

# Halliday, Sentencers and the National Probation Service

**Tom Ellis and Jane Winstone** identify some potential pitfalls in Halliday's proposals.

In the overview of Halliday's review of the sentencing framework for England and Wales, it is noted that *'A framework that will last needs firm foundations. Benefits would not materialise if the framework proved short-lived and the necessary transitional costs would be wasted'* (Home Office, 2001). Cost aside, the raft of criminal justice legislation since the Criminal Justice Act (1991) suggests that it is in the interests of all stakeholders in the Criminal Justice System to consolidate an integrated multi-agency framework which supports the professional delivery of consistent justice principles and philosophy. It is also in the interests of the equality and consistency of the experience of those who have been or who will be sentenced.

Below, we summarise what we think are the key proposals for changes to short prison sentences ('custody plus'), and non-custodial sentences. We then draw attention to some potential pitfalls these may pose for the relationship between probation practitioners and sentencers.

## 'Custody plus' proposals

The Halliday report proposes the 'custody plus' option to replace current custodial sentences of up to 12 months in both Crown and magistrates' courts. Under the existing process, offenders serve half of the stipulated sentence length (a maximum of six months in the Crown Court and three months in the magistrates' court). They are then released on automatic unconditional release (AUR) which is not linked to post-release supervision, except on a voluntary basis. This is a gap in provision that has attracted criticism, especially from David Blunkett, whose assessment is that *'it is 'crackers' to put people in jail for a short time without any measures*

*to change them or any plan for when they come out'* (Taylor, 2001).

Halliday proposes to replace the above system with a new system of 'mini licensing' for sentences of under 12 months. The new proposals mark a relatively complex attempt to ensure 'truth in sentencing', in that the periods stipulated will be those actually served. They also reflect an intention to calibrate sanctions upon an assessment of risk and seriousness. The new proposals offer 3 distinct sentencing routes as summarised below (see table below).

At first sight, this 'tough and tender' package represents an important step forward in balancing rehabilitative and retributive aims in sentencing, with an apparent shift toward rehabilitation. Unsurprisingly, it ties in very neatly with Blunkett's notion of a 'virtual clip around the ear' (see Fletcher, 2001). It has both philosophical and resource implications for sentencers and probation practitioners. Before looking at some potential pitfalls which this may bring, it is important to look at the proposed revision to community penalties in order to assess the cumulative impact of the new sentencing proposals.

## Non-custodial powers

Halliday notes that *'there has been a proliferation of new community sentences'* (Halliday Report 2001) over the previous decade and that this has resulted in sentencers facing a complex array of choices and possibilities which can lead to inconsistency. In part, his proposals attempt to simplify and regularise the purpose of non-custodial disposals and recognise them fully as 'conditional sentences' rather than the alternatives to incarceration they were prior to the Criminal Justice Act 1991.

Rather than have a series of separate orders with

## Custody plus: proposals for short sentences.

	Custody only (maximum)	Combined minimum	Combined maximum
<b>New full sentence lengths</b>	<b>3 months (max.)</b>	<b>6 months &amp; 2 weeks</b>	<b>12 months</b>
Custodial component	3 months	2 weeks	2 weeks to 3 months
Post-release supervision component	None	6 months	9 to 12 months (minus 2 weeks)

different aims, Halliday is proposing that there would be a single 'community punishment order'. Under this system, all offenders would effectively carry out some form of 'combination order plus', where a menu of all elements of existing community disposals, plus fines, compensation orders, etc. would be potentially available. Sentencers would be expected to arrive at a correct 'punitive weight' by balancing the primary and secondary purposes of sentencing: crime reduction (reducing re-offending), punishment (restriction of liberty) and reparation.

## Potential pitfalls in joining courts and probation practice

The Halliday proposals and the recent changes to legislation are intended to break up what is essentially still the framework of the Criminal Justice Act 1991, where offences plus mitigation and aggravation have to be judged as serious enough to warrant community penalties or more serious still, custody. This raises the following issues.

First, despite addressing the notion of 'condition creep' or net widening, Halliday is unconvincing in his arguments that the new framework will not result in this. He is seeking to make the power to award a community penalty instead of a 'less serious' fine a general one. The result is that those who can afford to pay a fine will, while the poor end up with a more 'serious' community penalty. There are parallels here with the punishing of those on benefits by their withdrawal for breach, with no equivalent sanction for those who work.

Second, the proposals effectively call for the creation of a mixed custodial/non-custodial sanction to replace virtually all short custodial sentences. This disregards sentencers' general preference for disposals whose main purpose is punishment (see appendix 5 of Halliday's own report) and the previous experience with the introduction of combination orders (Mair, Sibbitt & Crisp 1994). It is therefore likely that the custodial option will be over-used. While Halliday confidently asserts that the current distinctions between levels of seriousness are more apparent than real, will potential employers see a short period in prison as less problematic than a substantial fine?

Third, there is difficulty in conceptualising what the custodial element of a short sentence would achieve beyond fulfilling a punitive function for those of a consequentialist persuasion in the judiciary. Sentencers recognise that short periods in custody do not serve a rehabilitative function (Hedderman et al, 1999); are likely to dull the offender's sense of responsibility (Noble, 1996); disrupt their networks of social support; and delay the opportunity for participation in community-based accredited programmes which rely upon immediacy as one of the prime factors in successfully reducing the risk of re-offending (Ellis & Underdown 1998; Chapman & Hough 1998).

Langan (1994) produced US research which showed that split sentencing of this type is often associated with worse reconviction rates than other forms of community sentence. Given that split sentencing appears to mitigate against some of the key aspects underpinning the theoretical principles of the National Probation Service's research-led and evidence-based implementation of programme delivery, Langan's findings are not surprising.

Fourth, without establishing a fully informed dialogue between sentencers and the probation service, there will continue to be a mismatch in expectations about provision. The original study on the enforcement of community penalties (Ellis,

Hedderman & Mortimer, 1996) showed that magistrates were not well informed on the standards and, by inference, the aims to which the probation service were working. Any new sentencing framework needs to consider the possibility of adopting joint national standards for both sentencers (as the judiciary) and the prison and probation services (as the executive).

The National Probation Service has an ambitious programme of training and restructuring to deliver politically supported evidence-based programmes (A New Choreography, 2001). A contributory factor in the success of this will be a judiciary with a range of sanctions which support the theoretical and evidence based practitioner imperatives of reducing recidivism, promoting rehabilitation and protecting the public.

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