

PRISON SERVICE JOURNAL

March 2020 No 248



Learning Together

Campaigning to Transform Justice

Interview with Penelope Gibbs

Penelope Gibbs is Director of Transform Justice. She is interviewed by Dr. Jamie Bennett, who is a Deputy Director in HM Prison and Probation Service.

Penelope Gibbs is the founder and Director of Transform Justice, a small charity set up in 2012 with the aim of helping to create a better justice system in the UK, a system which is fairer, more open, more humane and more effective. Transform Justice intends to enhance the system through promoting change — by generating research and evidence to show how the system works and how it could be improved, and by persuading the public to support those changes, and practitioners and politicians to make them.

This interview explores the issues that concern the charity, their role in criminal justice reform and generating public discourse. The interview took place in December 2019.

JB: Could you describe your professional background? How did you become interested in the criminal justice and penal systems?

PG: I almost fell into criminal justice by accident. I worked as a producer on BBC Radio 4's Woman's Hour and I covered many stories about justice. I was contacted by Families Need Fathers, who wanted the programme to reflect their concerns about the family courts. I became fascinated by family courts and decided to do something voluntarily to contribute to a fairer family justice system. So I applied to be a magistrate. It was a long and bureaucratic process but I made it in 2004 just as I left the BBC to start working for a charity, TimeBank. I sat part-time as a criminal magistrate for three years and stood down when I joined the Prison Reform Trust in 2007. There I led a five year programme — 'Out of Trouble' — to reduce the number of children and young people imprisoned in the UK. Juliet Lyon, then Director of the Prison Reform Trust, took a risk in employing me since I had little knowledge of the criminal justice system and 'Out of Trouble' was their flagship programme. But she believed, rightly I think, that the criminal justice voluntary sector needed 'new blood' — an injection of new ideas and experience.

JB: Why did you found Transform Justice? what was your aim?

PG: I founded Transform Justice in 2012 to work for a fair, humane, open and effective justice system. I have been and always will be a penal reformer, but my greatest interest is in reducing imprisonment, rather than what happens in prisons. The aims of Transform Justice are very broad and cover the whole justice system, but we have focussed most on the criminal justice system.

JB: How is your work funded?

PG: We are a very lean organisation. The team is small and all work virtually. The work is all funded by grant making trusts and foundations. Like other campaigning organisations, we would not take money from the government, so that we can always speak truth to power. We manage but, overall, I think the funding for criminal justice advocacy is inadequate. The criminal justice sector has a massive job to change the debate but our voice is small. Unless we can shift the debate, the delivery of services to those with convictions will forever be hampered.

JB: How effective is your approach as a reform strategy? How does it contrast or complement other methods such as grassroots activism, litigation or political lobbying?

PG: Different campaigning approaches should complement each other. Unfortunately the criminal justice sector is pretty under-developed in its approach to campaigning. We have virtually no grassroots activism and no community organising. We have hardly any social media campaigning. There is very little strategic litigation in criminal law. Transform Justice's approach so far has been to target those who influence policy.

We focus on a particular issue like diversion from prosecution, gather the best data and evidence and present pragmatic suggestions for change.² We are insider and outsider campaigners, using every means at our disposal to influence policy and practice. We do lobby in the sense of advocating with politicians for change, but we also try to engage civil servants, practitioners and the police. It's very hard to gauge success in campaigning, particularly when more than

1. <http://www.prisonreformtrust.org.uk/WhatWeDo/Projectsresearch/Childrenandyoungpeople>

2. http://www.transformjustice.org.uk/wp-content/uploads/2017/12/November2017_Less-is-more.pdf

one organisation is advocating on the same issue and when achieving success can take a long time. Perhaps Transform Justice's biggest success is in raising awareness of the risks to access to justice posed by the government's £1.1 billion court reform programme. This programme involves closing courthouses and replacing them with video 'skype' hearings or online processes. Transform Justice was one of the first organisations to highlight the major changes proposed, and to suggest that the new processes may threaten defendants' and prisoners' rights. We did original research for and published a report on the use of video-links from prisons and police stations.³ This research suggested that defendants could not communicate properly over video links and that judges might have unconscious bias against those they saw on screen. I think we have helped raise awareness and concerns about the implications of the programme for access to justice. We have been particularly tenacious in getting hold (via Freedom of Information requests) of documents which the government had not published. The most important of these was a report commissioned by the government from the Boston Consulting Group in 2016, which cast doubt on the viability of the programme. It took me two years and an appeal to the Information Commissioners' Office to get it released.

