

Taking Forward Sentencing Reform

Keith Bradley, Minister of State for Criminal Justice Sentencing and Law Reform, responds to the Halliday and Auld reviews.

2001 saw two major governmental reappraisals of the criminal justice system. John Halliday's independent review of sentencing, Making Punishments Work: Review of the Sentencing Framework for England and Wales, was published in July. This was followed in October by A Review of the Criminal Courts of England and Wales, an independent review conducted by Sir Robin Auld, a senior Appeal Court judge. Various responses to these two major review reports are published in this issue of CJM – for the full text of the reports, consult www.criminal-courts-review.org.uk for Auld and www.homeoffice.gov.uk/cpg/halliday.htm for Halliday.

*This year, the guest speaker at the CCJS Annual General Meeting was the **Right Honourable Keith Bradley, Minister of State for Criminal Justice Sentencing and Law Reform**. The first half of his speech, 'Taking Forward Sentencing Reform', summarised the background and contents of the Halliday report. In the second part of his speech, published here, he gave an indication of the government's thinking on both the Halliday and Auld reports. For the full text of this speech, see the CCJS website, www.kcl.ac.uk/ccjs.*

“Those who break the law need to be punished, but they also need to be drawn away from crime and rehabilitated into law-abiding society. Society rightly expects to be protected from serious and dangerous offenders and in many cases the best way of doing this might be through imprisonment.

victims and the public, and the rehabilitation of offenders. The Home Secretary has set the service a target to achieve a five per cent reduction in reoffending by 2004. We have extremely able people now working in the Probation Service and I am confident that the service will achieve what we are asking from it.

Considerable demands will also be placed on the Prison Service. Some commentators have speculated that we are facing an increase in the prison population as a result of the Halliday proposals. This is most definitely not our intention. The proposals in the report provide justification for better use of imprisonment by providing alternatives that are viable. Inevitably, if there are fewer people in prison at any one time, the quality of the work with each prisoner can improve and the chances of reducing reoffending will be increased. Another major part of the recommendations was to involve the courts in the oversight of the management of supervision in the community. This included regular reviews of community sentences, approval of pre-release plans for those sentenced to custody for more than 12 months and dealing with enforcement issues. This was seen as bringing benefits for sentencers, benefits for those subject to the orders and benefits for improving public confidence. Although some responses have doubted that this involvement is a proper role for sentencers, the majority has greeted the concept with enthusiasm. What has been doubted is whether the practical problems that would be posed can be overcome, or whether the consequences of

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But not all offenders need custodial sentences. The 'What Works' programme provides the tools for addressing offending behaviour and for making a real difference with offenders in the community. This, coupled with the reform of the Probation Service and its clear focus on reducing reoffending, means that we will have a tough and credible alternative to custody for many offenders. We know that constructive, effective sentences, when properly examined and demonstrated, will capture sentencer and public approval.

Halliday recommends that a specific objective of court sentences should be to reduce reoffending. This is where What Works comes in; and the very evidence on which it relies can in turn be employed to convince the public. I mentioned earlier the impact of the proposals on the Probation Service. Aims for the Probation Service are set out in legislation as the protection of the public, the reduction of reoffending, the proper punishment of offenders, ensuring offenders' awareness of the effects of crime on their

overcoming them outweigh the benefits. It may be that a more limited involvement will in turn prove to be best. We shall continue with work to improve the information available to sentencers about the effectiveness and use of the various sentences that are eventually proposed. It is a challenging task, particularly where sentencers do not always sit in the same area. As in so many cases, effective technology has much to offer.

Effective enforcement of orders is seen by many as crucial to an effective sentencing framework. Many close to magistrates' courts have drawn attention to the problems in enforcing financial penalties and the way that brings the whole system into disrepute. It also means that fines are used less than they might otherwise be. These problems can so easily undermine the whole system and we shall need to ensure that enforcement plays its proper part in ensuring that the purposes of each sentence are fully met. The proposals regarding guidelines are particularly important because they form one of the

most important bridges between the legislation that Parliament will enact and the practical outworking of those provisions. I will reflect briefly on the current position, and on what appear to be important issues in relation to the proposals regarding guidelines and then give some indication of emerging thinking.

A variety of methods have been introduced across the world to try and resolve the problems we are addressing and Appendix Four of the Review Report sets out some information about the approaches in some other jurisdictions.

