

PRISON BREAK

Tackling recidivism, reducing costs

by Ian Mulheirn, Barney Gough and Verena Menne

Crime costs the UK some £72bn each year. The failure to crack re-offending among prisoners serving short-term sentences is a key driver of these costs. Offenders with short prison terms comprise the large majority of those handed sentences each year, and more than 70% are back behind bars within two years of release. Each time they return to prison, the cost to the criminal justice system is around £60,000 per person.

A radical new approach to tackle re-offending with much less public money is needed in the decade to come. This publication sets out just such an approach. The SMF accountability model proposes:

- Splitting the short- and long-term prison populations to enable more accountable rehabilitation of persistent offenders on short-term sentences.
- Contracting out end-to-end offender management for all sub-12-month offenders to regional providers paid by results to reduce recidivism.

This new approach offers a step-change in outcomes from the criminal justice system, and substantial savings to both the public purse and wider society.

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ISBN: 1-904899-70-6
£10.00

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FIRST PUBLISHED BY

The Social Market Foundation, March 2010

ISBN: 1-904899-70-6

11 Tufton Street, London SW1P 3QB

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ACKNOWLEDGEMENTS

This project would not have been possible without the generous support of HP. In particular, the authors would like to thank Gazala Haq and Debbie Willis for their support throughout.

The authors would also like to thank the participants of a roundtable held in January 2010, in which the main themes of the project were discussed. They are also indebted to a wide range of experts, policymakers, practitioners and ex-offenders, whose ideas and insights shaped this report.

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EXECUTIVE SUMMARY

Britain is tentatively emerging from a severe economic recession that has ripped a deep hole in the public finances. The coming decade of austerity will affect all government departments. The Ministry of Justice (MoJ) faced a tough settlement in the Treasury's 2007 Comprehensive Spending Review, which required it to make savings of approximately £900 million per year by 2011. But the two main parties' announced spending priorities to 2014–15 imply that the cuts over the next three years will be much tougher. The MoJ can expect further real terms budget cuts of around 24% by 2014–15.

Without a radical microeconomic strategy for delivering a more effective criminal justice system for less money, the effects of reduced spending will result in costs being shifted onto other parts of the state and society. The cost of crime in the UK is estimated at some £72bn per year, of which £22.7bn falls to the exchequer in one form or another. This represents a real terms rise in public spending of around a third on 1998. The increased expenditure has been accompanied by a fall in crime levels by 36% over the period. It is clear that a step-change in the system's effectiveness will be necessary if deep budget cuts are not to transfer even greater costs, in the form of more crime, onto wider society over the coming decade.

High rates of re-offending are at the heart of both the public and private costs of crime. Over the past decade two-year re-offending rates for prisoners have remained in the region of 60–65%. But the major recidivism problem is among those offenders on short-term sentences. With some 70–75% re-offending within two years of release, they are by far the most prolific re-offenders. People given short-term sentences also comprise the vast majority of those sentenced to a prison term each year, making up 70% of the total.

Failure to deal effectively with this large and prolific offender group, and to stop their repeated return to prison, is therefore at

the root of the burgeoning costs of the criminal justice system. An ex-prisoner's return to prison costs the exchequer around £60,000 each time. Each year, the tens of thousands of short-term prisoners cycling through the system cost the exchequer around £3½bn. The cost to society in total has been estimated at around £10bn per year.

But despite the huge strain that this group is placing upon the criminal justice system, these offenders receive the least support and supervision of any offender group. The key to improving criminal justice system outcomes with substantially less money over the coming decade therefore lies in cracking the short-term offender problem.

Over the past 30 years, a strong body of evidence has grown up around the kind of interventions that can work to reduce the likelihood of prisoners re-offending. Targeting key risk factors – education, unemployment, accommodation, substance abuse, social networks and behavioural problems – has been found to have a large impact on re-offending. The best treatment programmes have been shown to reduce re-offending by 10–20%. Moreover, the effectiveness of interventions varies hugely from person to person; consequently one-size-fits-all solutions are expensive and inefficient. This means that when interventions are carefully tailored, rather than applied across broad groups of offenders, their effectiveness can be substantially higher still. Finally, it is clear that joined-up service delivery is essential if offenders' multiple problems are to be dealt with effectively.

Getting the system right could pay huge dividends. Among persistent offenders it would not be unrealistic to imagine that re-offending could be cut by something in the order of 20 percentage points. In terms of the costs of bringing offenders to justice, this would represent a saving of up to £1bn per year to the exchequer. Additional savings of up to £2bn per year would accrue to wider society.

But despite improvements in our understanding of what works, the adoption of best practice has been slow. Tailoring services to offenders' needs is something that is not the strong point of the existing criminal justice system. Lord Carter's 2003 review aimed to improve the system in this regard. The Review precipitated a re-organisation of the criminal justice infrastructure to break down divisions between the prison and probation services, and to ensure a better focus on managing offenders throughout the whole of their sentence – both inside and outside prison. Despite Carter's reforms, the National Offender Management Service has failed to make the impact that was hoped for, and recidivism rates have remained stubbornly high over the past decade. There are three reasons for this.

First, the joining up of the prison and probation services has been undermined by bureaucratic in-fighting. Despite the best intentions of the architects of NOMS, the desired seamless system of offender management has not been forthcoming, and a prison-centric system has emerged from the turf wars. The result has been that joined-up services have not emerged.

Second, a lack of resources, coupled with prison and probation overcrowding, have undermined resettlement, rehabilitation and accountability for outcomes. With prisons perpetually overcrowded, movement of prisoners around the prison estate is rapid and frequent. This undermines any interventions that might be effective; breaks down any accountability for offending outcomes; and leaves prisoners a long way from home, making effective resettlement and post-release service coordination impossible.

Third, the system remains extremely centralised, with only weak incentives to innovate, increase value for money, and to join up disparate services in a cost-effective way. The system is also characterised by little flexibility for frontline providers to tailor programmes to fit individuals' needs, despite the clear messages from the evidence base about the need for such flexibility.

A better approach must refocus the whole system on achieving the real goal of reducing re-offending, rather than absorbing resources in bureaucratic wrangling. It must also leverage new resources into the system to do the vital work that is necessary to prevent re-offending, particularly among the sub-12-month prisoner group. Finally, the right system must sharpen incentives for cost-effectiveness and innovative solutions to the recidivism problem.

The focus of central government needs to shift away from micro-managing *processes* and towards defining the desired *outcomes* to be achieved. This change of focus needs to be set within an outcome-based commissioning approach that puts the financial risks and rewards for reducing re-offending onto private and third sector providers. Harnessing the profit motive to desirable outcomes through payment-by-results, while keeping process requirements to a minimum, will have five important effects. It will:

- allow greater flexibility of provision to allow **tailoring** and targeting of resources;
- encourage **innovation** among providers;
- **join up** the delivery of disparate services;
- strengthen **central accountability** for expenditure; and
- provide the opportunity for **private investment** into public services at a time of public spending retrenchment.

Despite the proven potential of public services commissioned on this basis, payment-by-results is not a simple 'out of the box' solution. Rather, it requires careful system design that allows those who take on the risks and potential rewards to have sufficient control over the offender management journey for real risk transfer to occur. Previous attempts to suggest a model for linking payments to reduced recidivism have failed to propose a workable model because they are imposed on the existing prison system, which frustrates any attempt

to transfer sufficient control and therefore accountability. Without addressing the fundamental problem of prisoners in perpetual motion around the prison estate, we will fail to crack the problem of how to strengthen accountability for reducing recidivism. In addition, previously suggested models have usually been too small a scale for the MoJ ever to be sure whether, in paying for apparent good outcomes, it is rewarding real achievement or just a statistical anomaly.

What is needed is a model that: combines the transfer of risk with a real transfer of control of offenders in both the pre- and post-incarceration environments; operates on a scale where success is measurable; and allows providers to benefit from the huge economies of scale involved in joining up complex services. This is the basis of the SMF's accountability model. The key elements of the model are as follows.

- **Split short- and longer-term prisoner populations.** New and replacement capacity in the prison system that is set to come on stream over the next four years will be sufficient to accommodate the entire stock of sub 12-month prisoners. It should therefore be strategically distributed across the UK to allow the separation of short- and longer-term prisoners. This would have two benefits: it would enable the design and operation of dedicated rehabilitation prisons; and it would ensure that the target group is held and resettled entirely within their home region rather than being constantly moved around the prison estate.
- **Contract out all offender management for sub-12-month prisoners.** The MoJ should contract out responsibility for the entire prisoner journey, from incarceration to resettlement, to one public, private or third-sector provider in each region of England and Wales, for all offenders sentenced to prison terms of less than 12 months.
- **Ten regional prime providers.** Ten commissioning regions of the UK would be based on the existing offender management

regions. Each regional provider could expect to handle some 7,000 offenders each year. This would provide both economies of scale and sufficient volume for the MoJ to discern real improvements in performance as distinct from statistical blips.