JB: You have a number of longstanding interests within the penal system. For example, you led the Prison

Reform Trust's 'Out of Trouble' programme aimed at reducing child imprisonment. There has been an extraordinary transformation in the criminalisation of children. The number of first time entrants to the criminal justice system fell 85 per cent in a decade, from 110,817 in 2007 to 14,400 in 2018. Similarly, the average youth custody population has declined from 2,914 in 2007 to 894 in 2018, a reduction of almost 70 per cent. To what do you attribute this transformation and what was your role in this?

PG: When I started leading the 'Out of Trouble' programme the chances of success in reducing child

and youth imprisonment looked slim. New Labour had ended up being tougher on people who committed crime than on the causes of crime, and children were caught in this punitive net. Tony Blair launched a street crime initiative and a target for offences brought to justice which had resulted in the numbers in child custody rising to over 3000 by August 2006.

I knew little about youth justice when I started but I consulted three wise men — Chris Stanley, Enver Solomon and Rob Allen. They suggested starting local and trying to get incremental change in particular areas.

This proved to be a winning strategy. By advocating for individual Youth Offending Team (YOTs) to reduce their demand for child custody, we started a movement of YOTs competing to bring down their rate of child custody rate (the percentage of those convicted in court who are sentenced to custody). We even succeeded in Merthyr Tydfil. They had the highest child custody rate in the country, higher than cities like Newcastle. I travelled there to meet the heads of the YOT and the local council. I'm afraid they didn't know what had hit them. No-one had ever suggested that local magistrates were imprisoning the local teenagers too readily. But they also didn't like being 'named and shamed' as the most punitive area in England and Wales. From then on, their numbers began to fall. The Prison Reform Trust was fortunate that others were pulling in the same direction. The government abandoned the 'offences brought to justice'

police target in 2008 and the Youth Justice Board continued to push hard for a reduction in numbers. We didn't formally co-ordinate activities, but we supported each other and worked in parallel. The numbers of children in custody in England and Wales began falling in 2008 and fell pretty steadily for eight years. The numbers should be much lower still, but we achieved a lot. I think there has been a sea-change in attitudes to child imprisonment. The only thing I regret about the campaign is that we did not advocate for a change in primary legislation to make it more difficult to sentence a child to imprisonment. Children can still be, and are, imprisoned for non-violent crimes, like breaching a

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3. <http://www.transformjustice.org.uk/wp-content/uploads/2017/10/Disconnected-Thumbnail-2.pdf>

community order or fraud. And the most used sentence for children is still the four month detention and training order, which involves a two month stay in prison. This length of sentence for a child achieves nothing and does a lot of damage. Reform of the legislation is unfinished business and I worry that serious youth violence may prompt a new punitive turn. I am working with colleagues in the Standing Committee for Youth Justice to campaign to narrow the criteria for using custody. We will be publishing proposals soon.

JB: What further reforms are, in your view, required in youth justice, particularly in youth custody?

PG: We need to prevent any child being imprisoned in a Young Offender Institution (YOI). They are not and never have been fit for purpose. Many YOI staff are good, but the prison service is dominated by an adult culture. The model of imprisonment is an adult one and prison officers get scant training to deal with challenging children. I am a supporter of the End Child Imprisonment campaign to have all children who are sentenced to custody accommodated in places staffed and designed for children's needs.

