

Beyond system failure – tackling violence risks in the criminal justice system

Mike Nash argues that extended control of offenders in the community may also unfairly extend punishment and overstretch an already stressed system.

Violent offending appears to be back in fashion. Not just as a criminal activity, but also as behaviour that media and government take a great interest in. For some time sexual offending, particularly predatory paedophilia and even newer forms of internet related sex offending, have hogged the headlines. However alongside reported increases in knife and gun related crime have come high profile cases of serious further offending by those released early from custody. These cases (see HMIP 2006a and 2006b) have, as expected, provoked a significant government response. Not only is the Home Secretary planning to “rebalance the criminal justice system in favour of the law-abiding majority” (incidentally a group described as a ‘chimera’ by Karstedt and Farrall, forthcoming *BJC*), but is proposing further draconian action against the

aid judgement and should certainly ensure greater consistency in decision-making but they can still be wrong.

What is important is that those at the front end of dangerousness, probation, prison and police officers, alongside health and hostel staff, are as well equipped as they can be to form good professional judgements. But they also need the time to really get to know offenders. Many offenders at the very serious end of the spectrum are good at demonstrating their compliance and reform, whilst continuing to manipulate situations and circumstances that might enable a repeat of their serious criminal behaviour. To get behind this façade not only requires systems to work more efficiently at exchanging information, but for practitioners to be good enough to recognise behavioural signs and relate them back to the circumstances of previous

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potentially dangerous. This word ‘potentially’ is important because we must remember that dangerousness is a future event that might or might not happen. We therefore need to be cautious in continuing to punish people for offences they might, but equally might not commit.

In essence it could be argued that the Government are closing the stable door after the horse has bolted, although in these cases the door was held open for the offender to walk out. The door was opened because these offenders were deemed to be safe for release – they later proved not to be. An immediate response is to blame system failure and act to put in place more oversight and more rules and requirements. Understandably, and probably correctly, inquiries often stop short of criticising and blaming people. Yet we should remember that systems are comprised of people and that these people form judgments of risk. They will be wrong perhaps as often as they are right. Strengthening the system may help avoid future calamity but will not eliminate it. Improving risk assessment tools may

offending. This may be as much a case of having sufficient time for casework as much as different forms of training or expertise. Time is however inevitably constrained as the Government pursues a policy of mass incarceration, which owes as much to over zealous rules on enforcement as it does to an upsurge in offending. With more people coming through the system and, importantly, having their punishment continued post-release, it becomes ever more difficult to commit the time to monitoring dangerous violent and sexual offenders that is needed. Knowing the offender is vital, but this is not a quick process. It may also require a degree of trust on the part of the offender in their professional worker. This process may come about less readily if the offender’s supervision is fragmented, shared between agencies and programmes (including private and voluntary providers under contestability plans), with people rarely getting to know the individual concerned.

New developments emerging at the present time are unlikely to facilitate the process of creating space

within the criminal justice process to get alongside these serious offenders. For example, alterations to the workings of the parole board may see fewer people released early on licence. The inclusion of lay representatives as advocates of victims' issues, alongside an expectation that new parole members have experience of victims' issues, is meant to be a part of the rebalancing process. Yet at issue here is more a case of effective risk assessment. It is difficult to construct a case to suggest that being a victim or having knowledge of victims makes for better risk assessment. This is a skilled process and may require distance from rather than proximity to the experiences of victims. Knowing how offenders choose victims and manipulate situations is important but this does not necessarily come from being a victim. Perhaps more likely here is the Government's sub-agenda of planning to increase punishment by whatever means.

The involvement of victims at crucial points in the criminal justice process appears ready-made to have the potential to increase sentence lengths and time served by prisoners. The inclusion of statements from the relatives of homicide victims in court before sentence will undoubtedly add an emotive element to that process and it will be surprising if tariffs are not lengthened as a result. Equally the inclusions of victims' representatives on parole panel hearings may reduce the chances of the unanimous decision now required before release is authorised. It is hard not to draw the conclusion that the Government is intent upon *tasking* criminal justice professionals to act more punitively and are utilising aspects of the community to ensure that they do so.

As stated above, violent crime appears to be back on top of the Government's agenda and the methods employed to tackle it reflect the way in which sexual offending has been approached. There are proposals for example for a 'Violent Offender Order', which will ape many of the provisions of Sexual Offender Orders (Home Office, 2006a). The key point to remember here is that people can not only have much of their freedom of movement restricted without committing a further criminal offence, but can also lose their liberty if they breach the conditions of the order. Ostensibly these measures aim to include those currently incarcerated for violence and sentenced before the 2003 *Criminal Justice Act* introduced sentences for public protection and extended sentences on those assessed as dangerous. These new orders (still subject to detailed clarification) would appear to allow release arrangements to include the restrictive order on those who have to be released but are still considered to be dangerous. Violations can result in a maximum prison sentence of five years. Once again the feeling is that the Government believes that the original sentence given to the offender was not enough and they should not be back in the community. Therefore they will be released but 'under suspicion' and potentially incarcerated for

breaching any of the conditions such as curfews and banning orders. They therefore become effectively re-criminalised without committing a further crime.

It remains to be seen if the 'Violent Offender Order' eventually becomes used in the same way as a Sex Offender Order. Under these provisions, people 'giving cause for concern' with a history of sexual offending can come under the restrictive conditions of the provisions – without a further offence being committed. If applied to violent offenders in similar fashion the pool would become very deep indeed.

In an era of end-to-end offender management, we are seeing the 'end' pushed further into the distance. The Government appear to want to keep more people in the system for longer. Unfortunately there is a chance that too many of these people will be sucked into extended punishment and control by nature of the offence category they are in rather than their actual behaviour at the time. Each of these measures is going to swell the size of the criminal justice caseload and the precious time needed to really get to know those most likely to pose the greatest risk will be further reduced. The system is being strengthened but few people appear to be thinking of the system operators' capacity to work effectively within it.

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