



Community Sentences: a solution to penal excess?

Helen Mills

About the authors

Helen Mills is a research associate at the Centre for Crime and Justice Studies

Acknowledgements

Rebecca Roberts, my colleague, at the Centre for Crime and Justice Studies, has been essential to the process of developing the ideas in the Reform Sector Strategies project, which this paper is part of.

Thanks to colleagues at the Centre for Crime and Justice Studies for engaging in numerous conversations and helpful debates which moved this paper on in various ways. In particular thanks to Melinda Kerrison for gathering some of the statistical information drawn on in this paper.

Professor George Mair at Liverpool John Moores University and Doctor Mary Corcoran at Keele University provided valuable comments on an early draft of this paper.

The Centre for Crime and Justice Studies is grateful to the Esmée Fairbairn Foundation for the financial support to undertake this project.

Registered charity No. 251588

A company limited by guarantee

Registered in England No. 496821

Centre for Crime and Justice Studies
2 Langley Lane, Vauxhall,
London SW8 1GB

info@crimeandjustice.org.uk

www.crimeandjustice.org.uk

© Centre for Crime and Justice Studies

July 2011

ISBN: 978-1-906003-30-2

Community Sentences: a solution to penal excess?

Helen Mills

Contents

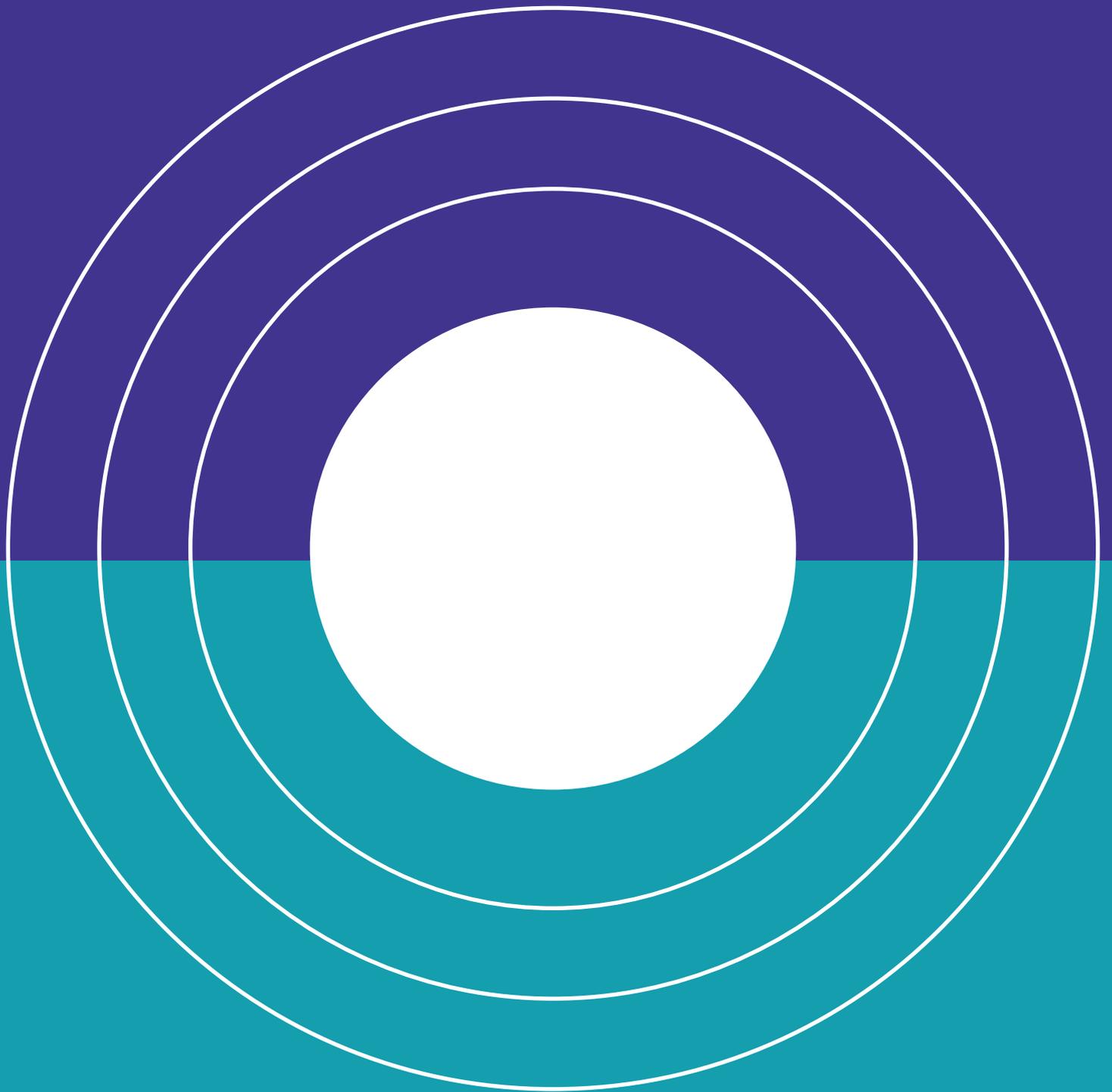
- 7** Introduction
- 11** Chapter 1: Reforming community sentences as a way to reduce the prison population
- 15** Chapter 2: How far did community sentences take us as an alternative to custody?
- 21** Chapter 3: Implications for those committed to challenging the use of custody
- 24** References
- 24** Appendix: Sources

Tables

- 17** Table 1: Prison and community sentence receptions pre- and post-2005 reforms
- 18** Table 2: Sentencing outcomes for indictable offences pre- and post-community sentence reforms (%)
- 18** Table 3: Proportion of community-based sentences imposed for summary offences

Figures

- 8** Figure 1: Prison population 1900–2009
- 12** Figure 2: Community sentences' role in strategies to tackle prison numbers
- 15** Figure 3: Prison and community sentence population, 2009 and 1998
- 16** Figure 4: Numbers commencing all community sentences, 1994–2009
- 17** Figure 5: Numbers commencing community-based sentences by type of order, 1994–2009
- 17** Figure 6: Short-term prison receptions and community-based sentence commencements, 2004–2009
- 18** Figure 7: Proportion of indictable offences sentenced to short-term custody, 2003–2009
- 19** Figure 8: Number of prison receptions under 12 months, 1994–2009





Introduction

This paper examines the use of community sentences as a mechanism for reducing reliance on custody in England and Wales. It focuses on the period since the late 1990s, a period in which there has been much consensus among political parties and the penal reform sector that addressing the problematically high prison population is bound up with the pursuit of 'better' community sentences.

The intention of this paper is to explore two key questions:

- **What can be learnt from the successive attempts to manage prison demands by reforming community sentences during this period?**
- **And what are the implications and challenges for penal reformers going forward?**

Community Sentences: a solution to penal excess? is the first of two papers produced by the Centre for Crime and Justice Studies (CCJS) as part of its Reform Sector Strategies project.

About the Reform Sector Strategies project

CCJS began the Reform Sector Strategies project in 2010, with the intention of exploring the extent to which current directions in penal reform offer genuine alternatives to custody in England and Wales. With this eighteen-month project, funded by the Esmée Fairbairn Foundation, we hope to generate an open, forward-looking dialogue about the development of coherent and credible approaches to tackling penal expansion, and to think through the challenge of reducing the prison population in the longer term.

As its name suggests, Reform Sector Strategies is a project explicitly for, and about, those engaged in the process of bringing hoped-for change to the penal system. This paper refers to 'penal reform organisations' and 'penal reformers'. This is intended to describe nationally focused organisations that view the use of prison as a last resort, are committed to policies aimed at rehabilitation rather than punishment, and undertake lobbying, media work, research and campaigning on criminal justice issues to achieve these ends. To keep the scope of this project manageable, the focus here is restricted to organisations largely devoted to national campaigning and lobbying, as opposed to service delivery.