- **A two-part payment.** Providers would be paid for achieving reductions in two-year reconviction rates, receiving a two-part tariff. The first element would be paid for achieving the secure and humane incarceration of each offender. The second part would be paid conditional on offenders not being reconvicted.
- **Staged outcome payments.** The second part of the payment to providers would take the form of a staged payment, rewarding them every six months, for up to two years, if the ex-offender has not been reconvicted. In addition to easing possible cash-flow problems for providers, this approach would mean that providers are also rewarded for reducing the frequency of offending – a socially valuable interim goal – not just for stopping it entirely.
- **Revenue neutral or better for the exchequer.** Payments to providers would be structured such that the programme cost for MoJ would be no higher than current expenditure, unless recidivism rates fall among comparable offenders.

In commissioning for outcomes and paying for their achievement, this model offers the prospect of introducing private investment into the offender management system at a time when departmental spending will be slashed. By giving providers complete control of the pre- and post-release environment for offenders in their region, the SMF model drives much stronger accountability for results than any previously suggested approach. Only with this level of accountability can outcome-based commissioning be made to work. If implemented, we can expect to see a substantial reduction in recidivism, offering immediate cost reductions for the criminal justice system of up to £1bn per year.

The SMF accountability model argues for a rethinking of the role of prison for short-term offenders, locating it as one part of a much more holistic approach to preventing re-offending. This can only be achieved by separating short-term prisoners from the rest of the prison population, and paying providers by results for tackling recidivism through their interventions in both the pre- and post-release environments. The challenge for a payment-by-results approach is not to be flawless, but to offer a substantial improvement in recidivism rates that have blighted Britain for too long. It is clear that the approach advocated here can achieve that goal over the next decade.

1. CRIMINAL JUSTICE SYSTEM IN CRISIS

THE COST OF CRIME AND THE NEED FOR A NEW STRATEGY

Britain is tentatively emerging from a severe economic recession that has ripped a deep hole in the public finances. Public borrowing, projected by the Treasury at £178bn for 2009–10, is at record levels. Significant and sustained public spending cuts are inevitable over the course of the next public spending review period. The Ministry of Justice (MoJ) faced a tough settlement in the Treasury's 2007 Comprehensive Spending Review, which required it to make savings of approximately £900 million per year by 2011.¹ But the next spending review is set to be far tougher.

The government has stated that it aims to protect frontline spending on health and education, while the Conservative Party has guaranteed that budgets for health, schools and international development will not be reduced. It is therefore inevitable that other big-spending Whitehall departments, including the Home Office and the MoJ, are going to face large cuts in their funding whichever party forms the next government. The recent Institute for Fiscal Studies (IFS) Green Budget, factoring in the implications of commitments by the two main parties to protect spending in certain departments, suggested that we can expect eye-watering real-terms cuts to non-ring-fenced departmental budgets of around 24% under a Labour government or 23% under a Conservative one by 2014–15.² For the MoJ, this would mean cuts to its £9.7bn annual budget of more than £2bn per year.

But while deep centrally imposed cuts to departmental budgets are necessary, they will not be sufficient to drive efficiency improvements from public services. Without a microeconomic

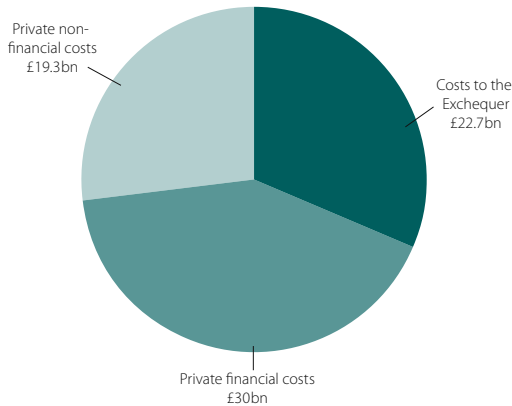
¹ House of Commons Justice Committee, *Role of the Prison Officer* (London: The Stationary Office, 2009).

² R. Chote, C. Emmerson and J. Shaw, *The IFS Green Budget* (London: Institute for Fiscal Studies, 2010), 183.

strategy for delivering more for less in each policy-area, the effects of reduced spending on services such as the criminal justice system will shift costs onto other parts of the state and society. It is therefore critical to develop policies that offer sustainable improvements in cost-effectiveness. This report proposes just such an approach for the MoJ to cut the huge and growing costs of crime.

The cost of crime in the UK in 2000 was estimated by the Home Office to be at least £60bn per year.³ Adjusted for inflation, a gradual reduction in crime levels over the decade and the above-inflation increases in public expenditure on the criminal justice system, the cost of crime in 2008 was more than £72bn. And this figure is far from comprehensive. It does not, for example, include important costs such as fear of crime, quality-of-life impacts, drug crime, low-level disorder, undiscovered fraud, lost productivity or the opportunity costs of crime.⁴

Figure 1.1: Estimated cost of crime in 2008



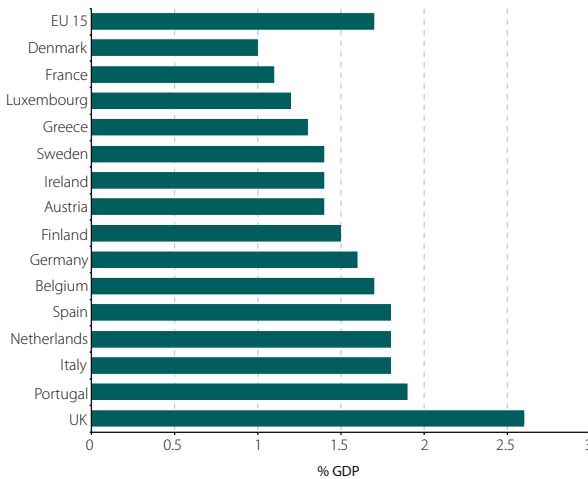
Source: Based on figures taken from Home Office, *The Economic and Social Costs of Crime*; E. Solomon, C. Eades and M. Rutherford, *Ten Years of Criminal Justice Under Labour: An Independent Audit* (London: Centre for Crime and Justice Studies, 2007), authors' calculations.

³ Home Office, *The Economic and Social Costs of Crime*, by S. Brand and R. Price (London: The Stationary Office, 2000).

⁴ Ibid.

Between 1997 and 2005 there was a 5% average annual real-terms increase in spending on public order and safety, in the form of spending on the criminal justice system and police, peaking at £22.7bn per year by 2008 (see figure 1.1).⁵ This expenditure was more than a third higher than the system cost just ten years earlier.⁶ Britain now spends a higher proportion of GDP on security and tackling crime than any other EU country (see figure 1.2) and, in fact, proportionately more than any other OECD country.⁷

Figure 1.2: Percentage of GDP spent on public order and safety



Source: Eurostat, *Statistics in Finance: Economy and Finance* (Luxembourg: Eurostat, 2006).

These increases in expenditure of around £5–6bn per year, over the decade, have been accompanied by a reduction in the level of crime in the UK. Over the ten years to 2008, overall crime fell by some 36% according to the British Crime Survey.⁸ The mooted cuts to

⁵ Solomon, Eades and Rutherford, *Ten Years of Criminal Justice Under Labour: An Independent Audit*.

⁶ The Howard League, *Do Better Do Less* (London: The Howard League, 2009), 6.

⁷ Prime Minister's Strategy Unit, *Building on Progress: Security, Crime and Justice* (London: Cabinet Office, 2007).

⁸ Home Office, *Crime in England and Wales 2008–09*, by A. Walker et al. (London: The Stationary Office, 2009), 27.

departmental budgets, projected by the IFS, of around 24% by 2014–15 would return expenditure on the system to 1997 levels. Drawing any causal relationship between expenditure on the criminal justice system and aggregate levels of crime is notoriously difficult. However, if a simple causal relationship is assumed – a big “if” – these cuts imply that we can expect a rise in crime of one third over the next five years.

But what crime costs to the exchequer is only around one third of the estimated overall impact on the UK. The simple financial cost to society – composed of such things as the cost of damage to and theft of property – makes up substantially more than that amount, at around £30bn. The implied emotional and physical cost of crime, meanwhile, has been estimated at around £19bn in today’s money. If crime levels were to increase in response to drastic expenditure cuts, the private – financial and non-financial – costs to society might be expected to increase by some £16bn per year.