We also need to continue to embed the idea that less is more — that the sanctions applied to children need to be as light as possible and that the ideal is to divert from the formal criminal justice system. The review by the Campbell Collaboration of studies of 'juvenile processing' proves that system contact is criminogenic.⁴

I would bring in a higher age of criminal responsibility so that no child could be criminalised or imprisoned at the age of ten. I'd raise the age of criminal responsibility to 14, with a view to raising it still further progressively.

JB: Is the commissioning of the first secure school a welcome development?

PG: The proof is in the pudding for the first secure school. Will it be small enough? Will it look like a prison or a school? Will it be therapeutic? It's a good idea to break away from the old model of child custody and to try something new, but I fear the budget is not

sufficient for the kind of care needed. The children who end up in custody are deeply damaged. They need expert care and education in its broadest sense. We need to spend what this costs, and if it costs more than we have, we need to reduce the numbers in custody rather than compromise care. I really hope the new secure school can break the mould. But it's too early to say. And the decision to locate it in a building that looks like a prison (now Medway Secure Training Centre) is not the best start.

JB: You have also taken a close interest in the use of remand. Why is this an issue that has particularly been of concern to you?

PG: I've researched the use of remand for both children and adults.⁵ All unnecessary imprisonment is of concern but the over-use of remand seems particularly unfair. Depriving someone of their liberty is a major step, yet we imprison more people who are pleading not guilty than people sentenced to custody.⁶

JB: What have been the recent trends in the use of remand?

PG: Child and adult remand numbers have come down, but I still think we over-use remand. The fact that most of those remanded are released into the community at the end of their trial throws doubt on the original decision to imprison. Only those who really pose a real and serious danger to their community

should be imprisoned pre-trial. The current use of remand creates tragic cases. The woman whose new born baby died in Bronzefield was on remand. Unless she was accused of murder, I can't imagine why a heavily pregnant woman would be remanded.

JB: What alternative approaches or reforms have you promoted in relation to remand and bail?

PG: I think reducing remand needs a fundamental attitude shift away from risk aversion. Most people are remanded to prevent them committing crime while on bail or absconding. But very few people do either. I'm not sure judges and prosecutors really understand how grim it is in local prisons, nor the damage that can be done even by short periods on remand. We also need more options for accommodation for those awaiting

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4. <https://www.campbellcollaboration.org/better-evidence/formal-system-processing-of-juveniles-effects-on-delinquency.html>

5. http://www.transformjustice.org.uk/wp-content/uploads/2018/12/TJ-December-2018-PRINT_V2-December.pdf
http://www.transformjustice.org.uk/wp-content/uploads/2018/03/TJ_March2018report.pdf

6. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/842608/Receptions_Q2_2019.xlsx
table 2.1

trial. There is very little specialist bail accommodation so people get remanded because they are homeless. We also need better bail information in courts and prisons. Pre-Transforming Rehabilitation (TR) there were good probation services which helped put together bail packages for defendants. But bail information services just disappeared with TR. Unfortunately no-one in authority asked why they had gone. HMPPS are now trying to revive them and have run a successful 'pilot' in Preston Magistrates' Court. Such programmes are great and other 'nudges' could work, but ultimately if I were Lord Chancellor I would tighten up the legal criteria for using pre-trial detention.

JB: As a former magistrate, you have experience of working in the local justice system. What, in your view, has been the significance of the court reforms since 2010, which have seen over a third of court buildings closed, and a move towards greater use of technology?

PG: We still don't know the significance of the HM Courts and Tribunal Service court reform programme. Many courts have been closed but many more will be closed. The impact of this has been softened by the parallel fall in prosecutions. The crunch will come if police numbers are increased significantly and prosecutions shoot up. The shrunken court system may not be able to cope. The government wants to replace courts with 'skype' hearings where no-one is in the court-room⁷, but the technology (even if it were a good idea) won't be ready to be rolled out for years. Meanwhile the number of defendants and witnesses failing to appear for their court case is likely to increase.

JB: You have experience of being a magistrate and you have also researched the role. What do you see as the strengths of the magistrates system?