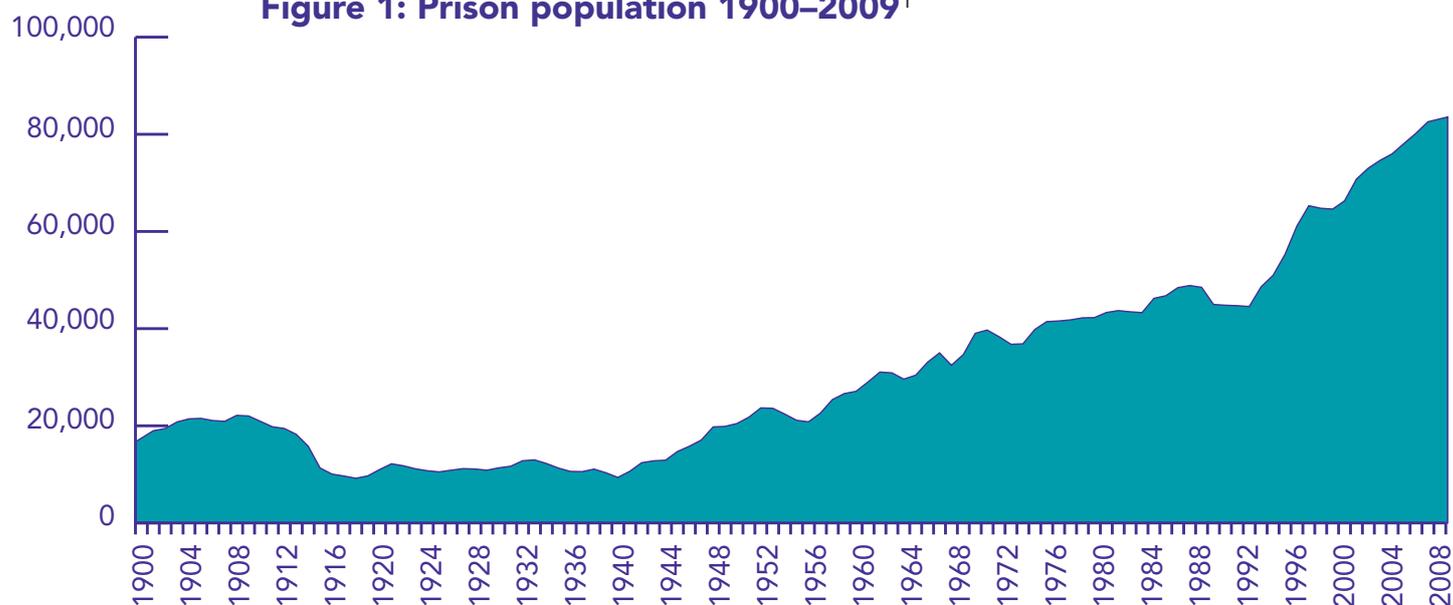
Categorising organisations by the term 'penal reform' incorporates a diverse range of activities, with key organisations and initiatives over the past decade including the Howard League for Penal Reform, the Prison Reform Trust and SmartJustice, Nacro, the Criminal Justice Alliance (and its predecessor the Penal Affairs Consortium), Payback, Rethinking Crime and Punishment, and Make Justice Work. The use of the single term 'penal reform' is not intended to suggest that the organisations considered under this umbrella are uniform or that they all agree.

This paper will be followed by a second, which will explore the challenges facing the development of coherent strategies to curb penal excess and offer a series of 'promising ideas' to address these challenges.

Why this paper?

The issues explored here are grounded in two beliefs. The first is that the use of prison is excessive. Increased prison numbers have been a continuing feature of the criminal justice system in England and Wales since the mid-1990s. By 2009, the prison population was nearly a third larger than it was in 1999. When considered in the context of the longer-term custodial trend, these prison demands represent a fundamental shift in the use of custody, with the prison population almost doubling over the past 30 years (see figure 1).

Figure 1: Prison population 1900–2009¹



The Centre for Crime and Justice Studies shared the desire that many had spoken about in the penal reform sector to halt this expansion and reduce the prison population.

The second starting point informing this paper is scepticism that the promotion and reform of community sentences is an effective mechanism to address the numbers in custody. This scepticism emerged from a previous CCJS project that monitored community sentences following their reform in the Criminal Justice Act 2003. Over the course of three years, until 2009, CCJS produced seven reports covering a range of subjects about how the reformed orders were working in practice. One of the most memorable contributions at a seminar held to coincide with the publication of the final report in the series was from a former Home Office official. In a discussion about the disappointing impact the new orders appeared to have had as a reducer of custody, he said, 'None of the attempts to reduce the custodial population through reforming community sentences have worked in the last 40 years.'

This struck us as an issue worthy of greater attention for two reasons. First, community sentence reform has been an active policy area and this looks set to continue with the Coalition. Since the late 1990s, government efforts to address growing prison numbers have been characterised by the attempt to persuade sentencers, and the public, that community sentences are credible enough to use in place of some custodial sentences and that material changes could be made to make community sentences more onerous is a thread that has linked numerous government attempts to address growing prison numbers (see chapter 1 for more detail).

¹ Average annual prison population. Excludes those held in police cells.

Second was our sense that a huge amount of time, energy and effort had been spent by penal reformers promoting community sentences over this period, at least partly with the hope of slowing and reducing prison numbers. Hence, whether community sentences are a mechanism to reduce reliance on custody is an important matter for those engaged in progressive penal reform, and one which would benefit from critical scrutiny given the continued public promotion of community sentences by many in the sector.

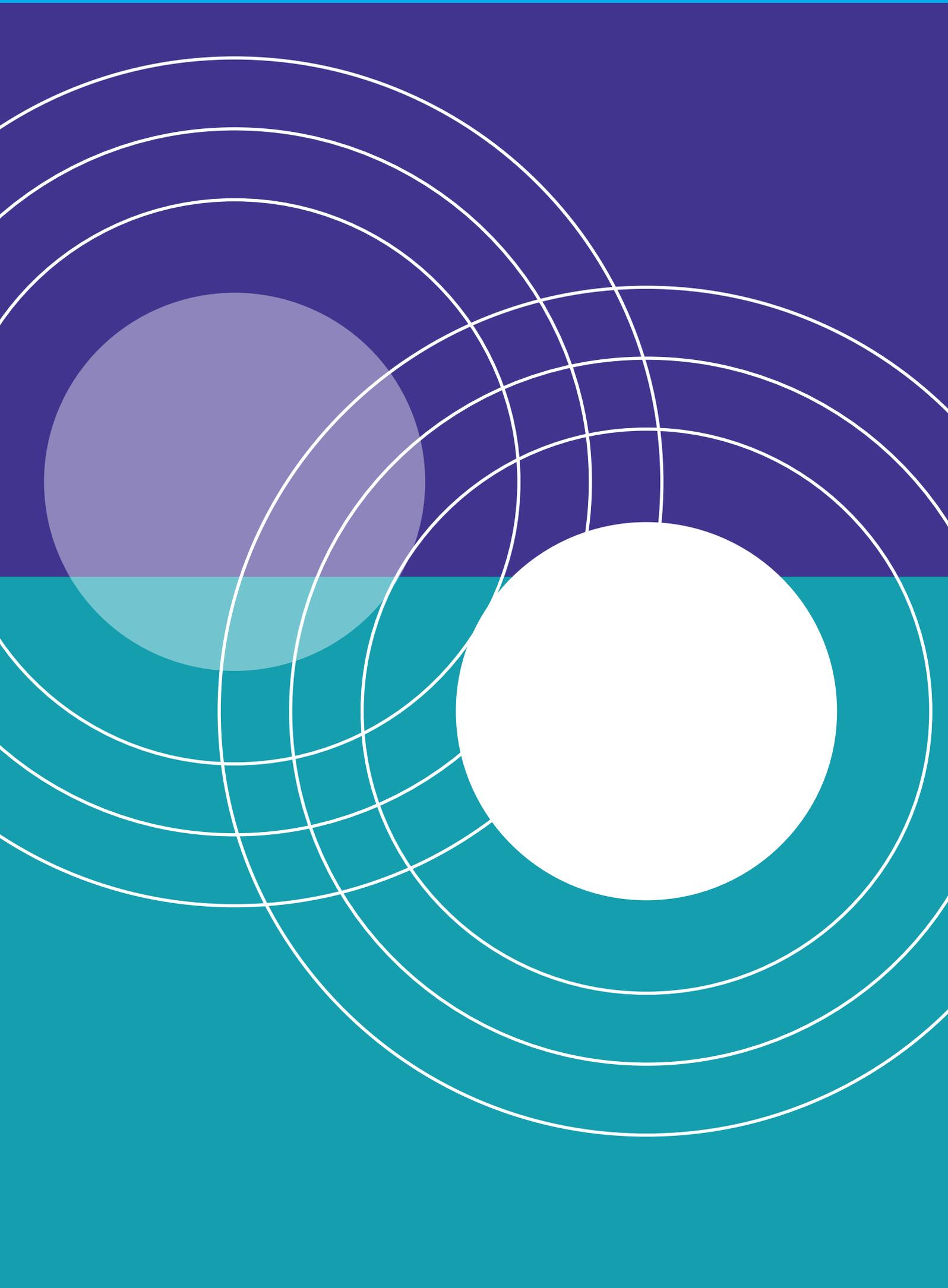
This paper sets out to examine the impact of community sentence reform and promotion on the size of the prison population and to reflect on the issues this poses for those committed to penal reform. It draws on:

- **Meetings with key representatives from penal reform organisations**
- **An analysis of sentencing data since the late 1990s**
- **Over 50 documents from this period, including reports from penal reform organisations, campaign documents and evidence to numerous select committee enquiries during this period.²**

The focus here on national campaigning and the overall prison population. Attempts to consider particular demographics of the penal population, such as women or young people, or to evaluate local pilots of community sentence practice are outside the remit of this paper.