As the recent Justice Select Committee report summarises: “The criminal justice system is facing a crisis of sustainability.”⁹ There is a very real danger that deep cuts to the exchequer’s expenditure on tackling crime will transfer even greater costs onto wider society in the form of more crime. It is clear that a step-change in the system’s effectiveness must be made, and that will require a radical look at how to deal with the drivers of cost in the criminal justice system.

THE PROBLEM OF RE-OFFENDING

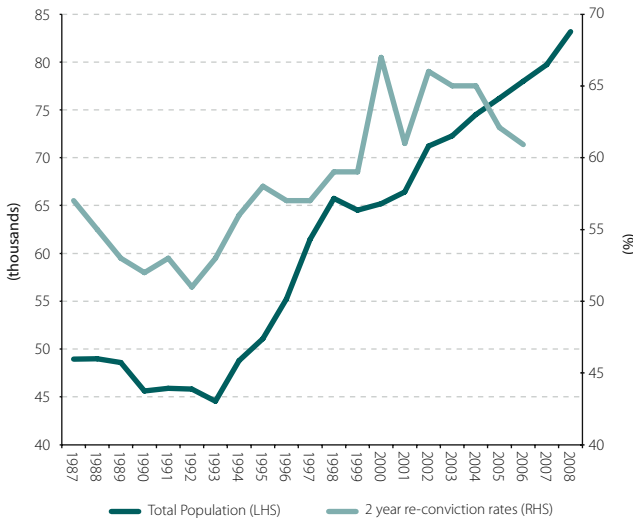
Preventing crime from happening in the first place might, in theory, seem like the most effective way to improve the outcomes of the criminal justice system. However, taking a scatter-gun approach to preventative action is likely to involve spending on millions of children and young people who do not go on to commit crime,

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

imposing high deadweight costs on the exchequer. On the other hand, identification and targeting of high-risk youngsters can be effective, but is likely to be seen as illiberal and stigmatising, even if it can be done with any degree of accuracy. So while prevention may be part of the answer, it is clear that “cure” remains a key policy lever.

High rates of re-offending are a key contributor to the high cost of crime, driving the record levels of investment in police, prison and probation services across England and Wales in recent years.

Figure 1.3: Total prison population and two-year reconviction rate



Source: Prison population statistics, by Gavin Berman, House of Commons Library, Social and general statistics section 2009; Home Office, Average population in custody (1989–1999), table 1.4; Home Office, www.homeoffice.gov.uk/rds/pdfs/chap9tabs.xls, table 9.1, prisoners reconvicted (1) by years of discharge, (2) by gender within 2 years of discharge from prison (rds chapter 9 tabs); Home Office Statistical Bulletin, Reconviction rates within 2 years from prison (1987–1996); Home Office, The prison population in 2001 and 2002: statistical review.

After a fall in reconviction rates in the 1980s, rates rose throughout the 1990s: in 1993, 53% of prisoners were being reconvicted within two years; by 2004, 65% of those leaving prison were reconvicted

within in two years.¹⁰ While reconviction rates have drifted slightly downwards over the past few years, they remain obstinately high: the two-year re-offending rate for 2006 was around 60% (see figure 1.3). It is a resounding failure of the criminal justice system in England and Wales that the majority of offenders completing a prison or community sentence go on to commit another crime.¹¹

Calculating the cost of re-offending is extremely difficult, and data on the subject is lacking. However, a report by the Social Exclusion Task Force published in 2002 attempted to put some figures on the costs of re-offending by ex-prisoners. The report estimates that dealing with recorded crime committed by ex-prisoners alone comes to at least £11bn per year for the criminal justice system – around £14bn in today's prices. The report goes on to set out just how expensive the process of a re-offending ex-prisoner's reconviction is.

- Internal Home Office analysis contributed to the report suggested that “each offence leading to reconviction costs the criminal justice on average £13,000.”
- When reconviction involves a return to prison, the Social Exclusion Unit (SEU) estimated that costs would rise by a further £30,500 for a crown court conviction.
- It is estimated that for every one reconviction brought to justice, a further five recorded offences go unpunished, costing police time and resource.

Adding all this together, it is reasonable to estimate that an ex-prisoner's return to prison cost the criminal justice system alone around £50,000 each time in 2002, or around £60,000 in 2010 prices.¹²

10 E. Dugan, “Re-Offending Rates Rise as the Prison Population Expands”, *Independent*, 20 July 2008; www.independent.co.uk/news/uk/crime/reoffending-rates-rise-as-the-prison-population-expands-872411.html.

11 Ministry of Justice, *Reoffending of Adults: Results From the 2007 Cohort England and Wales* (London: Ministry of Justice, 2009).

12 Social Exclusion Unit, *Reducing Re-Offending by Ex-Prisoners* (London: Social Exclusion Unit, 2002).

By combining the total number of prison sentences issued each year with the two-year rate of re-offending for ex-prisoners, we can therefore estimate that the cost to the criminal justice system of simply bringing re-offending ex-prisoners to justice is around £3½bn each year. This figure does not include the subsequent costs associated with incarcerating prisoners, which were estimated by the SEU at around £37,500 per person per year, or around £47,000 today.¹³

The *process* of reconviction itself therefore costs the exchequer a huge amount of money, but those costs are largely generated by one sub-section of the prison population: those on short custodial sentences.

SHORT PRISON SENTENCES

Adults serving short-term custodial sentences of 12 months or less are putting a huge strain on the criminal justice system. Since the introduction of the Criminal Justice Act 1991, offenders serving short custodial sentences of 12 months or less spend the first half of their sentence in custody before being released unconditionally. So, unlike prisoners serving longer sentences, they do not serve the final half of their sentence in the community under supervision from the probation service. Instead, they are released into the community with minimal support or supervision, to complete their sentence “at risk”.¹⁴ This simply means that if the individual commits a further offence, he or she may have to return to prison for the final part of the initial sentence, on top of any sentence imposed for the additional offence.

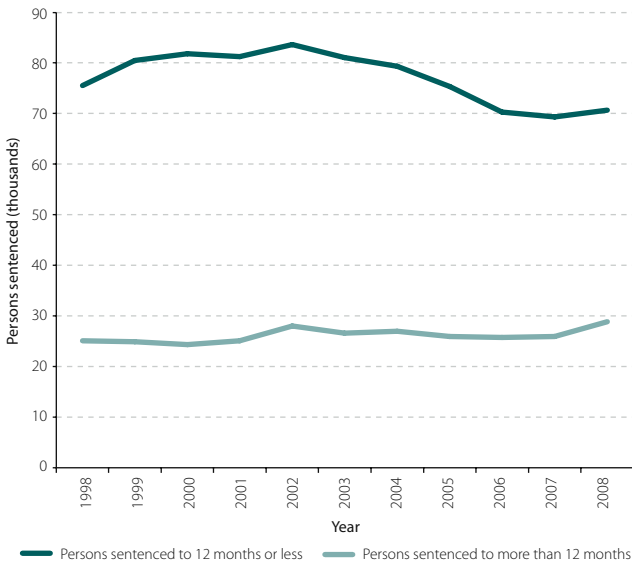
Short prison sentences have not had a significant direct impact on the growth of the prison population. According to Paul Kiff at the University of East London, only 6% of the increase in the total prison population between 1995 and 2005 can be attributed to the increased use of short

¹³ Ibid.

¹⁴ A range of wrap-around support schemes do exist, such as the “Prolific and other Priority Offender” scheme, the local authority run “Drugs Intervention Programme”, and the police-led “Integrated Offender Management”. These programmes do provide some support to sub-12-month prisoners on release.

custodial sentences.¹⁵ The vast majority of prison places are filled up by individuals on long-term sentences, because short-term prisoners tend to be released after only a few months of their sentence. The vast majority of sentences themselves are below 6 months. In 2006 just 14% of short sentences were 6–12 months in length, with 86% lasting up to 6 months.¹⁶ As such, prisoners on short-term sentences account for only 11% of the total prison population at any one time.¹⁷ This is about 9,000 offenders in prison, costing around £400 million per year to incarcerate.

Figure 1.4: Prison sentences per year, 1997–2008



Source: Ministry of Justice, www.justice.gov.uk/publications/sentencingannual.htm, chapter 2, table 2.3.

However, while short-term prisoners make up only 11% of the stock, they in fact comprise the vast majority of the number of people given a custodial sentence each year. In 2008, 70,648 people were sentenced to an immediate custodial sentence of 12 months or less,

¹⁵ House of Commons Justice Committee, *Towards Effective Sentencing* (London: The Stationary Office, 2008), 32.

