

Enver Solomon writes on recent developments in criminal justice.

Making sentencing clearer

Following on from its wide ranging review of the criminal justice system published in July 2006, the Home Office has set out a range of proposals to 'simplify sentencing' and make it 'clearer'. The consultation document, *Making Sentencing Clearer*, proposes reforms to the sentencing arrangements for dangerous offenders and changes to improve public understanding of sentencing.

The options put out for consultation include:

- making sentences easier for the public to understand by explaining more clearly that fixed term determinate sentences comprise two parts, one in custody and one on licence in the community;
- giving judges more discretion to calculate and more clearly express how long dangerous offenders will spend in prison;
- making it possible for some prisoners who present a serious risk to the public who have fixed sentences, to be held in prison beyond the automatic halfway release point;
- giving offender managers a quasi-judicial function to deal with a breach of a community order by varying the punishment without having to go back to a court; and
- reducing demands on probation resources by reducing the use of community orders for less serious offenders so that probation can focus on supervising more serious offenders. Options range from legislative changes such as removing the community order from the sentencing options for particular kinds of offences to informal efforts to influence the context in which sentencing decisions are taken to allow for self imposed restraint on the part of sentencers.

The consultation document is available at: http://www.noms.homeoffice.gov.uk/news-publications-events/publications/consultations/Making_sentencing_clearer_consul?view=Binary

Anti-social behaviour

The Home Office has announced proposals for further powers to deal with anti-social behaviour. They have been put out to consultation, according to the Home Office, in response to police and local authorities requesting to increase the range of options for frontline staff to tackle anti-social behaviour. The proposals include

- a referred Penalty Notice for Disorder (PND) designed 'to give teeth' to informal Acceptable Behaviour Contracts. Police officers planning to issue a PND – for example, in relation to drunken behaviour – will be able to suspend

the financial penalty for up to six months, the maximum length for an ABC – on condition that the offender signs an Acceptable Behaviour Contract agreeing to keep out of trouble. Failure to follow the contract would mean an instant £80 financial penalty paid by the offender (or their parent). If the ABC is adhered to, the PND will be cancelled;

- a new Premises Closure Order providing powers to close a variety of premises causing a range of anti-social behaviour, for example, excessive noise and rowdy behaviour, to be closed down and sealed for a set period, regardless of tenure.

Other proposals being implemented to strengthen existing powers to tackle anti-social behaviour, but not being consulted on, include

- raising the top rate PND financial penalty from £80 to £100;
- increasing parents' responsibility for such financial penalties incurred by under 16s;
- restricting the use of PNDs for chaotic individuals with substance misuse problems and encouraging the use of conditional cautions involving a requirement to be assessed for substance misuse;
- exempting PNDs for violent offences from recorded crime figures so that there is not a disincentive for the police to use them.

'Strengthening powers to tackle anti-social behaviour' is available at <http://www.homeoffice.gov.uk/documents/cons-asb-powers/>

Intermittent custody

In November the Home Office abandoned plans for intermittent custody, introduced as a new sentence in the *Criminal Justice Act 2003* and piloted at two prisons (one male and one female) from 2004.

The sentence was intended as a punishment for offenders who had committed serious offences, but who did not present so much of a risk to the public as to require immediate full-time custody. The intention was to enable prisoners to retain their jobs or discharge their childcare responsibilities more successfully by serving a custodial sentence only at weekends or only on weekdays. It was seen as an innovative development that had originally been proposed in the Halliday review of sentencing that informed the 2003 Act.

The Home Office decision to withdraw the sentence was taken despite an evaluation of the pilots which came to a number of favourable conclusions. These included the fact that judges, probation officers, and offenders serving the sentence, all felt it was a valuable addition to the sentencing options. The majority of prisoners who were employed prior to their sentence were able to keep their jobs, and all those living with dependent children continued to do so during their sentence.

There were also some significant drawbacks. It was considered to be a 'niche' sentence that was infrequently used. A key problem was the lack of uptake for weekday periods in custody, meaning prison cells were left empty outside of weekend occupation. At a time of severe prison population pressures this was clearly considered to be unacceptable.

