

Returning to Punishment: prison recalls

Enver Solomon describes how tighter probation enforcement is pulling increasing numbers back to prison after release.

Record prison numbers and overcrowded jails are nothing new. But less well known is the startling rise in the number of people recalled to custody which is a hidden factor behind the rising prison population. The number of offenders returned to prison after being released on licence in the community has more than trebled in the last five years to more than 8,100 and it is likely to increase further with the implementation of the 2003 *Criminal Justice Act*. In some local prisons recalled prisoners make around ten per cent of the jail's population.

The dramatic rise in recalls might be understandable if many of the offenders on licence in the community were committing more crimes. However, according to the Parole Board only 252 (seven per cent) of those released early on parole in 2003-2004 were recalled for a further offence. But there has been a slight increase since 2001-2002 when the reoffending rate had been stable for a number of years with just four per cent being

attending probation appointments. The past decade has seen a greater emphasis from the Probation Service on tighter management of enforcement practices. National standards have curtailed probation officers' discretion about when to breach offenders and how to respond to failures to attend probation appointments. They are under strict instructions to commence recall action on or before a third unacceptable failure to comply with the licence conditions and each probation area has strict overall targets.

The Parole Board has highlighted the change in probation practice. In its annual report it notes the 'improved performance by the National Probation Service in submitting breach reports' as a possible factor in the rise in recalls. The Board also points to greater police surveillance stating that there has 'been some evidence that the police are targeting offenders on licence when investigating crimes' (*ibid*). A new protocol between the police, probation and the Prison Service which came into force at the beginning of

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recalled for further offences. The Parole Board is conducting a review to establish the reasons for this increase. Initial findings have shown that the Board's decision making is not any riskier but the final results will not be known until later this year (Parole Board, 2004).

The fact remains that the majority of offenders are not recalled as a result of committing further offences. The Home Office has only recently started collating statistics to establish the reasons for recalls for those who are not on parole. The figures show that over a three month period at the end of last year only eight per cent of prisoners who had been given determinate sentences of more than four years but had not been granted parole were recalled for re-offending. For those serving shorter sentences of between twelve months and four years the figure is higher – four out of ten recalled for re-offending. However, this is not surprising as reconviction rates are much higher for people who are serving shorter sentences.

The rise in prison recalls is mainly a result of tougher enforcement by the Probation Service. The majority of those who are recalled to prison have failed to comply with licence requirements, such as

this year means that police forces will automatically receive prior information of a prisoner's release on licence. The protocol sets out the role of the Police Service 'to complement and, where appropriate, assist the Probation Service in the monitoring and supervision of those released on licence' (Home Office, 2005).

Offenders who are returned to custody face a range of problems and there are also particular challenges for the local prisons, already under considerable pressure, which receive them. A major concern is that offenders can often be recalled to prison but left uninformed about the reasons. Basic information is not passed to the prisoner or the prison authorities leaving prisoners frustrated and angry, creating problems for prison staff. Delays also mean offenders are unable to make prompt representations against the decision to recall them to custody. They may not even have been informed that they are able to make representations. Overstretched staff in overcrowded prisons struggle to provide appropriate legal advice and support. In a recent inspection of Birmingham jail the Prisons Inspectorate recommended that legal services provision should be increased (HM Chief Inspector of Prisons, 2004).

This is of particular concern given a House of Lords judgement which extends the opportunities for prisoners who make representations to be given an oral hearing.

Earlier this year the House of Lords ruled that the Parole Board's failure to offer two determinate prisoners, Smith and West (R (West) v Parole Board [2005] 1 WLR 350), an oral hearing to consider their representations was a breach of common law procedural fairness. The Law Lords took the view that a decision which results in an offender's further detention, possibly for many months or even years, requires the highest standard of procedural fairness, even though the individual is being returned to serve the remainder of a prison sentence which has already been imposed by a court after a fair trial. David Pannick QC has emphasised the importance of the House of Lords judgement "for its recognition that the common law requires that recall decisions must satisfy high standards of procedural fairness which will confer, in almost all cases, a right to an oral hearing" (Parole Board, 2005).

The House of Lords judgement is a significant victory in making the recall process fairer and just but equally important is the need to review the approach to technical breaches of licence conditions. Is returning a person to prison a proportionate punishment? As Carol Hedderman and Mike Hough note, the Probation Service's national standards on enforcement are very clearly focused on a tough, punitive response.

"Aside from offering advice about the number of appointments offenders will be offered, the standards say nothing about the standard of help an offender might reasonably expect or how compliancy might be rewarded. They are also couched in terms that focus on prohibiting poor behaviour rather than reinforcing appropriate conduct." (Hedderman and Hough, 2004)

One option is to introduce a graduated response so there is a hierarchy of action against breach that includes reminding offenders of the terms of their order and initial and final warnings. Ultimately offenders need to be given greater assistance and encouragement to comply with licence conditions. The current standards do not make provision for encouraging compliance by rewarding it. Hedderman and Hough have proposed 'a graduated system of positive rewards' that range from "awarding attendance certificates to early termination for good behaviour" (*ibid*). There is also the option of making it clear what is on offer to offenders in terms of access to employment, education, accommodation, finances, childcare and transport to encourage compliance.

In general offenders need much more support and advice to enable them to stay out of prison and successfully complete their sentence without being recalled to custody. At present advice and support provided about early release and parole focuses on getting out, rather than staying out, of prison. And recalled prisoners need to be given clear and prompt explanations for the reasons for their recall and then be able to access an efficient appeals process. If NOMS does not take appropriate action local prisons could be left struggling to cope, unable to do much more than warehouse recalled offenders in overcrowded conditions.

This article is based on a Prison Reform Trust briefing paper 'Recycling Offenders Through Prison'. Enver Solomon left PRT in June to become head of policy and research at the Revolving Doors Agency.

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