Chapter one of this paper considers government policy and the penal reform sector's approach to promoting community sentences as an alternative to custody since the late 1990s. The outcomes of community sentence reform on the prison population in this period are then examined in the second chapter. The final chapter reflects on the findings from this inquiry and the implications for those committed to challenging the current use of prison.

². See Appendix for more details about the materials reviewed as part of this project.



Chapter 1



Reforming community sentences as a way to reduce the prison population

This chapter summarises government policy and the penal reform sector's approach in recent years to promoting community sentences as an alternative to custody. The Home Affairs Committee (HAC) report, *Alternatives to Prison Sentences*, is an appropriate starting point for considering how community sentences have been proposed as a way to control and reduce prison numbers (HAC, 1998).

The impetus for the Committee's inquiry was the growth in prison numbers that had occurred in recent years, a growth which, according to the Committee, could not be explained by increased crime or seriousness of offending. The report considered it 'of paramount importance to investigate credible alternatives to custody and to use them wherever appropriate' (ibid). With the exception of a page about fines and a section on early intervention, the report focused on community sentences. More specifically, it asked how community sentences might replace some custodial sentences.

The HAC report was not the first time community sentences had been linked to desires to control the prison population – this had been the case since at least the 1960s – but it set out a framework for thinking about the problem and the possible solutions to rising prison numbers that has been highly influential until the present day. The proposition takes the following form. First, the problem of, and consequently the solution to, prison growth is located within sentencing practice. The typical explanation for why the prison population has increased is that more severe sentencing has been driven by a more punitive climate. The way to tackle this is to create an environment for sentencers to make more and better use of community sentences. If sentencers are more able and willing to impose a community-based sentence where they would otherwise have imposed custody:

- **This would reduce the numbers entering prison and increase the numbers serving community sentences**
- **Hence, there would be a smaller future prison population than would otherwise be the case.**

There have been successive government attempts to manage prison numbers through the reform and promotion of community sentences since the HAC report. These have included new community sentences, reforms to community sentences practices, and campaigns to change the rhetoric around community sentences. In some sense, this type of community sentence reform appears to have been considered inherently a good thing by those involved in penal reform. Indeed, a decade on from HAC's report, a Justice Committee inquiry regarding sentencing found:

A remarkable degree of consensus amongst judges, practitioners, politicians and pressure groups alike, not only about the fact that prison should be the last resort, and reserved for the most serious and violent offenders, but also that non-custodial options are often more effective in reducing re-offending and in rehabilitation. This consensus makes it even more striking that we find ourselves facing the highest number of prison inmates since records began. (House of Commons Justice Committee, 2008)

Figure 2 summarises government and penal reform strategies regarding community sentence reform, with their stated desires to manage the size of the future prison population. This greatly simplifies and imposes uniformity on a much less tidy reality, and as such has serious limitations. But such an overview makes it apparent that, while the detail of Coalition policy is different from that of the former Labour government, promoting community sentences to sentencers and the public as credible sentences and material changes which aim to make community sentences more onerous remain a constant. This continuity exists alongside a penal reform sector which has promoted community sentences

in this period, at least partly in the hope that they will act to tackle prison expansion. Indeed, some penal reform campaigns have described community sentences almost in terms of a panacea:

By promoting the use of high quality community sentencing we can help achieve the [...] vision of less crime, safer communities, fewer people in prison.

More widespread use of effective community sentences would both allows us to reduce the use prison and reinvest resources into local communities to cut offending.

Our commitment wasn't to community penalties or to the probation service specifically. We care about community sentences because we are implacably opposed to the excessive use of prison.

For some working in penal reform organisations, community sentences may well be inherently a good thing. However, an alternative explanation is worth considering. For some, the investment in community sentences seems to have been adopted as a pragmatic position and one that some of those working in penal reform suspected would bring limited gains in terms of reducing prison numbers for a number of reasons.

Penal reform organisations tend to deem the use of prison in recent years as excessive and a concerning development. However, for some, to control future growth in prison numbers and perhaps reduce the prison population by a few thousand has been the scale of their ambition. For others, with an agenda on reducing prison further than this, this period was considered an adverse climate for an ambitious programme of penal reform. At a time of continued prison expansion and with an absence of political and public support for radically cutting prison numbers, slowing the pace of growth and preventing future expansion became legitimate targets for penal reformers to set for their work. Thus, even among supporters of greater reductionism, community sentence promotion may have been responding to a limited agenda regarding addressing prison numbers.

Figure 2: Community sentences' role in strategies to tackle prison numbers

Last Labour administration	
Why prison population growth is problematic	Predicted growth in prison numbers in the context of a record prison population had undesirable consequences for CJS cost and prison service strain to maintain the regime.
Proposals on how community sentences could address prison demands	Promotion of community sentences in place of some short-term custodial sentences. Community sentences to divert some people from short-term custody by encouraging sentencers to impose community sentences credible enough to replace some short-term custodial sentences. In public/media debate community sentences advocated as a more appropriate (not 'softer') response to crime than custody in some circumstances. ³
Key policies/campaign messages	<p>Changed available sentencing options in the community:</p> <ul style="list-style-type: none"> Introduced SSO, a new custodial sentence to be served in the community; reformed community sentences into one generic sentence with 12 requirements. <p>Promoted tough, effective community sentences and introduced measures intended to make community sentences more onerous:</p> <ul style="list-style-type: none"> Reduced discretion for managing community sentence breach and made consequences for breach more onerous; public campaign on community sentence benefits compared to custody in some circumstances; established intensive alternative to custody pilots. <p>Increased visibility of punishment in the community:</p> <ul style="list-style-type: none"> Introduced high-visibility jackets for unpaid work; established community payback where local residents could nominate and vote for unpaid work placements. <p>Attempt to better target prison and probation according to risk and seriousness:</p> <ul style="list-style-type: none"> Reconfigured separate prison and probation services into one organisation (NOMS); extended market of criminal justice providers to private and voluntary sectors.
Intentions for size of overall prison population	Mid-2000s: planned for pace of prison population growth to slow and for overall prison population to stabilise at 80,000 by 2008 (Home Office, 2004: 79)

The Coalition⁴

Why prison population growth is problematic Need to manage associated resource and cost implications of an overcrowded prison estate in context of 23% cut in MoJ budget over four years. Some currently subject to prison could be better dealt with by community sentences (in terms of cost-effectiveness and reducing reconvictions).

Proposals on how community sentences could address prison demands Encourage diversion at point of sentence by promoting community sentences to sentencers and the public as a credible, onerous and effective (not 'softer') response to crime in place of some custodial sentences. It was intended that those diverted from prison to community sentences would be less likely to come back to CJS due to improvements in reconviction rates for community sentences.⁵

Key policies/campaign messages

Introduce financial incentive for community sentence providers to achieve lower reconviction rates:

- Expand marketplace of private and voluntary sector providers in offender management under 'payment by results'.

Change available sentencing options in the community:

- Potential extension of SSO to custodial sentences over 12 months; give sentencers additional choice of not adding sentencing requirements (eg supervision, curfew, etc) to SSO.

Promote tough, effective community sentences and introduce measures intended to make community sentences more rigorous and demanding:

- Continue the intensive alternative to custody pilots; introduce intensive unpaid work orders.

Increase visibility of punishment in the community:

- Build on local community involvement to decide the type of unpaid work undertaken on community sentences.

Intentions for size of overall prison population Reduction in prison population by 3,000 by 2014/2015 (prison population around the same number as 2008).

Penal reform sector

Why prison population growth is problematic Increased punitiveness has led to some custodial sentences being served by those for whom it is not a justified or appropriate response. Rapidly expanded, costly and overcrowded prison system is detrimental to rehabilitation which could take place.

Proposals on how community sentences could address prison demands Reasoned arguments about benefits of community sentences and the wastefulness of short-term custody. Key audience for campaigning and lobbying work: politicians and policy makers, the public, and sentencers. Intention for community sentences to be imposed in place of some custodial sentences (to act as a diversion) and for improvements in community sentences to reduce the number of people returning to CJS.