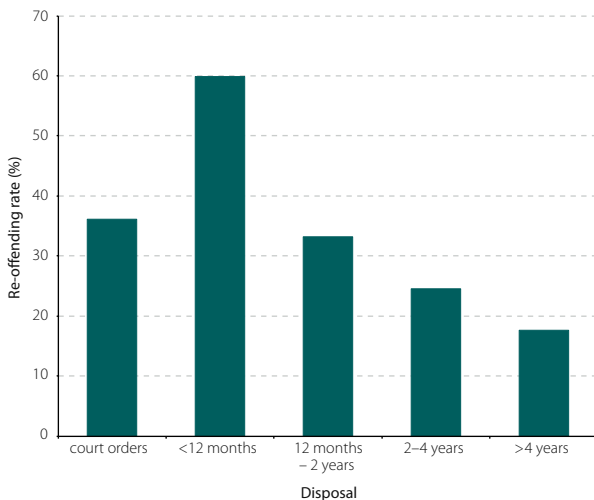
¹⁶ *Ibid.*, 32.

¹⁷ Ministry of Justice, *Statistical Bulletin: Offender Management Caseload Statistics 2006* (London: The Stationary Office, 2007).

some 70% of the 99,525 immediate custodial sentences issued in that year.¹⁸ The sheer scale of the turnover of prisoners that these figures imply imposes huge costs in terms of administration, quite apart from the £60,000 cost to the criminal justice system associated with reconvictions, described above. Figure 1.4 shows how massive turnover in the prisoner population has characterised the system for years.

Not only do short-term prisoners make up a huge proportion of the criminal justice system costs associated with custodial sentences, they also have disproportionately high reconviction rates. The standard two-year reconviction rate for this group is between 70 and 75%,¹⁹ and 60% go on to re-offend within just 12 months of release. Figure 1.5 compares the one-year reconviction rates of offenders with different sentence types: short-term prisoner re-offending is almost twice as high as that of any other group.

Figure 1.5: One-year reconviction rates by disposal



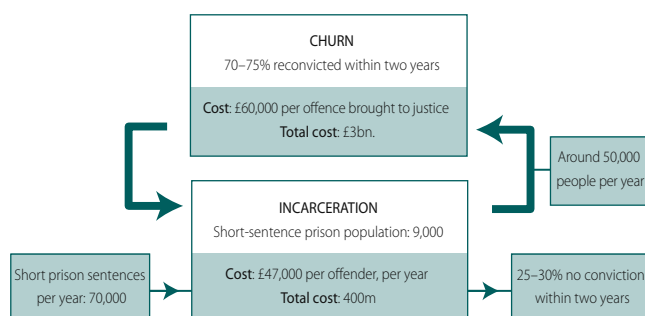
Source: Ministry of Justice, *Reoffending of Adults: Results from the 2007 Cohort England and Wales*.

¹⁸ Ministry of Justice, www.justice.gov.uk/publications/sentencingannual.htm, chapter 2, table 2.3.

¹⁹ J. Cunliffe and A. Shepherd, "Reoffending of Adults: Results From the 2004 Cohort", *Home Office Statistical Bulletin* 06, 7 (2007).

When coupled with the high cost to the criminal justice system of an ex-prisoner's path back to prison of some £60,000, this high reconviction rate means that those offenders serving short sentences flow round the system and end up costing the criminal justice system more than £3bn per year. Once again, this 'cost of churn' figure excludes any incarceration or prison transaction costs associated with this group, which are themselves substantial. Figure 1.6 gives a visual representation of the costs of churn in the system.

Figure 1.6: Cycling among short sentence prisoners



Not only are the static costs associated with the churn of short-term prisoners huge, but they have dynamic implications too. Short-term prisoners are, unsurprisingly, at the greatest risk of going on to commit severe offences.²⁰ They are also more likely to be prolific offenders: of those in prison on short sentences, 58% have ten or more previous convictions, 35% between eight and ten and only 8% have fewer than three.²¹ Taking into account wider costs to society, a recent NAO report estimated that the total cost of repeat short-term offending is up to £10bn per year.²² Failure to deal effectively with this group and to stop the churn is therefore at the root of the burgeoning costs of the criminal justice system and to society more broadly.

20 A. Cookson and G. Gaskarth, *Primary Justice: An Inquiry into Justice in Communities* (London: All Parliamentary Local Government Group, 2009), 6.

21 House of Commons Justice Committee, *Towards Effective Sentencing*, 36.

22 National Audit Office, *Managing offenders on short-term custodial sentences* (London: HMSO, 2010).

But despite the huge strain that this group is placing upon the criminal justice system, these offenders receive the least support and supervision of any offender group. They do not benefit from having an offender manager, and get little supervision from the criminal justice service when they leave prison and move back into the community. Local authorities are confronted with the huge challenge of providing what support there is. This situation is untenable if the government is to prevent a sharp rise in crime as public spending is heavily squeezed over the next decade.

Box 1.1: Short sentences – facts and figures

- Prisoners on short-term sentences account for roughly 11% of the total prison population at any one time – this is about 9,000 offenders.²³
- Prison places for this group cost the tax-payer more than £400 million per year.²⁴
- Owing to the high volume and turnover of short-sentence offenders, this category accounts for 70% of all prison sentences handed down each year.
- This group has particularly high re-offending rates: 70–75% go on to re-offend within 2 years of release²⁵ as compared to around 60% of the overall prison population. Each year, the tens of thousands of short-term prisoners cycling through the system cost the exchequer around £3½bn.
- The re-offending rate jumps to 92% for those under the age of 21 years serving short sentences.²⁶
- Prisoners with short-term sentences are likely to be prolific offenders: of those in prison on short sentences, 58% have ten or more previous convictions, 35% between eight and ten and only 8% have fewer than three.

²³ Ministry of Justice, *Statistical Bulletin: Offender Management Caseload Statistics 2006*.

²⁴ Estimate based on total prison service-operating budget of £1,936m for 2006/7 multiplied by 11% (proportion of prison population who are short-sentence offenders).

²⁵ Cunliffe and Shepherd, 'Reoffending of Adults: Results From the 2004 Cohort', figure 9.

²⁶ Ibid.

- They are also more likely than the general prison population to go on to commit severe offences.²⁷

CONCLUSION

Offenders serving short custodial sentences of 12 months or less account for only 11% of the prison population at any one time, but because of their high frequency of turnover they make up 70% of prison sentences a year. They have the highest reconviction rates of any group (70–75% reconvicted within two years) and flow round the system at a fast rate, costing the exchequer roughly £3bn per year in churn costs, around £400m in incarceration costs, and untold amounts in future criminal activity.

The key to improving criminal justice system outcomes with substantially less money over the coming decade therefore lies in cracking the short-term offender problem. And yet this group is largely neglected in the current system.

But what interventions, if any, can be made to reduce the likelihood of an individual going on to re-offend? Or are we doomed to failure in our desire to reform offenders as offender programmes are largely ineffective? The next chapter examines the evidence on “what works” to reduce re-offending, to determine the most effective approach to reduce recidivism.

27 Cookson and Gaskarth, *Primary Justice: An Inquiry into Justice in Communities*, 6.

2. WHAT WORKS TO REDUCE RE-OFFENDING?

As established in the preceding chapter, re-offending costs society in general, and the exchequer in particular, a huge sum of money, not to mention the fact that it blights lives and ruins communities. A disproportionate amount of this cost is caused by offenders serving short-term custodial sentences. This group, which makes up the overwhelming majority of those sentenced to a prison term each year, has by far the highest reconviction rates and tends to consist of prolific offenders. As such, it is the key driver of cost in the criminal justice system. The challenge, then, is to tackle re-offending in an efficient and effective way. But do we know what, if anything, works to reduce recidivism?

DOES REHABILITATION WORK?

Offender services have three competing goals: public safety, prisoner rehabilitation and punishment. Until the 1970s it was accepted that rehabilitation was central to correctional operations. However, the 1970s saw a significant shift in the power balance away from rehabilitation, and the motivation of that shift was as much empirical as it was political. An influential paper by Robert Martinson, an American sociologist, reviewed a large number of rehabilitation evaluations and found that, overall, offender treatment was largely ineffective.²⁸ In the following years, Martinson's conclusions became accepted in mainstream criminology.²⁹ As a consequence, support and funding for rehabilitation waned and attention was focused instead on punishment, primary crime prevention such as policing, and deterrence such as "short, sharp, shock" initiatives.

However, a small number of critics of the "nothing works" doctrine challenged the assumptions and empirical evidence

28 F. T. Cullen et al., "Nothing Works Revisited: Deconstructing Farabee's Rethinking Rehabilitation", *Victims & Offenders* 4: 2 (2009).