PG: The strengths of the magistrate system is that it brings ordinary members of the community into the heart of the justice system and offers judgment by peers. In the magistrates' courts, those members of the community sit on panels of three and decisions are made through discussion and, if necessary, majority decision. District judges sit alone, often without a legal

advisor. So an unrepresented defendant may be convicted and sentenced to custody on the decision of one person. I am concerned that no-one is infallible and investing so much responsibility in a single district judge risks miscarriages of justice.

JB: Are magistrates representative of the communities they serve? Has this changed in recent years?

PG: The challenge for the magistracy is that they are supposed to be representative of the people but aren't and never really have been. Magistrates were historically local gentry. They became more representative steadily through the 20th century but were still predominantly middle class, middle aged and white when Lord Falconer became Lord Chancellor in 2003.

He determined to broaden the intake of magistrates, modernised the way vacancies were advertised and began to make a difference. No-one since has taken a real interest in the diversity of the magistracy. Recently their numbers have been cut significantly and this has caused the average age to rise. So now over half the magistrates in England and Wales are over 60. Only 12 per cent are from BAME communities.⁸ We don't have data on class but this is probably where magistrates are least representative. Anecdotal evidence suggests most

magistrates are not just middle class, but professional, better educated middle class.

JB: What training and expertise do they have?

PG: Magistrates get three days initial training which is not enough. This training is topped up but the budget for magistrates' training has been cut back drastically. I sat as a magistrate 2004-7 and, looking back, I knew incredibly little about what I was doing, and I fear some of my colleagues were pretty ignorant too. The idea is that magistrates don't need legal expertise because they always sit with a qualified legal adviser. But it would be good if they (and paid judges) had training in basic criminology — in the science of what works to reduce crime and encourage desistance. I think magistrates would use fewer short prison sentences and remands if they had better training and development. Magistrates point out in defence that their decisions are seldom appealed. This is true, but is

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7. <https://insidehmcts.blog.gov.uk/2018/07/30/realising-the-potential-for-video-hearings/>

8. <https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/diversity/judicial-diversity-statistics-2019/>

not I think a measure of the quality of their decision-making. There are many systemic barriers to defendants appealing their conviction or sentence.

JB: How should the magistrates system be reformed? Do you believe it has a legitimate place in the justice system?

PG: My faith in the magistracy is wearing thin, not because I think the model is wrong but because it is not being implemented well. There is no point having lay magistrates if they are not recruited, trained and used effectively. And respected. Good magistrates tell me they are treated as 'free labour' and expected to put up and shut up. We need radical reform of, and investment in, the institution if it is to survive. As it is, I think the power to imprison should be taken away from magistrates since they simply don't have enough training.

JB: In your report on reframing crime and justice in England and Wales⁹, you focussed on public discourse and communication. In particular, the struggle that people in the criminal justice sector have in getting their agenda across to the public. How would you describe this problem?

PG: Advocates of penal reform — of a less punitive criminal justice system — have long felt they were hitting their head against a brick wall. They have been dismissed as soft liberals who don't understand what it's like to live on a crime ridden estate. The voice of the progressive criminal justice sector has been weak and has been drowned out by those who believe in being tough on crime. This means there has been no effective resistance to sentence inflation and to campaigns to introduce new offences, such as up-skirting.

JB: What was the approach you were advocating for reframing the debate?

PG: In 2014 politicians and the media were not listening to our pleas to reduce the prison population and reduce criminalisation. So I and colleagues in the Criminal Justice Alliance and Clinks decided to identify a better way of communicating. Led by Transform Justice we commissioned research from the international NGO, the FrameWorks institute on people's core beliefs about crime and justice, and what values and metaphors would be most successful. The FrameWorks research methodology is multi-disciplinary but relies most heavily on anthropology, neurology and

linguistics. Anthropologists teach that our cultural beliefs are at the root of our attitudes and views. So FrameWorks start by conducting anthropologically based interviews with a range of respondents. Their research on crime and justice in England and Wales revealed a profound belief in retribution and in deterrence. This is underpinned by a belief that those who commit crime are 'rational actors' who make a considered, calculated decision to commit crime having weighed up the potential benefits against the risks of being caught and sanctioned. The 'rational actor' belief is not limited to crime. Many people believe that those who are addicted to drink or drugs have made individual rational choices. These beliefs are very strong and prevalent across social groups. No single campaign will change those beliefs. We need to understand and acknowledge them and try not to trigger the rational actor and retribution beliefs. This is not easy.