Key policies/campaign messages

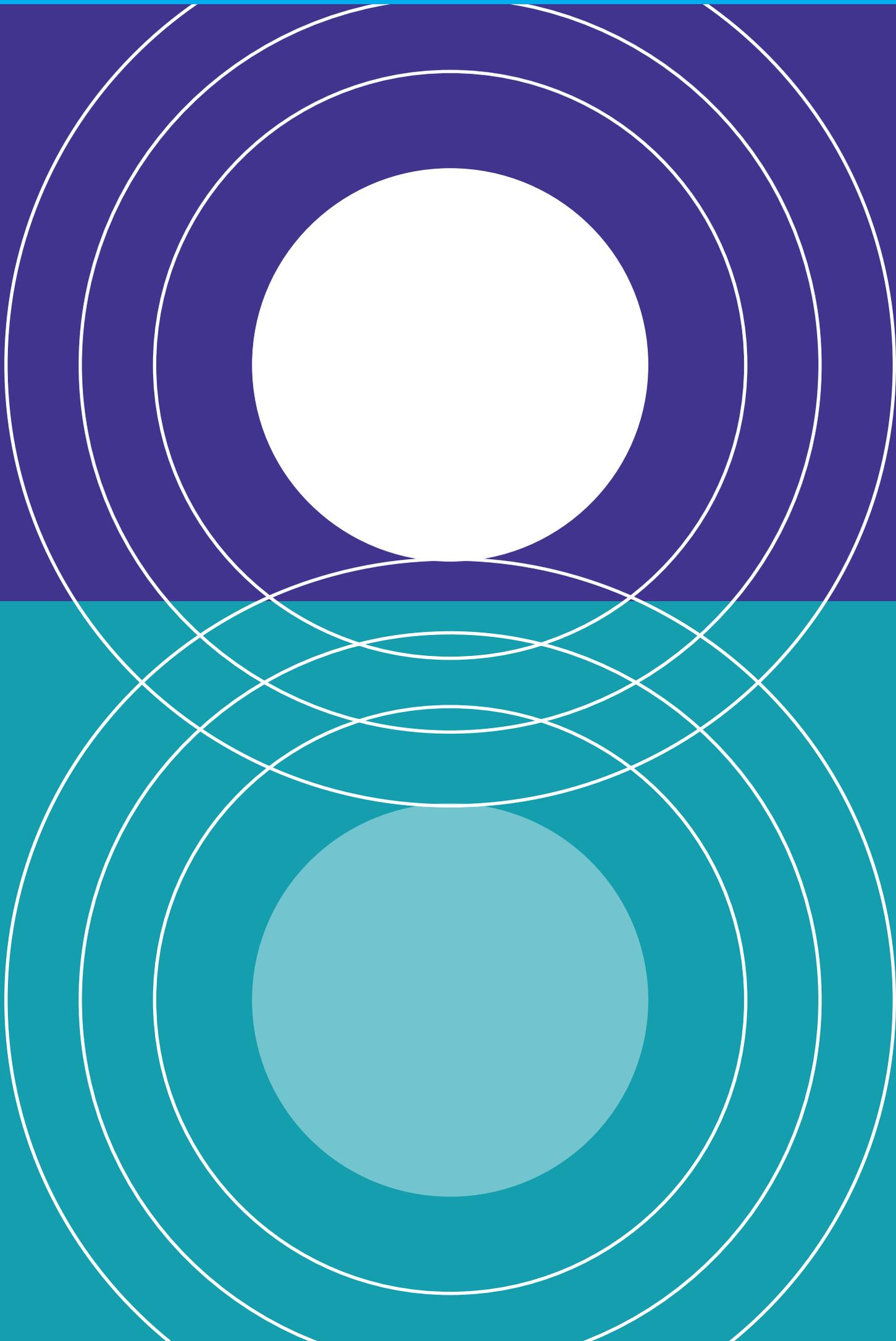
- Better quality, rational public debate about crime and CJS
- Community sentences are better than prison because they are more effective at reducing reconviction, cost-effective, rehabilitative ('tackle the causes of crime') and respond appropriately to 'vulnerable' groups (eg women, young people, those with mental health problems); they are tough and a means by those who commit crime pay back to the community
- Improve the quality of community sentences; address delivery problems and make their intentions better publicly understood
- Increase investment in community sentences, particularly rehabilitative work.

Intentions for size of overall prison population Reduction in overall prison population. Size of desirable prison population and scale of reduction hoped for not specified. Longer-term outcome for the use of custody to be reserved for serious, violent offenders.

³. Community sentence promotion was the key mechanism to slow the predicted flow into prison. Other strategies Labour implemented to attempt to control prison growth included the Home Detention Curfew and the early release scheme.

⁴. The Coalition's criminal justice policies outlined in the *Breaking the Cycle* green paper (2010) were out for consultation at the time of writing.

⁵. In addition to community sentence reform, other proposals put forward by the Coalition with the intention of reducing the prison population include: the reform of indeterminate sentences for public protection; reducing the minimum length of sentences; restricting the use of remand to those likely to receive a custodial sentence; and reinvigorating the use of fines in place of some community sentences.



Chapter 2



How far did community sentences take us as an alternative to custody?

In 2009 compared to 1998:

- The numbers subject to community sentences had increased by over 10 per cent and these community sentences were more onerous regarding breach.⁶
- The overall prison population was nearly a third larger by 2009 compared to 1998.

Figure 3: Prison and community sentence population, 2009 and 1998



Obviously the trend in prison numbers cannot simply be explained by the trend in community sentences. It could be the case that the greater number of community sentences in 2009 did have a displacement effect on custody but that other influences counteracted the effect on overall prison numbers. However, these snapshot figures do raise concerns that, in a period where the hopes of government and penal reform organisations to tackle record prison numbers were pinned to an increased use of community sentences, the use of community sentences simply increased alongside prison expansion.

Assessing more closely whether and to what extent the increased number of community sentences appears to have acted as a diversion from custody is a difficult business. There are no statistics that distinguish community-based sanctions given by sentencers instead of custody from community sentences given to people who would not have received custody anyway. By limiting the inquiry to a particular community sentence intervention intended to have this effect and considering a number of indicators, it is possible to establish the impact of a particular community sentence reform.

The changes to community sentences implemented in 2005 provide a specific intervention that can be assessed in terms of its intended diversion effect on custody. These reforms were introduced by the then Labour government, partly with the intention of persuading sentencers and the public that community sentences were credible enough to be used in place of some short-term custodial sentences. There were essentially two changes to the community sentence options available to sentencers. First, the range of community sentences previously available was

⁶. There was a 470 per cent increase in imprisonment for breach of non-custodial sentences between June 1995 and January 2009 (Ministry of Justice, 2009).

⁷. Court orders included: Suspended Sentence Order, Community Order and range of community sentences prior to *Criminal Justice Act 2003* reforms.

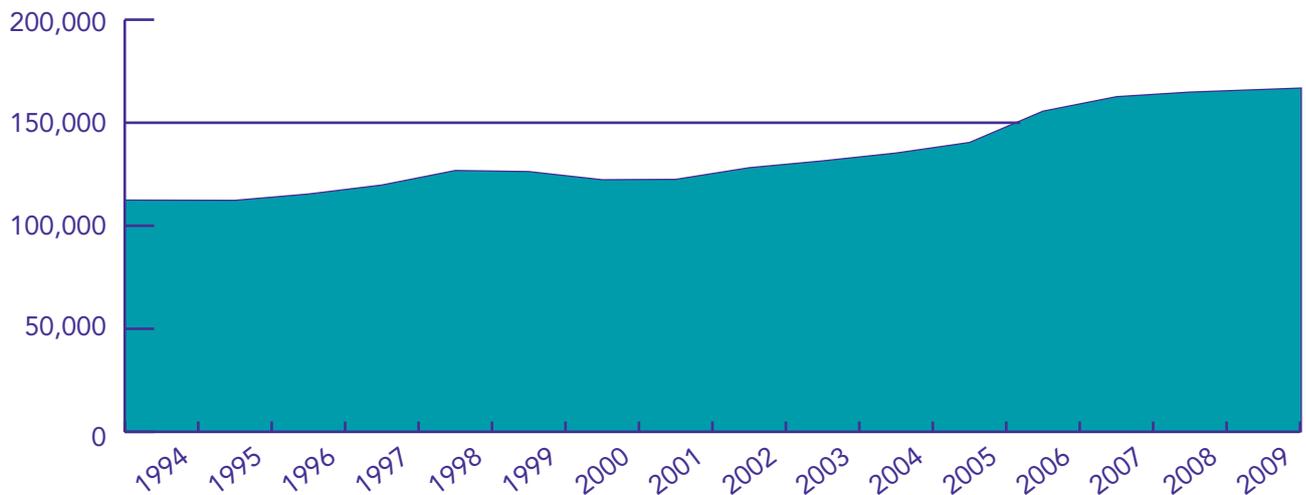
⁸. As at 30 June each year. Does not include those held in police cells, secure training centres or secure children's homes.

restructured into the generic community order, with a menu of 12 possible requirements. Second, the suspended sentence order (SSO) was introduced. This new sentence was aimed at those who had crossed the custody threshold, to allow sentencers to impose a custodial sentence that, in lieu of breach, could be served in the community; it applied to custodial sentences of 12 months or less.