29 C. R. Hollin, "To Treat or Not to Treat? An Historical Perspective", *Handbook of Offender Assessment and Treatment* (2001).

presented by Martinson. Shortly after the publication of Martinson's article, Palmer re-analysed his data and found that more interventions were effective than the original analysis showed.³⁰ In response to Palmer and other critiques, in 1979 Martinson published a follow-up paper, recanting his "nothing works" conclusions.

Other evaluations and meta-evaluations were published which highlighted the effectiveness of rehabilitation.³¹ In 2002 McGuire published a paper evaluating 18 meta-analytic reviews published between 1985 and 2000. McGuire reported a mean reduction in recidivism of between 5 and 10% for a range of interventions. A more recent study by Lipsey and Cullen confirms this general trend, citing stronger reductions in recidivism, and emphasising the variations in the effectiveness of different treatments.³²

Programme evaluations have found that, in particular, when the risk factors associated with offending are targeted, the effectiveness of treatments increases. These factors can be static or dynamic. Static factors, such as an individual's criminal history, cannot be altered. It is possible, however, to influence and change dynamic factors, such as a person's education, employment or substance misuse. Targeting dynamic risk factors directly has been found to have the biggest impact on re-offending.³³ In the literature, education, unemployment, accommodation, substance abuse, social networks and behavioural problems are considered to be the most important risk factors. In the remainder of this chapter, we take a brief look at the evidence on effectiveness of interventions in some of these key areas.

30 T. Palmer, "Martinson Revisited", *Journal of Research in Crime and Delinquency* 12: 2 (1975).

31 Hollin, "To Treat or Not to Treat? An Historical Perspective".

32 M. W. Lipsey and F. T. Cullen, "The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews" (2007).

33 R. K. Hanson and A. J. R. Harris, "Where Should We Intervene? Dynamic Predictors of Sexual Assault Recidivism", *Criminal Justice and Behavior* 27: 1 (2000).

Education

While a lack of basic skills is not in itself predictive of re-offending, it is related to a number of other factors known to be associated with offending, for example, unemployment and social exclusion.³⁴ Research has also shown that many offenders in prison and serving community sentences lack essential basic skills.³⁵

There is some evidence from the US that skills training can play a part in reducing re-offending. In a quasi-experimental study,³⁶ Streuer, Smith and Tracy showed that prisoners who had participated in an educational programme were substantially less likely to be re-arrested (9 percentage points lower), re-incarcerated (12 percentage points) or reconvicted (10 percentage points) compared to non-educated prisoners.³⁷ An important aspect of education is that it raises the chances of employment and gives inmates something to build on when they leave prison. As one former prisoner interviewed in the course of this research explained: "I had loads of education classes in prison. I got English and Maths GCSE, and also IT. I'm now better qualified than I was before, so hopefully this will help with jobs."³⁸

Employment

There is also evidence to suggest that unemployment and offending are linked.³⁹ The 2001 Resettlement Survey found that two-thirds of prisoners were unemployed before they entered custody and that 12% of adult prisoners had never had a paid job.⁴⁰ Work commissioned

34 F. J. Porporino and D. Robinson, "Can Educating Adult Offenders Counteract Recidivism?" (Portland: Correctional Service of Canada, 1997).

35 G. McMahon et al., "Basic Skills Programmes in the Probation Service: An Evaluation of the Basic Skills Pathfinder", *Home Office Research Findings* 203 (2004).

36 The two comparison groups were not put together at random, but specific attention was given to the selection procedures, so that while results are not as robust as from a randomised study, they still give a good indication about the effects of education.

37 S. J. Steurer, L. Smith and A. Tracy, *Three State Recidivism Study* (Landham: Correctional Education Association, 2001).

38 27-year-old male – served 18-month prison sentence.

39 D. P. Farrington et al., "Unemployment, School Leaving, and Crime", *British Journal of Criminology* 26: 4 (1986).

40 Home Office, *Jobs and Homes: A Survey of Prisoners Nearing Release*, by S. Niven and J. Olagundoye (London: Home Office. Research, Development and Statistics Directorate, 2002).

by the Home Office evaluated two employment programmes that worked with offenders under probation supervision. The results showed the impact of combining education, training and employment support. Some 43% of participants committed an offence resulting in conviction, compared to 56% of the control group. However, it is not possible to discount the selection effect in this study.⁴¹

Chapter 5 takes a closer look at the link between unemployment and crime at the aggregate level and finds that the relation between the two is not straightforward. But in conjunction with other interventions, being in employment – not least because of its interdependence with other factors such as education, accommodation and substance abuse – can be an important step towards reducing someone’s likelihood of re-offending.

Accommodation

Homeless people tend to be overrepresented in the prison population;⁴² a study in San Francisco showed that nearly one in four homeless people (23.1%) had been incarcerated.⁴³ A large body of literature exists on the question of whether homelessness is a cause or a consequence of crime. But while the relationship between offending, incarceration and homelessness is complex, there is a consensus that having no fixed address to go to after release makes re-offending more likely.⁴⁴ Despite the simple and obvious need for accommodation, the 2003 Resettlement Survey findings revealed that less than three weeks before their release date, 29% of prisoners did not have an address to go to.⁴⁵

41 Home Office, *Working Their Way Out of Offending: An Evaluation of Two Probation Employment Schemes*, by C. Sarno et al. (London: Home Office Research, 2000).

42 M. Seymour, “Homeless Offenders in the Community: The Issues and Challenges for Probation Supervision”, *Irish Probation Journal* 1: 1 (2004).

43 M. B. Kushel et al., “Revolving Doors: Imprisonment Among the Homeless and Marginally Housed Population”, *American Journal of Public Health* 95: 10 (2005).

44 See, for example, Social Exclusion Unit, *Reducing Re-Offending by Ex-Prisoners*.

45 Home Office, *The Impact of Corrections on Re-Offending: A Review of “What Works”*, by G. Harper and C. Chitty (London: Home Office, 2005).

Drugs and alcohol

Many offenders serving both prison and probation sentences are drug and alcohol addicts, and their offending is often linked to substance misuse.

A meta-analysis of 66 experimental and quasi-experimental studies found that drug treatment programmes reduced the average rate of re-offending to 28% among those who participated in substance abuse therapies, and to 35% among a comparison group. The analysis found that those interventions that focused on the multiple aspects of substance abuse, such as “therapeutic communities” (a participative, group-based approach) were the most effective.⁴⁶

Mental health

In Britain, almost half of prisoners have at least three co-occurring mental health conditions. By comparison, the equivalent proportion in the overall population is less than 1%.⁴⁷ If untreated, mental health problems can be made worse by imprisonment and will reduce the chances of finding or keeping a home and a job, hence significantly increasing the chances of re-offending.

Social networks

Evidence suggests that social networks matter: communities with strong social networks are less likely to experience crime;⁴⁸ and, similarly, those individuals with stronger social networks are less likely to re-offend. Research shows that those who are visited by a friend or family members are less likely to re-offend (52%) than those who do not receive a visit (70%).⁴⁹ While there are clearly

46 O. Mitchell, D. B. Wilson and D. L. MacKenzie, “The Effectiveness of Incarceration-Based Drug Treatment on Criminal Behavior”, *Campbell Systematic Reviews* 11 (2006).

47 Revolving Doors Agency, *Prisons: Britain’s “Social Dustbins”* (London: Revolving Doors Agency, 2007).

48 R. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Schuster and Schuster, 2000).

49 Ministry of Justice, *Factors Linked to Reoffending: A One-Year Follow-Up of Prisoners Who Took Part in the Resettlement Surveys 2001, 2003 and 2004*, by C. May, N. Sharma and D. Stewart (London: The Stationary Office, 2008).

questions around what the causal effect of social networks is, they are strongly associated with better outcomes.

Thinking and behaviour

Many offenders suffer from anger management and behavioural problems. Interventions using cognitive behavioural techniques, which focus on the thinking skills of offenders, have been shown to produce a reduction in re-offending.⁵⁰ These findings were confirmed in a more recent study, which focused on cognitive behavioural programmes. McGuire et al. compared 26 studies from 16 countries and found that these programmes produced a 14% reduction in recidivism.⁵¹

JOINING UP SERVICES

While each and all of the above issues can contribute to tackling recidivism, addressing all of them together is key to any effective approach. The St Giles Trust recognised the importance of a seamless journey from prison into the community and designed its *Through the Gates* scheme accordingly. With housing being a key aspect of its services, the scheme ensures that prisoners are supported before release, on the day of their release and for some weeks after release. This approach has been successful when judged on a process basis. Discounting those who did not engage with the programme, 80% of participants were supported into temporary or permanent accommodation and support with claiming benefits was delivered to almost 92% of the people who needed it. Almost 50% of those who had substance abuse problems were referred to specialist services.⁵² Another evaluation of the programme is

50 C. R. Hollin, "Treatment Programs for Offenders Meta-Analysis, 'What Works', and Beyond", *International Journal of Law and Psychiatry* 22: 3–4 (1999).