Along with the indefinite delay to the implementation of the custody plus sentence, the abandonment of intermittent custody, means that two key sentencing reforms from the *Criminal Justice Act 2003* intended to address the lack of support and supervision for prisoners serving short sentences have not been introduced.

Further information and discussion is available on the Mind website at www.mind.org.uk and the Mental Health Alliance website at www.mentalhealthalliance.org.uk – as well as information about getting involved in the campaign against the current Bill.

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Is criminal justice working?

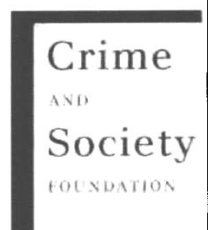
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capacity to think. Within such institutions there is a constant pressure on staff to respond to the primitive communications of those who are resident in unhealthy, distorted ways, just as we respond to the problem of violence collectively as a society. Institutional dynamics may come to mirror the societal impetus to deal in talion law. It is well established that there are high rates of mental disorder amongst inmates within our prisons (Singleton *et al* 1998). The consequence of grouping people with personality disturbances together is that the institution inevitably becomes infected by those who inhabit it, and a constellation of disturbed dynamics is set in motion.

Our gut response is to respond to violence in a thoughtless way, at best as a problem which needs to be eliminated and locked away. Clearly there are some people who have to be physically restrained. But by shifting our view and maintaining our capacity for thinking, violence provides useful data; seen from a different point of view, what at first appears to be a problem can be a source of information, a communication about the experience of shame, humiliation, vulnerability and fear, which the perpetrator cannot bear to experience and thus forcibly locates in someone else. Our wish as a society to forcibly relocate these experiences with the perpetrator once again can perpetuate rather than address the problem of violence in society. ■

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Standing Commission on Custodial Deaths to bring together the experiences from the separate investigation bodies as the most effective way to ensure that the lessons of past custodial deaths are learned in order to prevent or minimise future violations of Article 2 of the European Convention on Human Rights (Parliamentary Joint Committee on Human Rights, 2004c). An over-arching body could look beyond individual deaths and identify key issues and problems arising from the investigation and inquest process and monitor the outcomes and progress of inquest findings. The Standing Commission could play a key role in the promotion of a culture of human rights in regard to the protection of people in custody. It could provide a mechanism for an examination of broader thematic issues as well as issues of democratic accountability, democratic control and redress over systemic management failings that fall outside the scope of the inquest.

The continuing high toll of preventable deaths of vulnerable people in custody make it absolutely vital that this closed world is open to independent inspection and investigation and held to account when human rights abuses occur. ■

Deborah Coles is Co-director of INQUEST.

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suggests that they will also have a negligible impact.

There has, however, been a renewed emphasis on educational programmes. Rio Ferdinand has recently signed up to the Damilola Taylor Trust's campaign, 'Respect Your Life Not a Knife', which hopes to reduce the levels of knife carrying by children and young people. "Rio: knives aren't cool, kids" ran the headline in the *Sun*, which has backed the campaign. Funding to the tune of £1 million has also been provided by five charitable trusts to five organisations to carry out anti-knife work in London. It is hoped that these will be successful but that remains uncertain until they are evaluated.

And so, back to the beginning. First, there has not been enough research into knife carrying and knife use; the nature and scale of the problem is far from clear and, thus, designing successful interventions will be difficult. Second, the knife is merely an implement used in crime. Without dealing with the underlying causes of violent crime, initiatives to reduce knife usage will have only a limited impact. Knives may have recently occupied attention and resources, soon it might be guns again, and the public debate will lurch from one tool or expression of violence to the next, all the while leaving the root causes untouched. As research commissioned by the Home Office has stated: "First of all, one of the most consistent findings is that homicide, like most other violent crime and predatory property crime, is strongly associated with poverty and social inequality. This suggests that preventive strategies focused upon particular offences should be complemented by, and complementary to, broader long-term initiatives against poverty and social exclusion" (Brookman and Maguire, 2003).

Until these problems are addressed, illegal knife use will continue to be a problem.

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Knife Crime: Ineffective Reactions to a Distracting Problem? A Review of Evidence and Policy is available on the CCJS website, www.kcl.ac.uk/ccjs

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