Three things can be identified from the data about the impact of these reforms on custody. First, the sentences were popular. There was a notable growth in the number of people being given a community-based sentence following the reforms (see figure 4). If we look at the two types of community-based sentence available, we can see it was the more onerous SSO that was responsible for this growth in community-based sentencing (see figure 5). By 2009, the courts handed down suspended sentences for 10 per cent of all indictable offences, a far greater use of the SSO than the Home Office had predicted (Mair et al., 2007: 17).

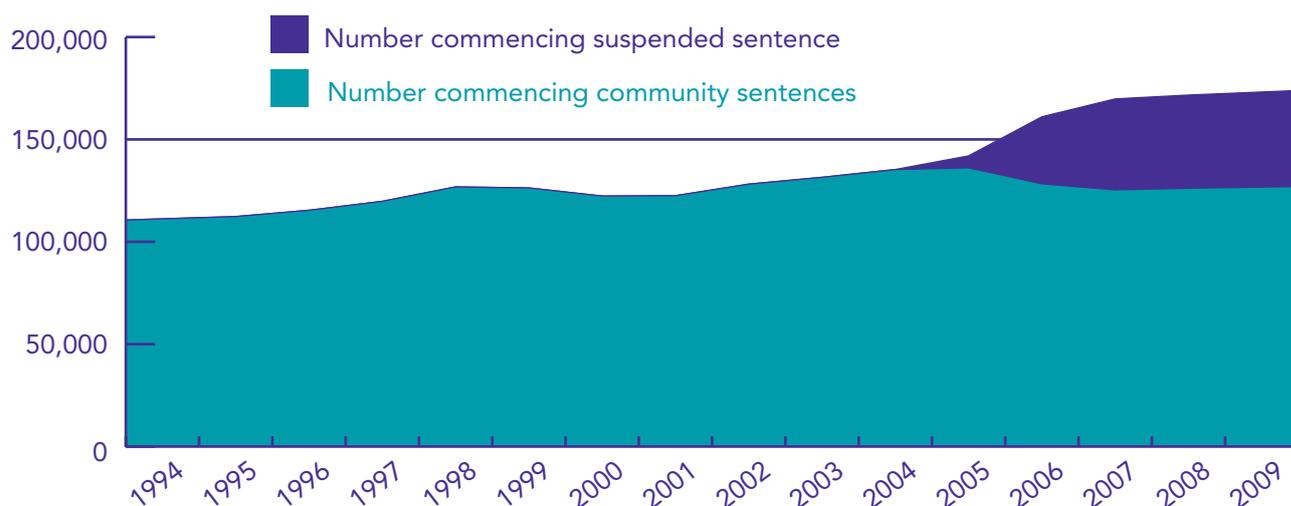
The fact that there are more community sentences, on the surface of it, seems a promising development for those who have invested in their promotion. What's more, according to the previous statistic, 10 per cent of all people sentenced to an indictable offence would have gone into custody had it not been for the introduction of the SSO, which allowed them to serve a sentence in the community. However, the second thing that can be established is that, although popular, these new sentences were not effective alternatives to custody. While it is impossible to assess precisely the impact of these reforms on courts' use of custody, all indications suggest that the growth in the use of community-based sentences had a marginal displacement effect on custody.

Figure 4: Numbers commencing all community sentences, 1994–2009



Detecting evidence of a diversion from short-term custody is the essential 'test' of the impact of these reforms on the use of custody because this is the population the reforms were principally anticipated to affect. Table 1 and figure 6 compare community-based sentence commencements with the number of receptions for prison sentences of less than 12 months pre- and post-2005 reforms. This shows that around 2,000 fewer people commenced a short-term prison sentence in 2009 compared to the year before the reforms were implemented in 2004. This is a 3 per cent decrease in short-term prison sentence receptions over the five-year period. Comparing this reduction with the upward trend in short-term prison sentences that preceded it (short-term prison sentence commencements increased by 3 per cent over the five years prior to 2005) suggests that the reforms appear to have had a diversion effect on short-term custody. However, in 2009, nearly 47,000 people commenced an SSO: a custodial sentence served in the community. The introduction of a higher tariff community-based sentence did not displace short-term custody in anything like a like-for-like way. The indication is that a significant proportion of those who received an SSO would have previously received a lesser sentence. Indeed, the SSO appears

Figure 5: Numbers commencing community-based sentences by type of order, 1994–2009

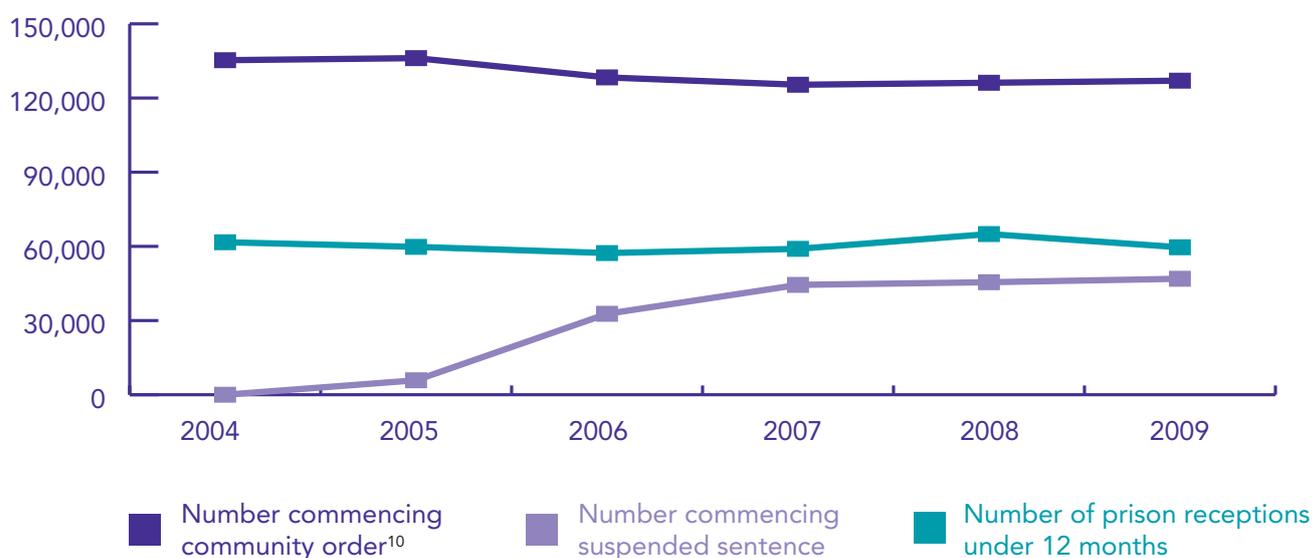


to have had a greater displacement effect on other community sentences than on custody. The reduction in numbers commencing a community order and its predecessors was double the reduction in numbers of receptions to short-term custody (reduced by 6 per cent and 3 per cent respectively).

Table 1: Prison and community sentence receptions pre- and post-2005 reforms

	2004	2009
Number of receptions for prison sentences of less than 12 months	61,669	59,636
Number of SSO commencements ⁹	n/a	46,897
Number of community sentence commencements	135,296	127,012
Total number entering prison for less than 12 months and commencing a community-based sentence	196,965	233,545

Figure 6: Short-term prison receptions and community-based sentence commencements, 2004–2009



⁹. Includes the community order and its predecessors.