The other key learning from the reframing research is that facts do not persuade, or at least not facts on their own. We need to use values and metaphors in our communications to engage people and persuade them of the need for progressive reform. Some values work better than others. FrameWorks found that if you use 'cost-effectiveness' as a value to persuade people of the use of alternatives to

imprisonment (as in 'we should use community sentences because they are cheaper than prison'), it backfires — people do not want to associate criminal justice reform with saving money. But pragmatism/problem-solving does work as a value. If we all communicated through using these values and metaphors we would, over time, be able to garner greater support for criminal justice reform.

Can this be achieved successfully in collaboration with the mainstream media? In the main, journalists hold the same beliefs as everyone else. They do not create public opinion, merely reflect societal beliefs. There is no point blaming the Daily Mail or the Sun for anything. We need to give the mainstream media newsworthy stories. But these stories should be chosen to reflect progressive criminal justice reform, and 'framed' with a value. Most of the recent fly on the wall documentaries about prison are counter-productive. They are edited to show prisons and prisoners at their most violent. The risk of such programmes is that they simply confirm the public belief that those who commit

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9. http://www.transformjustice.org.uk/wp-content/uploads/2016/08/UKCJ_MM_July_2016_Final-1-2.pdf

crime are bad people who deserve tougher punishment.

JB: Have you seen this done successfully?

PG: I think the Criminal Justice Alliance media awards ¹⁰ show it can be done well. I judged this year's awards and all the finalists showed that good journalism can change the debate. Adele Robinson of Sky News made a documentary about Circles of Support. As the Criminal Justice Alliance said 'The documentary powerfully questions the widespread belief that perpetrators of sexual abuse cannot be rehabilitated and, by highlighting that most people with convictions for sexual offences are released from prison and return to their communities, shows the 'lock them up and throw away the key' response to be counter-factual'. The public already believe in rehabilitation, so documentaries like this reinforce that belief.

JB: What do you see as the current and pressing problems facing the criminal justice system? What projects do you have planned for the future?

PG: The political and media reaction to the murders of Jack Merritt and Saskia Jones showed that we have a long way to go in shifting the debate towards progressive criminal justice reform.

I think the greatest problem facing the justice system is the strong public belief that all transgressive behaviour can be 'cured' by criminalisation and ever harsher sentences. The criminal justice system can deliver punishment but there is scant evidence that

criminal sanctions change the behaviour of those convicted. Some people need to be locked up to protect others and/or themselves, but locking up the minority of those who commit a particular crime (most are never caught) will neither deter nor, probably, curb that behaviour. We need to look to prevention, designing out crime, changing public attitudes and nudging people to reduce harmful behaviour. An example is domestic abuse — a scourge on our society. The incidence of domestic abuse has been going down in the same period that enforcement and punishment have got tougher for perpetrators. Tougher punishment is unlikely to be causing this reduction in abuse since there is good evidence that criminal sanctions do not reduce abuse¹¹. So something outside the criminal justice system seems to have brought about a change in behaviour.

We also need to listen to victims. Most victims want the person who harmed them not to do it again, but don't necessarily want them to be given a formal criminal justice sanction. We need to build our knowledge of how to prevent and successfully support people to stop committing crime.

In 2020 Transform Justice will be using its reframing research to begin a three year programme to promote out of court disposals and approaches. These are comparatively effective, popular with police and victims, but are being used less and less. This project will aim to increase confidence in diverting the right people from prosecution.

10. <http://criminaljusticealliance.org/wp-content/uploads/2019/12/CJA-awards-brochure-2019.pdf>

11. <https://whatworks.college.police.uk/toolkit/Pages/Intervention.aspx?InterventionID=27>