51 J. McGuire et al., "Evaluation of Structured Cognitive Behavioural Treatment Programmes in Reducing Criminal Recidivism", *Journal of Experimental Criminology* 4: 1 (2008).

52 G. Park and S. Ward, *Through The Gates – Improving the Effectiveness of Prison Discharge: First Half-Year Evaluation, August 2008 to January 2009* (London: St Giles Trust, 2009).

supposed to be released in spring 2010, and is expected to confirm the success of earlier evaluations.

CONCLUSIONS

Clearly, then, there is a range of interventions to reduce recidivism that do work, showing consistently strong effects on average. Professor Lawrence Sherman, from the University of Cambridge, found that the best treatment programmes reduce recidivism by 10–20 percentage points.⁵³ These numbers are impressive, but it is important to bear in mind that they only represent average changes and that the effectiveness of interventions varies hugely from person to person.⁵⁴

This means that when interventions are carefully targeted, rather than applied across broad groups of offenders, their effectiveness can be substantially higher even than these averages suggest. As Cullen and Lipsey have pointed out: “There is ... considerable variability in those effects associated with the type of treatment, how well it is implemented, and the nature of the offenders to which it is applied.”

Personalisation also recognises that an offender is likely to have a number of criminogenic needs that cannot be addressed by a single intervention. Thus, an individually tailored approach which provides offenders with multi-modal interventions is recognised to be the most effective approach to tackling recidivism.⁵⁵

Targeting cutting-edge interventions at those who could benefit from them most has the potential dramatically to reduce recidivism. Among persistent offenders it would not be unrealistic

53 L. W. Sherman et al., *Preventing Crime: What Works, What Doesn't, What's Promising* (Washington: Citeseer, 1997).

54 Lipsey and Cullen, “The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews”.

55 Home Office, *The Impact of Corrections on Re-Offending: A Review of “What Works”*, 67.

to imagine that re-offending might be cut by something in the order of 20 percentage points. In terms of the costs of bringing offenders to justice alone, this would represent a saving of up to £1bn per year to the exchequer, and up to £2bn more in savings to the private sector from reduced crime. But tailoring services to offenders' needs is something that is not the strong point of the current system. The next chapter analyses how the current offender management system seeks to join up effective services and why it has not been as successful as might have been hoped.

3. EVIDENCE INTO PRACTICE?

As the previous chapter outlined, there is a growing understanding of the types of interventions that are effective in reducing re-offending. This chapter considers how effective reforms to the offender management system in England and Wales have been at implementing these kinds of insights and at generating new solutions. The chapter concludes by drawing out what the characteristics of a more successful system would be.

A DECADE OF REFORM

The prison and probation services in England and Wales have made a concerted effort to ensure that robust evidence drives their approach to designing and delivering interventions, and to managing offenders. Since the 1990s a range of pre-accredited and accredited offending behaviour programmes have been set up to help shape the way offenders think and act (such as the Reasoning and Rehabilitation Programme and Enhanced Thinking Skills), while a range of other initiatives have been introduced that focus on drugs, employment and accommodation.

However, while a growing recognition of the kinds of interventions that are effective is important, establishing efficient best practice that is responsive to offenders' needs depends on having the right structures in place to drive accountability and to allow new and more effective programmes to develop.

A desire to reform the structure of the correctional services to achieve these ends lay at the heart of the Carter Review⁵⁶ of the prison and probation services in England and Wales. The review set out a number of substantial structural changes in an attempt

56 P. Carter, *Managing Offenders, Reducing Crime: A New Approach* (London: Strategy Unit, Cabinet Office, 2003).

to reduce crime and re-offending in an effective, integrated way, based on proven interventions and a robust evidence base.⁵⁷

Carter found that different parts of the system were not working together; most problematically, there was an institutional divide between the prison and the probation service. Across the criminal justice service, decisions were taken without a clear idea of the likely outcomes and with little regard for how they might affect other parts of the system. This meant that the service was inefficient, and that few of the players were focused on the overall goal of reducing crime and preventing re-offending. The system was a barrier to the adoption and development of best practice.

Carter called for a new approach to break down the division between the prison and probation services and to ensure a better focus on managing offenders. The report stressed that prison and probation needed to be focused on the management of offenders throughout the whole of their sentence, driven by information on what works to reduce re-offending. It also emphasised the importance of competition from private and voluntary providers to improve effectiveness and value for money.

Most significantly, it called for the establishment of a National Offender Management Service (NOMS). The aim of NOMS was to bring together the prison and probation services into one organisational structure to ensure “end-to-end” offender management throughout the criminal justice system. The introduction of NOMS and the concept of end-to-end offender management were seen as ways of ensuring more effective targeting of interventions to deal with offenders’ criminogenic needs, and overcoming the fragmentation of offender services.

57 Home Office, *The Impact of Corrections on Re-Offending: A Review of “What Works”*, 28.

Carter recommended the introduction of offender managers, based in the community, to be responsible for individual offenders throughout their entire sentence, whether the sentence is served in custody, in the community or a mixture of both. The offender manager would be responsible for assessing the offender, planning their sentence and ensuring that the plan is carried out.⁵⁸ The Government accepted Carter's recommendations, and in 2004 the NOMS was established.

Importantly, Carter's was a bureaucratic solution to a bureaucratic problem. Fragmented and siloed delivery of different services used by prisoners was to be resolved by structuring the bureaucracy in a way that ensured that someone took a strategic view of the whole offender journey.

FAILURE TO CRACK RECIDIVISM

The prison and probation services in the UK have pioneered the introduction of programmes focused on tackling offenders' criminogenic needs, and NOMS was established to create a joined-up correctional service that champions integrated programmes based on the principles of "what works". Nevertheless, recidivism rates remain unacceptably high. The question remains, therefore: why have re-offending rates not fallen substantially since the introduction of NOMS?

The answer comes in three parts:

- First, the joining-up of the prison and probation services has been undermined by bureaucratic in-fighting.

58 National Offender Management Service, *Offender Management: A Brief Guide for Probation Staff*, www.probation2000.com/documents/Offender%20Management%20A%20Brief%20Guide%20for%20Probation%20Staff.pdf.

- Second, a lack of resources, coupled with prison and probation overcrowding, have undermined resettlement, rehabilitation and accountability.
- Third, the system remains extremely centralised, with only weak incentives to innovate and to join up disparate services in a cost-effective way, and little flexibility for frontline providers to tailor programmes to fit individuals' needs.

In the remainder of this chapter we consider each of these goals in turn.

Bureaucratic wrangling

Part of the reason the structural reforms have not had more successes in reducing recidivism is that they have run into difficulties themselves. From the outset, NOMS was blighted with problems. It was felt by many stakeholders that the establishment of the service had been rushed, without serious planning and with no real consultation. It remained unclear who had overall responsibility for probation and who had overall responsibility for prisons. This meant that the divisions between the prison and probation services remained, and the seamless sentencing that had been hoped for did not materialise. Many observers argued that NOMS resulted in a prison-focused structure which failed to drive up standards in probation, instead weakening it further by marginalising it within NOMS.⁵⁹ The House of Commons Justice Committee shares these concerns: "We are concerned that there are no probation staff at a senior level in NOMS: this suggests a lack of advocacy on behalf of probation for better resources."⁶⁰

These problems led to a reorganisation of NOMS in April 2008, with the introduction of a single Director of Offender Management (DOM) for each English region and for Wales. DOMs now hold the

59 Cookson and Gaskarth, *Primary Justice: An Inquiry into Justice in Communities*, 8.

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

budget for the prison and probation services/probation trusts in their region, which it is hoped will lead to better integration between the two services.

However, despite the restructuring, doubts remain about the effectiveness of NOMS. The Commission on English Prisons Today stated that the current NOMS model is “unwieldy, over-complex and ineffective”.⁶¹ And it is clear that there continues to be a fundamental lack of integration between the prison and the probation service.