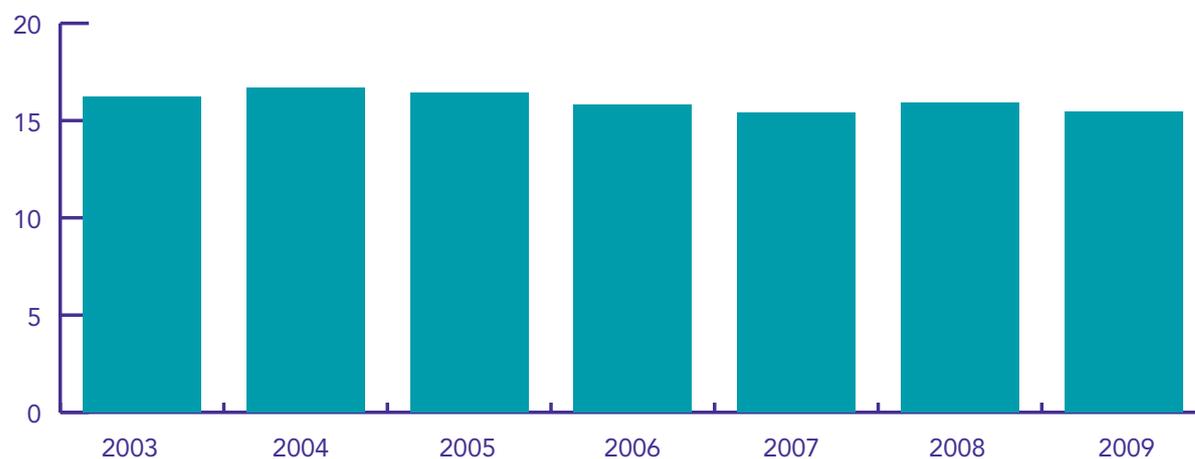
¹⁰. Includes community order and predecessor sentences.

Court sentencing trends support this interpretation that the tougher community sentences introduced did not, in practice, act as an effective diversion of custody. The courts' proportional use of custody for indictable offences in 2009 was the same as before the community sentence reforms were introduced in 2004 (see table 2). Figure 7 demonstrates that the rate of short-term custody for indictable offences for this same period reduced by 1 per cent.

Table 2: Sentencing outcomes for indictable offences pre- and post-community sentence reforms (%)

	2004	2009
Immediate custody	25	25
Suspended sentence	1 ¹¹	10
Community sentences (community order and predecessor sentences)	35	33
Fines	21	17
Other disposals	18	16

Figure 7: Proportion of indictable offences sentenced to short-term custody, 2003–2009 (%)



The combined high use of the SSO and the smaller reduction in short-term custody than the reduction in lower tariff sentences (community orders, fines and other disposals) suggests that, rather than significantly impact the courts' use of prison, this 'alternative to custody' reform was more effective at displacing other non-custodial sentences.

The increased use of community-based sentences for less serious summary offences over the past decade (see table 3) suggests that there has been a continuation of the longer-term trend Morgan described in 2003 as 'the silting up' of the probation caseload', with 'more and more offenders getting mired deeper and deeper within the criminal justice system for doing less and less' (Morgan, 2003: 14).

Table 3: Proportion of community-based sentences imposed for summary offences

	1998	2008
% community sentences ¹² imposed for summary offences	35	46
% summary offences sentenced to community sentence	5	8
% suspended sentences imposed for summary offences	18	31
% summary offences sentenced to suspended sentence	0.1	1.2

¹¹. Prior to the introduction of the SSO, a suspended sentence was in operation but had fallen into virtual disuse after successive restrictions on its use since it was introduced in 1967.

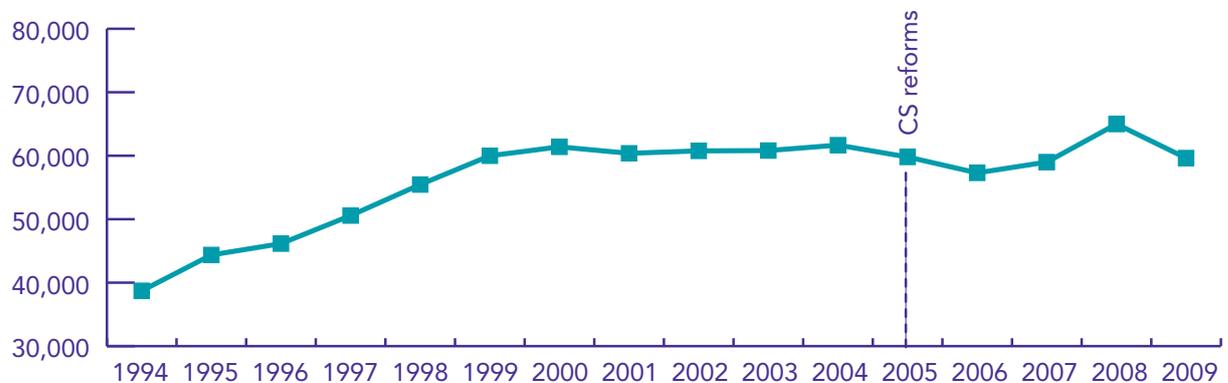
¹². Includes the community order and its predecessors.

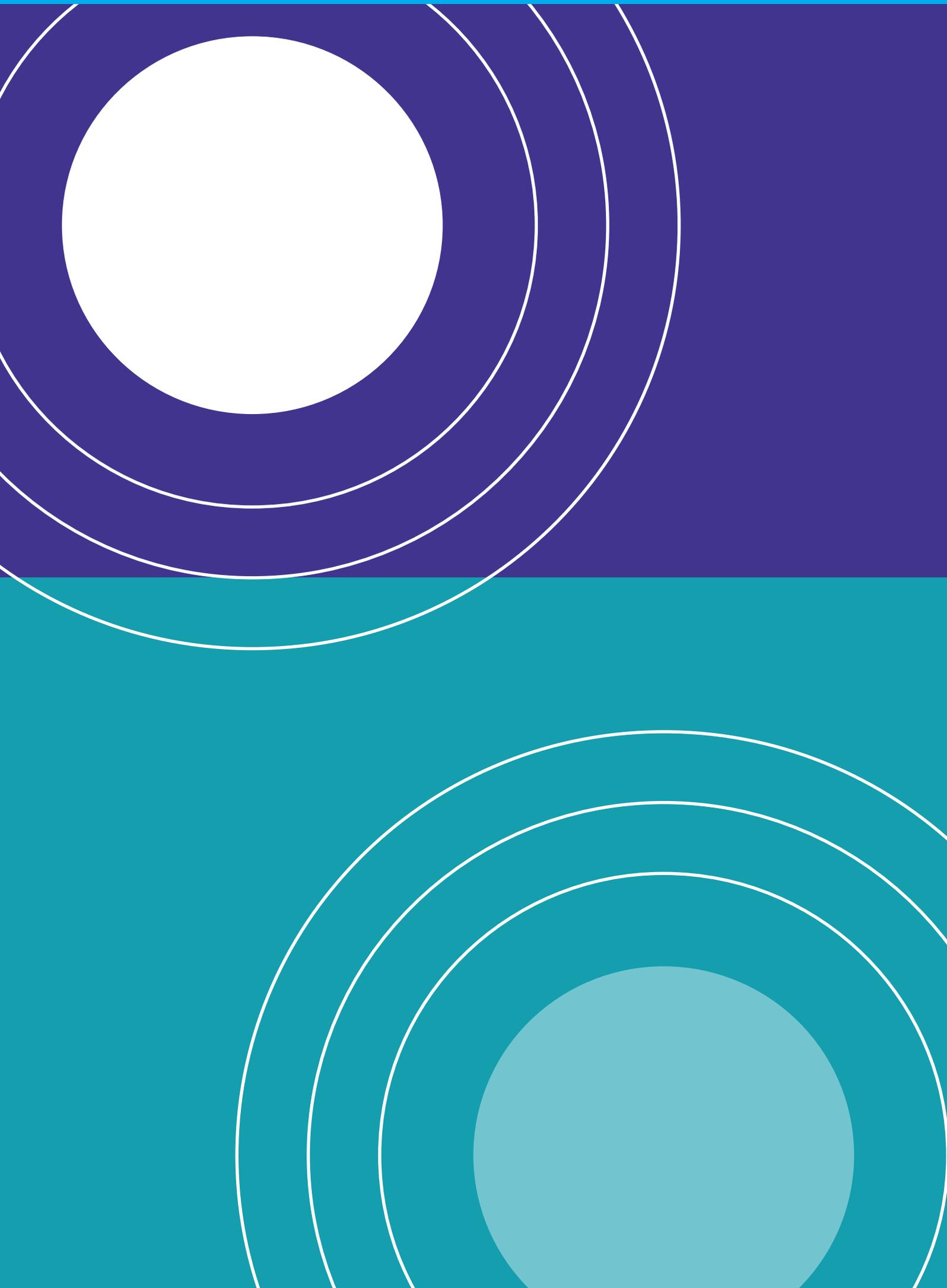
Figure 8 shows the trend in short-term custody since the mid-1990s. There are two significant points regarding the influence of community sentence reform on custody. First, the reduction in short-term custody that occurred was not sustained. There was an initial drop in the number of prison receptions for sentences under 12 months in the two years that followed the implementation of the reforms in 2005. However, the number of short-term prison sentence commencements then returned to around the same level as prior to this reform.