As you know, guidelines come through a number of different sources - Court of Appeal decisions, Magistrates' Court Sentencing Guidelines and the prescribing of minimum and mandatory sentences by Parliament are three of the most common. The present arrangements have some practical drawbacks and do not fully resolve the inevitable tensions that affect the balance between the responsibilities of Parliament and the independence of the judiciary. There are, of course, a very large number of offences that come before the courts - in excess of 600 - and a number of issues that cut across individual offences such as the impact of previous convictions and the approach to the assessment of financial penalties. Many offences can encompass a wide range of seriousness and the maximum penalties currently prescribed do not always reflect a coherent approach to the whole range of offending.

We have seen some very encouraging developments to accompany the growing recognition of the advantages that good quality guidelines can bring. For many years the Magistrates' Association has overseen the production of guidelines for the most common offences coming before Magistrates' courts. By building a team involving District judges, magistrates, justices' clerks and the academic world and by securing the support of the Lord Chief Justice and the Lord Chancellor, they have ensured that the guidelines they produce are widely used. We also have seen the creation and development of the Sentencing Advisory Panel which has provided well regarded advice to the

and with a similar extensive consultation remit.

- And that there be a specific provision requiring consultation with a special committee of Parliament but that the decision on any guideline is for the Council alone.

The arguments are that this arrangement will have the capacity to command the confidence of those within and outside the criminal justice system, that it will properly preserve the necessary line between the responsibilities of Parliament and the independence of the judiciary and that it will produce the quality of guidelines that are necessary to provide the proper framework for the exercise of judicial discretion. It will also overcome some of the practical problems that exist with the present system in, for example, finding suitable cases in which to make guideline judgements and in being able to deal with issues that cover more than one type of case.

John Halliday also emphasised that the first goal in implementation should be to create sufficiently high levels of confidence in the direction of change, in the way it will be managed and resourced and in the commitment to the long term goals. The response to the consultation shows that the quality of the report and the way in which both the presentation and the consultation have been handled have created those high levels of confidence in the direction of change and we now intend to move on into the next phase. As I indicated earlier, I look forward to the continuing contribution from members of this Centre and others to bring about successful completion of this very important project.

The Auld Report

The Sentencing Review forms an important element in the Government's programme for reforming the criminal justice system, but it does not stand alone. Another key element is Lord Justice Auld's review of the criminal courts.

Sir Robin Auld's report was published last month. The

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Court of Appeal, drawing on the benefit of a wide membership including those who are sentencers and those who are not, those who are lawyers and those who are not, and on the extensive consultation processes that it has adopted when formulating its proposals.

One of the driving forces for guidelines is to develop consistency of approach. We know that there is information that gives people cause to believe that there is a sentencing lottery and that people are being treated differently for no good reason depending on which court they appear in on any particular day.

Guidelines need to command confidence. This confidence needs to be felt by those who use them directly, by Parliament and by the public at large. This means that they must be of good quality and created in a way that reflects that quality.... What the emerging thinking seems to be leading to is the following situation:

- All courts to be required to take account of guidelines and to give reasons for departure from them as part of the normal giving of reasons for sentence.
- Guidelines to be issued by a council consisting only of sentencers - drawn from the Court of Appeal, High Court, Circuit judges, District judges and magistrates - and chaired either by the Lord Chief Justice or his nominee.
- That body to be supported by something like the Sentencing Advisory Panel which formulates the detailed advice and consists of people from a variety of backgrounds as at present

government has again welcomed it. We believe that the reforms which it recommends will be crucial elements in creating a respected criminal justice system that works well and reduces crime; and one that commands the confidence of the public and those who work within it.

The government takes the view that Auld's recommendations are too important simply to be left to judges and politicians alone to decide upon. Many of them are of wide interest to the public. We again intend to engage with people and communities around the country in a genuine debate.

(The Minister summarised the main recommendations of the Auld report at this point in his speech. See the web address given at the beginning of this article for a summary of Auld's review report.)

The main issues.

Nineteen out of twenty criminal cases are dealt with, from start to finish, in the magistrates' court. Auld's proposals would not change this. In the summary tier of his proposed unified criminal court - the Magistrates' Division - lay magistrates and District judges would continue to deal with all summary offences, and with those either-way cases which were not likely to attract a sentence beyond their current sentencing powers.

Lay magistrates would also participate in the proposed District Division. Here they would sit alongside the judge (usually a District judge, but a more senior judge if the circumstances required) to hear middle-ranking either-way cases

thought unlikely to attract a sentence of, as Auld suggests, more than two years' imprisonment.

These are far-reaching recommendations. It has not gone unnoticed that it would transfer a great deal of business from the Crown Court to the new District Division. I look forward to hearing from you and others what you have to say about this, both as a matter of principle and from a practical point of view.

Another important recommendation concerns where serious cases involving young defendants (that is, 10-17 year olds) should be tried. At present such cases are heard in the Crown Court. Under Auld's proposals a special youth court would hear them instead. This would be composed of a judge of an appropriate level and at least two experienced youth panel magistrates.

