and the Treasury that prisons should not hold more prisoners than is provided in their certified normal accommodation. Expecting prisons or probation to bring about the rehabilitation of offenders and end reoffending is a holy grail the pursuit of which is doomed to failure. Prisons should strive not to make

A Cabinet Office report argued for the transformation of ALBs to reduce costs and increase accountability through a reduction in autonomy and closer relationships with departments.

15. Cabinet Office (2016) *Public Bodies 2016*, London, Williams Lea Tag.

16. Ministry of Justice (2016) *Prison Safety and Reform* (Cm 9350), London, Williams Lea Group for HMSO

prisoners worse, and to treat them with dignity and respect and where possible to provide educational and other services that can help repair the deficits that so many have suffered. Probation can certainly do much to help offenders with problems they experience either before or after they have been in prison but cannot be expected to undo many years of past experiences. The causes of crime lie elsewhere — in poverty, deprivation, poor education, housing, and life chances. In short giving them something to lose. Having something to lose keeps most of us straight.

We agree with our Lord Chief Justices, Lord Woolf, Lord Phillips and Lord Thomas that the prison population is far too high and that more discretion should be given to judges in sentencing. The provisions in Schedule 21 of the CJA 2003, which brought in 'starting points' for fixing the minimum term in mandatory life sentences, should be repealed as well as the mandatory minima, now enshrined in the Sentencing Act 2020, for drugs, residential burglary and other matters. The role of the Sentencing Council should be limited to helping to iron out disparities in sentencing between courts.

Both prisons and probation are primarily operational services, analogous to the NHS albeit on a

much smaller scale, and they require a great deal of autonomy in order to fulfil their operational duties. They are therefore well suited to the Agency model with its possibility of having a clearly identifiable leader who is both responsible and accountable for what goes on. We understand that since our research was completed some of the functions withdrawn to the centre under Liz Truss have been returned to the HMPPS agency, and that Jo Farrar, the current Chief Executive, has been given 2nd Permanent Secretary status, last held by Martin Narey. These are steps in the right direction. But we are concerned that Farrar is expected to cover not only HMPPS but also the Legal Aid Agency, which has a budget of £2 billions, as well as the Office for the Public Guardian, and Criminal Injuries Compensation, amongst possibly others. These seem likely to remove her from day to day operational matters and reduce both her ability to advise Ministers and to provide the dedicated leadership that prisons and probation so badly need.

Finally, there needs to be a carefully constructed cross party agreement as to the legitimate achievable aims of the prison and probation services which should be set out in primary legislation, together with a code of standards.

- Prison Service Journal readers can receive a 25% discount when they order "The Honest Politician's Guide to Prisons and Probation" by Roy D. King and Lucy Willmott from www.routledge.com by entering the code **HPOL25** at the checkout.