Second, the scale of increase in short-term prison receptions in the late 1990s that preceded the community sentence reforms was left unaddressed and largely unchanged. Thus the net change over the past 15 years was that short-term prison receptions grew by 57 per cent.

In sum, perhaps the 2005 reforms to community sentences could be said to have effectively maintained or stabilised the use of short-term custody when, without this intervention, it would have continued to increase. However, these reforms did no more than this. When considered in the wider context of prison population demands, the impact of reforming community sentences on short-term custody constituted a moderate, temporary adjustment.

Figure 8: Number of prison receptions under 12 months, 1994–2009





Chapter 3



Implications for those committed to challenging the use of custody

Andrew Bridges, then Chief Inspector of Probation, in evidence to the House of Commons Justice Committee Inquiry *Towards Effective Sentencing*, said:

I do think we have to learn lessons over the last 40 years (and we do not learn them) that alternatives to prison, so-called, turn out to be the opposite of alternatives to prison. When you create conditional sentencing of any kind, whether it was suspended sentences from 1967 right through to a number that were got rid of in the 1980s because people realised it was having the effect of increasing the prison population, and now we have reintroduced conditional sentencing with more suspended sentence orders than ever before, it is counter-intuitive.

*People say: 'We will make a rule that these will only be given to people who would have gone to prison otherwise', and it does not matter how well you try to draft the legislation and it does not matter how conscientious individual sentencers may be – and I am sure the majority of individual sentencers are very conscientious – in the end you expand those sentences and then, because a large proportion of offenders do not think about what they are doing, they breach the orders and they end up in custody. If – and this is a policy decision – the aim is not to increase the prison population by even more, please do not be deceived into thinking that sentences with a label of 'this is designed to keep you out of prison' will necessarily have that effect. **What we have to think about is recalibrating our expectations about what sentencing is supposed to achieve.***

(2007; emphasis added)

This paper is part of Reform Sector Strategies, a project that intends to contribute towards a constructive, forward-looking debate about effective strategies for thinking about, responding to and changing the current high use of custody. Its purpose is to consider how far community sentences, the long-backed alternative for tackling the massive increases in prison numbers, have taken us in achieving reductions in custody.

In practice community sentence reform has been shown to have serious limitations as a mechanism to reduce the use of custody:

- **Sentences introduced as explicit alternatives to custody have failed to act as like-for-like replacements for prison sentences**
- **Community sentences do not appear to have leveraged a sustained reversal in the numbers sentenced to short-term custody**
- **Reforms have produced tougher community sentences without the desired reduction in the use of custody and with unintended uptariffing consequences**
- **Efforts to reform community sentences in this period appear, at best, to have been a mechanism for *maintaining* the size of the short-term custodial population by putting a hold on possible future growth.**

The data in this paper have told a clear story of failure for those concerned with prison reduction. Reforming community sentences to impact on prison demands has been beset with problems in practice. Perhaps this is no different from any change implemented in the criminal justice system. No reform produces easy, wholeheartedly 'positive' change in the way it is intended. How can this failure be explained so that its implications are understood?

Perhaps the promotion and reform of community sentences was a good idea badly implemented. If there had been restrictions on sentencers' use of the more onerous SSOs, or perhaps if governments had invested more resources in convincing sentencers to impose a community rather than a custodial sentence, there would have been a more tangible impact on numbers in custody. This is an explanation the Justice Secretary Ken Clarke seems to favour:

*[Community penalties] are a crucial part of the sentencing framework. They can be a tough, effective way of making offenders turn away from crime and protecting the public. I am aware that for years successive Governments have tried to make community penalties more tough and effective. I'm also aware that **the public are still not convinced** that they are as effective as prison. **It is not a new problem at all.***

(Clarke, 2010; emphasis added)

Alternatively, perhaps governments weren't sufficiently committed to reforming community sentences to reduce prison demands. In this period there was a consensus around promoting community sentences and controlling prison numbers on the one hand. But, on the other, there was no ideological commitment to reducing the use of custody. Nor was there an exclusive commitment to community sentence promotion; rather, it coexisted alongside other drivers for criminal justice, including that of continuing to be palatable to a perceived punitive media and public.

Both these may well be true. However, there are more optimistic readings of the possibilities of community sentence reform and promotion than the evidence presented here about its ability to reduce custody suggests. These are assumptions seriously worth questioning by those committed to reducing prison numbers. Putting aside the disappointing performance of community sentence reform that has been described, it is not clear that a strong case for community sentence promotion as a mechanism to get to grips with the scale and nature of current prison demands exists.

This assessment will not be greeted with surprise by many working in penal reform. That there are limitations to promoting community sentences as a way of reducing the prison population may well be privately established but it is not publicly communicated in a clear and consistent way. This paper defines clear limits to reforming community sentences as a diversion from custody. Continuing to reform community sentence in the vein of the last decade can:

- **Control predicted future prison growth**
- **Manage the flow into short-term custody**
- **Adjust the overall numbers in prison by a few thousand.**

All of these are legitimate ambitions. But these ambitions should not be confused with addressing the step-change in prison use since the mid-1990s, described in figure 1. There may be other valid reasons for supporting community sentences, such as a commitment to their potential rehabilitative ideal. However, the evidence presented here suggests that the promotion and reform of community sentences will not fundamentally realise a longer-term vision for a significantly different, reduced custodial population. As the quote at the start of this chapter highlights, this is not a case of community sentence reform done badly, rather 'What we have to think about is recalibrating our expectations about what sentencing is supposed to achieve' (Bridges, in House of Commons Justice Committee, 2007).

Of course, community sentence reform could be done differently in future. Attempting to influence policy decisions to adjust prison numbers to between 80,000 and 85,000 is a legitimate exercise for those concerned with progressive penal reform and no easy feat. But there is no evidence to suggest that the outcome of this process will realistically achieve more than a tweak to the overall numbers in custody. For those committed to tackling prison numbers, this poses the question, is this enough?

To tackle the step-change in custody's use requires looking outside the confines of promoting and tweaking community sentences. Continuing to locate an ambition to address prison numbers in a debate about more and better community sentences comes at a clear price: a lack of credible, coherent strategies regarding longer-term decarceration. We now face a prison population dramatically different from that of a generation ago and a significant gap in the debate among those committed to penal reform about how to tackle these record prison numbers beyond mere adjustment.

References

Bridges, A. (2007), unpublished evidence to the House of Commons Justice Committee Inquiry, *Towards Effective Sentencing*.

Clarke, K. (2010) 'The government's vision for criminal justice reform', speech at the Centre for Crime and Justice Studies, 20 June.

Home Affairs Committee (HAC) (1998), *Alternatives to Prison Sentences*. London: Home Office. See www.gov-news.org/gov/uk/news/alternatives_prison_sentencesgovernment_response/48928.html

Home Office (2004), *Confident Communities in a Secure Britain. The Home Office Strategic Plan 2004–2008*, London: Home Office.

House of Commons Justice Committee (2008), *Towards Effective Sentencing*, London: HCJC. See www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/184/184.pdf

Mair, G., Cross, N., and Taylor, S. (2007), *The Community Order and Suspended Sentence Order*, London: Centre for Crime and Justice Studies.

Morgan, R. (2003), 'Thinking about the demand for probation services', in *Probation Journal*, 50 (1), pp.7–19.

Sources for all statistics data

Home Office/Ministry of Justice (various years), *Offender Management Caseload Statistics*.

Home Office/Ministry of Justice (various years), *Sentencing Statistics, England and Wales*.

Appendix: Sources

Penal reform organisations

Over 50 documents produced by penal reform organisations from 1998 onwards were reviewed, including reports, campaign documents and evidence to numerous select committee enquiries. Key initiatives and enquiries include (where possible grouped by organisation):

All-party parliamentary penal affairs group: various

Commission on English Prisons Today: 2007–2009

Corston, J. (2007), *The Corston Report: A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System*, London: Home Office.

Criminal Justice Alliance (2010), *Criminal Justice Areas for Action*.

Esmée Fairbairn Foundation (2002–2008), *Rethinking Crime and Punishment*.

Fawcett Society (2003–2008), *Commission on Women and the Criminal Justice System*, London: Fawcett Society.