This lack of integration between the two services is undermining the effectiveness of programmes at the front line. Interrupted classes and drug programmes, for example, are unlikely to show positive effects, and will disappoint those who take part in them. But this experience was not uncommon among the offenders interviewed in the course of researching this report. One ex-offender described the situation as follows:

*When I was in prison I was getting drug treatment and classes too, but that all stopped when I came out to the probation hostel. They hadn't sorted out my methadone – it was hell. And I can't finish my studies here either.*⁶²

Without forward planning in the last weeks in custody and ongoing care after release, simple tasks such as finding accommodation can become difficult and frustrating for ex-offenders. Again, joined-up services were disappointingly absent:

Sorting out my housing has been a nightmare. When I left prison I thought my probation officer would be able to get me my own place, but nothing has happened. I'm stuck at this hostel, but I

61 The Howard League, *Do Better Do Less*.

62 22-year-old male – served 2-year prison sentence, currently in residential probation hostel.

*just want to get my own flat to start my new life. But no one can give me a straight answer – no one knows when I can move out, or where I can go.*⁶³

Clearly, a lack of housing capacity is a policy issue in its own right, so it would be unfair to lay the blame for accommodation problems of ex-offenders at the door of NOMS. Nevertheless, the inability of NOMS to provide a smooth transition for offenders from custody into the community across a huge range of services is a serious failing. Any progress made in prison can be quickly lost if there is insufficient support for prisoners once they are released.⁶⁴ The success of interventions rests, to a huge degree, upon offenders being able to integrate or reintegrate into society. For most prisoners, efforts to prevent further offending involve a long-term process, and participation in programmes while in custody is only part of the rehabilitative process. It is important, therefore, for prisons to plan and arrange adequate aftercare and support before prisoners are released. Research from the US shows that participation in post-release support is associated with lower rates of re-imprisonment, longer gaps between prison spells for those who do re-offend and higher levels of post-release employment.⁶⁵

Rehabilitation is a particular problem for prisoners serving short sentences. As discussed above, these offenders are the most likely to re-offend and yet they are largely overlooked when it comes to support and supervision both during their sentence and after their release. The 2001 Halliday Review of the sentencing framework in England and Wales described the state of short custodial sentences, as “one of the most serious deficiencies in the

63 40-year-old male – served 6-year prison sentence.

64 Home Office, *The Impact of Corrections on Re-Offending: a Review of “What Works”*.

65 M. L. Prendergast et al., “Amity Prison-Based Therapeutic Community: 5-Year Outcomes”, *The Prison Journal* 84: 1 (2004).

present [sentencing] framework.”⁶⁶ And over the past decade there has been a failure to successfully address the situation. The Criminal Justice Act 2003 established new community sentences in an attempt to encourage a move away from short-term imprisonment, but this proved unsuccessful. The Act also set out new provisions, known as “Custody Plus”, to make short custodial sentences more effective, but the initiative was never implemented. More recent programmes of wrap-around interventions have been slightly more promising. Nevertheless, the system remains characterised by very limited support for this group.

Those offenders serving short sentences are not allocated an offender manager as their time spent in prison is not considered long enough for any meaningful interventions to be put in place. It is, however, long enough to detach the individual from community networks and employment that may help to prevent re-offending.⁶⁷

Moreover, the current set-up represents a prison-centric approach to tackling recidivism, disregarding the possibility of continued engagement with short-term prisoners after their release. Consequently, they are typically left to themselves to find accommodation, sort out their benefits, arrange drug or alcohol treatment and find work. As the international evidence makes clear, this is a recipe for high rates of recidivism.

Despite the best intentions of the architects of NOMS, the desired seamless system of offender management has not been forthcoming, and a prison-centric system has emerged from the turf wars. A more effective system must provide a singular focus on reducing recidivism rates, and hold everyone in the system accountable for achieving that goal.

⁶⁶ J. Halliday, “Making Punishments Work”, *Report of a Review of the Sentencing Framework for England and Wales* (London: Home Office, 2001), iv.

⁶⁷ House of Commons Justice Committee, *Towards Effective Sentencing*, 36.

Lack of resources

Another significant problem with the current situation is the fact that both the prison and the probation service are overstretched, due to the volume of offenders they have to deal with.

Since Labour came to power in May 1997, the prison population has increased by more than a third, rising from 60,000 to an all-time high of 83,000. With a prison population rate of 153 per 100,000, England and Wales lock up more prisoners per head of the population than any other country in Western Europe apart from Spain (160) and Luxembourg (155). In fact, our level of incarceration is at least 60 per cent more than countries such as France, Germany, Ireland and Italy.⁶⁸ The Government has recently announced its intention to scrap the early release scheme, a move that will put yet more upward pressure on the prison population.⁶⁹

It is hardly surprising that the surge in the number of people imprisoned in England and Wales over the past 15 years has led to prisons becoming dangerously full. Despite the creation of more than 20,000 prison places since 1997, the system remains overcrowded.⁷⁰ MoJ figures reveal that the rate of overcrowding was 24.6% in 2007–8.⁷¹

Overcrowding leads to two main problems. First, it can undermine standards of safety and security. In February 2008, the number of prisoners exceeded even the “safe overcrowding” limit,⁷² despite the introduction in June 2007 of an early release scheme, allowing low-risk prisoners to be released 18 days early. Second,

68 World Prison Population List, (2009), www.kcl.ac.uk/depsta/law/research/icps/news.php?id=203.

69 *Observer*, 14 February 2010, “Gordon Brown set to end early jail release scheme”.

70 Home Office, *Digest 4: Information on the Criminal Justice System in England and Wales*, (London: The Stationary Office, 1999).

71 House of Commons Justice Committee, *Role of the Prison Officer*, 4.

72 National Offender Management Service, *Prison Accommodation and Population Briefing*, www.hmprisonservice.gov.uk/assets/documents/100035D522022008_web_report.doc.

it reduces the effectiveness of rehabilitation work with prisoners. Here we focus on the second issue.

The sheer volume of prisoners means that important programmes on education and training, drug and alcohol rehabilitation or behaviour management are often so oversubscribed that prisoners have to wait months before they can enrol.

Aside from this, overcrowding has also led to an increase in the transferral of prisoners from one prison to another in order to accommodate the in-flow of new prisoners. If a local prison is in danger of being unable to accommodate prisoners sent by the courts, governors are instructed to move prisoners to other prisons. It is estimated that around 8,000 prisoners were moved on overcrowding drafts in 2001. This is in addition to the standard movements of prisoners around the system for reasons such as security reclassification or proximity to home.⁷³ The constant churn of prisoners creates three interconnected problems.

First, moving an offender from one prison to another disrupts their rehabilitation programme, and often prevents them from completing programmes they have started. Under such conditions, even the most effective interventions are bound to fail. As one former prisoner explained to the authors, interventions that are offered are rendered almost useless for many prisoners because of the churn problem:

It's mad how crowded the prisons are now. Two blokes in one cell. I was moved three times in one year just because the prisons kept filling up. Every time I started a class I would end up being moved to another prison and being put on the waiting list. It then takes 2 or 3 months to get to the front of the list and start the class again. Then you get moved!⁷⁴

⁷³ Social Exclusion Unit, *Reducing Re-Offending by Ex-Prisoners*, 30.

⁷⁴ 23-year-old male – served 2-year prison sentence.

Second, internal churn can also mean that prisoners end up a long way from home – some 32% of prisoners are held more than 100 miles from their home⁷⁵ – putting further strain on family and support networks and disrupting resettlement.

Finally, and perhaps most importantly, moving an offender from one institution to another breaks down any sense of accountability or responsibility on the part of prison governors and others for any subsequent offending behaviour. It is not possible to hold a prison governor accountable for an offender's rehabilitation programme if that offender only remains in their facility for a short period of time before being moved on. Without such basic levels of accountability, it should be no surprise that recidivism rates in the UK are as high as they are today.

Aside from the problems that stem from prison overcrowding, it is clear that a major part of the failure to reduce recidivism is due to the limited resources directed at resettlement support. The international evidence makes it clear that effective offender management and supervision need personal communication and the building up of trust over time between the manager and the offender, through face-to-face interaction. The Home Office itself has stated that, to be effective, offender management has to be a "human service process", rather than a bureaucratic, administrative or electronic one.⁷⁶

However, from the authors' conversations with both offenders and criminal justice professionals during the course of researching this report, it is apparent that, in reality, offender managers and offender supervisors have such large caseloads that they lack the time to spend with offenders in their charge. Some professionals said that the role had become a "box-ticking" exercise and that

75 House of Commons – Home Affairs, www.publications.parliament.uk/pa/cm200405/cmselect/cmhaff/193/19302.htm.

76 National Offender Management Service, *The NOMS Offender Management Model*, www.warwickshireprobation.org.uk/assets/userfiles/warwickshire/NOMS_Offender_Management_Model.pdf.