There is a case for reviewing the way in which we deal with young people accused of 'grave crimes', and we will certainly be looking at whether the adult court is the right place for such cases. At the same time we recognise that there may be public concerns about the withdrawal of trial by jury for serious offences committed by those at the top end of this age group.

Since in various ways Auld's proposals would extend the range of cases which lay magistrates could deal with, it is not surprising that he emphasises the need for them to be representative of the whole community. He makes a number of recommendations for making improvements in this area.

Preliminary views.

I have underlined our commitment to genuine consultation on the Auld report, just as we have done on Halliday. But it would be reasonable of me to express some preliminary thoughts.

The idea of a unified criminal court makes good sense. The current arrangement with two separate administrations to manage criminal courts is a throwback to a bygone era. Replacing this with a single, modernised organisation will speed up justice, and release resources for the fight against crime.

Auld agrees with the government about the inappropriateness of defendants dictating where they are tried. His proposals for a system of allocation by the court, with decisions made in the knowledge of the full facts including any previous convictions does seem rational. It has also built into it the safeguard of a right of appeal to a Circuit judge. One difference is that the bill provided only for an appeal against a decision to try the case summarily; Auld, on the other hand, envisages that defendants could appeal against allocation to a

the Magistrates' Division. Auld recommends that 'the decision whether to appoint a District judge should no longer turn primarily on, or be impeded by, the views of magistrates but it should be the Lord Chancellor that takes the initiative.

Auld's recommendations would streamline the large number of strategy boards and consultative committees that currently exist. We agree that there needs to be a clear line of accountability from the local level, through regional and national structures, up to the Criminal Justice System Cabinet Committee chaired by the Home Secretary.

We suggested in our paper *Criminal Justice: The Way Ahead* that courts in crime hotspots might sit for longer hours, including at the evenings and at weekends. Now Sir Robin Auld has recommended that there should be a thorough examination of the costs and benefits of extending court sitting times. We thought this idea would be worth pursuing if it would have an impact on delays, deter local criminals, improve access to justice and help to reassure local communities. In order to test whether it would work, we are in the process of planning pilot schemes to take place in London and Manchester, starting next year. These pilots will address: what additional hours the courts should open; the costs and the benefits for victims, witnesses and others arising from the new sitting times; the impact on waiting times in bringing cases to court and court productivity; and the effect on public confidence of extra sitting hours.

Auld recommends that juries should draw on all sections of society to the full, other than criminals and the mentally disordered. We in the Home Office support these recommendations, but we are not persuaded that having 'up to three' members of a jury from an ethnic minority in cases where race is a factor is, in fact, right. We want all juries to be representative of all of our communities: this is the right way to eliminate any risk of racial bias in the way juries work. Not by artificially building a different sort of bias into the composition of the jury.

An issue at the interface of Auld and Halliday is how the Halliday recommendations would affect the boundary between the sentencing powers of the two lower Divisions proposed by Auld. Auld recommends no change to magistrates' current sentencing powers. But, if Halliday's 'custody plus' proposal is adopted, ought it to be available to the Magistrates' Division on the basis that a three-month sentence in 'real time' equates to the present six-month limit? Or should it be confined to the District Division, on the grounds that it might result (in the

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higher division than they had wished.

One point which emerges from Sir Robin Auld's report is the arbitrariness with which business is allocated as between lay magistrates and District judges. I know that there are certain classes of case on which District judges concentrate, including complex, priority or long cases, and Auld recommends that this should continue. But the general rule is that District judges undertake the full range of work. It is perhaps odd that two entirely different tribunals - one consisting of three trained laymen, and the other of a professional member of the judiciary - should have parallel jurisdiction, and that the generality of cases should be capable of being assigned to one or other without distinction.

If the District Division becomes a reality, it will be necessary for District judges to be available throughout the country (which, of course, they are not at the moment). If this happens, there may be a case for looking again at the distribution of work within

event of a breach) in the imposition of a longer sentence? This is a matter we shall need to consider carefully, and I am sure you will wish to make comments on it yourselves.

I am sure you will have your own opinions of Lord Justice Auld's report. It is vital that you share these with those of us in government. We have a criminal justice tradition of which we can be justly proud - but much more needs to be done to make sure it is fit for the twenty-first century.

Politics in a democracy is about public engagement, about civic renewal, about the strengthening of society through the acceptance of responsibility. All of us need to think about the role and the responsibilities we have within the criminal justice system.

Our expectations of the judiciary are high. We expect that their judgements will be the embodiment of justice for the particular case in hand. Our goal is to provide a " system that enables them to do just that in the future.