Fawcett Society (2009), *Engendering Justice – from Policy to Practice. Final report of the Commission on Women and the Criminal Justice System*, London: Fawcett Society.

Home Affairs Committee (HAC) (1998), *Alternatives to Prison Sentences*, London.

Home Affairs Committee (HAC) (2010), *The Government's Approach to Crime Prevention*, London: Home Office.

Home Office (2006), *Making Sentences Clearer*, London: Home Office.

House of Commons Justice Committee (2008), *Towards Effective Sentencing*.
See www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/184/184.pdf

House of Commons Justice Committee (2010), *Cutting Crime: The Case for Justice Reinvestment*.

Howard League for Penal Reform (2010), *Take Action 2010: Less Crime, Safer Communities, Fewer People in Prison*. See www.howardleague.org/1014/

Howard League for Penal Reform, *Community Sentences Cut Crime Campaign* [campaign materials].

Make Justice Work/Matrix (2009), *Are Short-term Prison Sentences an Efficient and Effective Use of Public Resources?*

Payback (2000), *Community Crime, Community Punishment*.

Payback (Unknown), *Reflections on Payback's work*.

Penal Affairs Consortium, *A Joint Manifesto for Reform*.

Prison Reform Trust: various

Smart Justice, *Alternatives to Custody: Do They Work?*

Members of the Reform Sector Strategies team met with Roma Hooper and Roma Walker (Make Justice Work), Juliet Lyons (Prison Reform Trust), Jon Collins (Criminal Justice Alliance), Francis Crook (Howard League for Penal Reform), Antonia Bance (Corston Coalition), Dominic Williamson and Tina Braithwaite (Revolving Doors).

Bibliography

In addition to the materials referenced above, the following sources were consulted:

- Bennett, J. (2009), 'Exploring penal reform', *Criminal Justice Matters*, 77, London: Routledge.
- Blunt, C. (2010), *Churchill Speech*, Speech to Nacro.
- Bosworth, M. (2010), 'Introduction: reinventing penal parsimony', *Theoretical Criminology*, 14 (3), pp.251–256.
- Bottoms, A. (1981), 'The suspended sentence in England, 1967–1978', *British Journal of Criminology*, 21, pp.1–26.
- Bottoms, A., Rex, S., and Robinson, G. (eds) (2004), *Alternatives to Prison: Options for an insecure society*, Devon: Willan.
- Carlen, P. (2002), 'Women's imprisonment: models of reform and change', *Probation Journal*, 49, pp.76–87.
- Carlen, P. (2004), 'Controlling measures: the repackaging of common sense opposition to women's imprisonment in England and Wales', in Newburn and Sparks, *Criminal Justice and Political Cultures. National and International Dimensions of Crime Control*, Devon: Willan.
- Carlie, M.K. (1993), 'Prison reform in England: an overview', *International Journal of Offender Therapy and Comparative Criminology*, 37 (3), pp.197–219.
- Carter, P. (2003), *Managing Offenders – Reducing Crime: A New Approach*, London: HMSO.
- Casey, L. (2008), *Engaging Communities in Fighting Crime. A Review*, London: Cabinet Office.
- Cavadino, H. and Dignan, J. (2002), *The Penal System: An Introduction*, London: Sage.
- Cohen, S. (1985), *Visions of Social Control*, Cambridge: Polity.
- Corcoran, M. (2009), 'Bringing the voluntary sector to market', *Criminal Justice Matters*, 77, London: Routledge.

- Corcoran, M. (2010), *Snakes and Ladders: Penal Reform for Women under New Labour* (unpublished).
- Corcoran, M. (2011), 'Dilemmas of institutionalisation in the penal voluntary sector', *Critical Social Policy*, 31 (1), pp.30–52.
- Edgar, E. (2003), 'The net widens', *Prison Report*, 60, February, Prison Reform Trust, pp.23–24.
- Faulkner, D. (2007), 'Prospects for progress in penal reform', *Criminology and Criminal Justice*, 7 (2), pp.135–152.
- Grimshaw, R. (unknown) *Payback: The Impact of Payback: The Campaign for Community Penalties (1999–2001)*, London: Centre for Crime and Justice Studies.
- Grimshaw, R. (2002), 'Challenging penal populism: can 21st century communications techniques make a difference?', paper presented at the British Criminology conference 2002.
- Hansard (2010), Lords debates, 22 February, col. GC215.
- Herbert, N. (2010), Speech on government plans for prison reform, Howard League for Penal Reform, 22 October.
- Home Office (2004) *Confident Communities in a Secure Britain: The Home Office Strategic Plan 2004–08*. London: Home Office.
- Hough, M. Jacobson, J. and Millie, A. (2003), *The Decision to Imprison: Sentencing and the Prison Population*, Prison Reform Trust.
- Kaye, R. (2011), *Fitting the Crime. Reforming Community Sentences: Mending the Weak Link in the Sentencing Chain*, London: Policy Exchange.
- Loader, I. (2010), 'For penal moderation: notes towards a public philosophy of punishment', *Theoretical Criminology*, 14 (3), pp.1362–4806.
- Mair, G. and Mills, H. (2009), *The Community Order and the Suspended Sentence Order Three Years On: The Views and Experiences of Probation and Offenders*, London: Centre for Crime and Justice Studies.
- Matthews, R. (1989), 'Alternatives to and in prisons: a realist approach', in Carlen, P. and Cook, D. (eds.), *Paying for Crime*, Milton Keynes: Open University Press, pp.128–150.
- McMahon, M.W. (1992), *The Persistent Prison? Rethinking Decarceration and Penal Reform*, Toronto: University of Toronto Press.
- Ministry of Justice (MoJ) (2007), *Penal Policy: A Background Paper*, London: Ministry of Justice.
- Ministry of Justice (MoJ) (2008), *Community Sentences: Reducing Reoffending, Changing Lives*, London: Ministry of Justice.
- Ministry of Justice (MoJ) (2008), *Prison Policy: Update Briefing Paper*, London: Ministry of Justice.
- Ministry of Justice (MoJ) (2010), *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, London: Ministry of Justice.
- Ministry of Justice (MoJ) (2009), *Story of the Prison Population 1995–2009*, London: Ministry of Justice.
- Moore, J.M. (2009), 'Penal reform: a history of failure', *Criminal Justice Matters*, 77, London: Routledge.
- Morris, N. and Tonry, M. (1990), *Between Prison and Probation. Intermediate Punishments in a Rational Sentencing System*, Oxford: Oxford University Press.
- Nacro (1989), *The Real Alternative: Strategies to Promote Community Based Penalties*, London: Nacro.

- Piche, J. and Larsen, M. (2011), 'The moving targets of penal abolitionism: ICOPA, past, present and future', *Contemporary Justice Review*, 13 (4), pp.391–410.
- Ryan, M. (1978), *The Acceptable Pressure Group. Inequality in the Penal Lobby: A Case Study of the Howard League and RAP*, Farnborough: Saxon House.
- Ryan, M. (2003), *Penal Policy and Political Culture in England and Wales*, Winchester: Waterside Press.
- Ryan, M. (2009), 'Does the penal lobby matter any more?', *Criminal Justice Matters*, 72, London: Routledge.
- Scottish Consortium on Crime and Criminal Justice (2005), *Reducing the Prison Population*, Edinburgh.
- Straw, J. (1998), Speech to the Prison Reform Trust annual lecture. London?
- Straw, J. (2007), Speech to Howard League for Penal Reform AGM, 21 November, London
- Straw, J. (2008), 'Punishment and reform', speech to the Royal Society of the Arts, 27 October, London.
- Tombs, J. (2003), 'Justify prison not the alternatives', *Prison Report*, 60, February, Prison Reform Trust, pp.9–10.
- Tombs, J. (2004), *A Unique Punishment: Sentencing and the Prison Population in Scotland*, Scottish Consortium on Crime and Criminal Justice.
- Vass, A. (1990), *Alternatives to Prison. Punishment, Custody and the Community*, Sage: London.
- Wilson, C. (2001), 'Networking and the lobby for penal reform: conflict and consensus', in Ryan, M., Savage, S.P. and Wall, D.S. (eds.), *Policy Networks in Criminal Justice*, Basingstoke: Palgrave, pp.122–150.
- Worrall, A. (1997), *Punishment in the Community*, London/New York: Addison Wesley Longman.

The Centre for Crime and Justice Studies is an independent public interest charity that engages with the worlds of research and policy, practice and campaigning. Our mission is to inspire enduring change by promoting understanding of social harm, the centrality of social justice and the limits of criminal justice. Our vision is of a society in which everyone benefits from equality, safety, social and economic security.

www.crimeandjustice.org.uk

£10