NOMS had neither the time nor the resources to put in place successful rehabilitation programmes. For short-term prisoners, even this level of intervention is absent, since they are not allocated an offender manager on release – in fact, they are not allocated an offender manager at all.

If interventions before and after release are successfully to reduce re-offending rates, they need to be targeted and tailored to the needs of the individual.⁷⁷ Overcrowding within prisons and limited resources and reach of probation mean that this is rarely what happens, and consequently the effectiveness of the interventions is limited.

With the MoJ budget set to come under intense pressure over the next decade, the lack of resources will worsen. Only radical solutions – such as funding badly needed offender management services by using the savings that will accrue to the exchequer if they are successful – will solve this problem. But the finance to kick-start such a virtuous circle will not, in the coming decade, be found from the Treasury's coffers.

Central control and the wrong incentives

The third failing of NOMS relates to its bureaucratic nature. As a national bureaucracy that attempts to control the prison and probation service from the centre, NOMS provides only weak incentives for joined-up, cost-effective or innovative service provision. The need for central political and financial accountability for the system has spawned stultifying central control at the expense of new ideas and radical thinking about how to tackle recidivism. This has created three related problems:

1. The absence of a profit motive within the system means that incentives for the system to seek out the most cost-effective

77 Home Office, *The Impact of Corrections on Re-Offending: A Review of "What Works"*, 76.

provision are very weak. This is particularly worrying given the impending squeeze on resources.

2. With no focus on making frontline professionals accountable for offender outcomes, performance across NOMS is measured on the achievement of process targets. This distorts the behaviour of professionals to achieve processes rather than using their knowledge of the individual and their needs to reduce the likelihood of their re-offending.
3. Finally the monolithic nature of the system limits the possibility that different areas of the country might attempt different interventions, with the best blazing a trail for others to follow.

The establishment of NOMS appears to contradict a more general movement towards decentralisation and the empowerment of local communities that is occurring across other parts of government. The House of Commons Justice Committee recommended that the Government continue to contract with small organisations experienced in delivering effective probation services, rather than devolving power to the front line.⁷⁸ A change in the balance between central control and local freedom and responsibility is needed, but the NOMS structure appears to be working in the opposite direction. With funding set to be squeezed further, it is likely that greater central accountability will further reduce local flexibility unless a system can be developed that marries frontline flexibility with central accountability.

If the criminal justice system is going to get serious about tackling re-offending, then these incentive problems must be resolved. A focus on achieving value for money, a shift from rewarding the achievement of processes to rewarding that of outcomes, and greater freedom with accountability for frontline professionals will all be essential.

78 House of Commons Justice Committee, *Cutting Crime: The Case for Justice Reinvestment*, 10.



CONCLUSION

It is clear that despite a concerted effort to improve the correctional services in England and Wales over the past 15 years, and to introduce evidence-based, joined-up interventions to reduce recidivism, there has been no step change in performance. In the words of the House of Commons Justice Committee: "The Government has not demonstrated the cost-effectiveness of its policies to reduce crime or re-offending."⁷⁹

So what should be done? A better approach must refocus the whole approach on achieving the real goal of reducing re-offending, rather than absorbing resources in bureaucratic wrangling. Secondly, it must leverage new resources into the system to do the vital work that is necessary to prevent re-offending, particularly among the sub-12-month prisoner group. Finally, the right system must sharpen incentives for cost-effectiveness and innovative solutions to the recidivism problem. In the next chapter we argue that such a shift can only be achieved by introducing a payment-by-results approach to the criminal justice system in the UK.

⁷⁹ Ibid., 16.

4. TACKLING RECIDIVISM: A VIABLE MODEL OF PAYMENT-BY-RESULTS

The previous chapter examined how the offender management framework in England and Wales has fared, and the reasons for its apparent failure to deliver the step change in re-offending that was sought. In this chapter, with a view to resolving the shortcomings of the current regime, we set out a model of payment-by-results combined with a proposal for reorganising how prison capacity is currently deployed to strengthen accountability and reward reductions in re-offending rates.

The SMF accountability model will encourage innovative approaches to tackling recidivism, strengthen providers' accountability for offender outcomes, improve the cost-effectiveness of delivery and leverage more money into the system at a time of deep public spending cuts.

WHY PAYMENT-BY-RESULTS?

In driving the delivery of effective public services from the centre, government can steer public agencies (through target-setting) or private ones (through payments) to achieve a range of things. They can specify desired *inputs* to the process, such as the number of prison places to be provided; second, they might stipulate specific *interventions* that need to be undertaken, such as offering skills courses to prisoners; third, they can require certain *outputs* to be achieved – for every prisoner to gain a qualification or be found accommodation on release. The specified processes are typically found within the most effective offender management regimes. They are also easy to measure and, therefore, to monitor.

But while a given range of inputs, interventions and outputs may be found in the best regimes, it does not mean that requiring them to be undertaken in a tick-box manner will achieve the same

result throughout the system. Performance management based on measuring such interim process targets invariably distorts provider behaviour away from the real aim of the service and towards the targets. The current offender management system, however, suffers from these problems of centralised control. Even where effective interventions are deployed, value for money is hard to come by in such a centralised system. The effectiveness of interventions varies hugely, as the evidence in chapter 2 showed, making the tailoring of programmes to individual needs and circumstances essential if really cost-effective programmes are to be put in place.

The focus of central government needs to shift away from micro-managing *processes* and towards defining the desired *outcomes* to be achieved. Under such a system, “the state ceases to focus on the *how* and instead focuses primarily on defining the *what*, then pays for performance rather than processes”.⁸⁰ Paying providers only when they achieve the goals set by government has the potential to drive much more effective and efficient performance. In short, it aligns the incentives of service providers so that what is desirable for society as a whole also becomes desirable to them. By throwing the financial risks, and some of the rewards, onto the provider, the system removes much of the need for resource-intensive and unproductive monitoring of the principal–agent relationship between government and the service provider. In the case of offender management, the clear desirable outcome is a reduction in re-offending. A payment-by-results mechanism requires a range of providers and will therefore typically involve organisations from the public, private and third sector.

Harnessing the profit motive to desirable outcomes, as well as keeping process requirements to a minimum, drives five important effects: first, it creates greater flexibility of provision to allow tailoring and targeting of resources; second it encourages innovation among providers; third it joins up the delivery of disparate services; fourth

80 L. M. Cumming et al., *Better Outcomes* (London: 2020 Public Services Trust, 2009), 12.

it strengthens central accountability for expenditure; and finally, it provides opportunity for private investment into public services.

1. Payment-by-results gives providers the freedom and incentive to **tailor services** to the individual's needs. By freeing-up providers from central controls and targets and paying them on outcomes, the commissioners of services allow the provider to use the experience of their one-to-one contact with clients to allocate resources and interventions between them according to need. Without personalisation, services are less likely to be successful and the provider would therefore receive no payment.
2. Payment-by-results also encourages providers to **innovate** in the services they offer. Innovation can reduce costs, improve the effectiveness of delivery, or both. This is particularly important when effective delivery relies on the coordination of a complex range of services, as in offender management. By contrast, interim targets and process requirements bind providers' hands, limiting their scope to try new things, and giving few incentives to do so even where they can.
3. Where one provider is responsible for the end-to-end service, payment-by-result offers a strong incentive to **join up service delivery**. In offender management, providers will not only face an incentive to coordinate prison and probation services, but also other relevant public services such as employment, health and housing services. For example, since ex-prisoners are less likely to re-offend if they are in work, paying for outcomes creates strong incentives for the provider to liaise with local employment services in order to reduce the chances of that person re-offending.
4. Payment-by-results combines the flexibility to personalise and innovate for the front line with **central accountability for public spending**, as the providers are judged, held to account

and ultimately paid according to the outcomes they achieve. Bureaucratic approaches to managing service delivery are often criticised for hampering innovation and leaving little room for frontline staff to deliver services as they see fit. But while central control may be stultifying, central accountability for the money spent is essential. A payment-by-result system with minimal process requirements – a “black box” approach – can achieve the best of both worlds: separating control and accountability and leaving the former with the service provider and the latter with central government.

5. In allowing private and third-sector providers to benefit financially if they prove effective at reducing recidivism, payment-by-results creates opportunities and **incentives for private investment** in offender management. The state struggled to find sufficient money to invest in offender management even in the boom years, so the chances of it doing so now are nil. By allowing private investment, and only rewarding it for achieving measurable reductions in cost to the exchequer, payment-by-results offers an investment solution in a time of public financial stringency.

One of the policy areas in which payment-by-results is beginning to become the norm is that of welfare to work. Several countries around the world have experimented with paying providers for getting jobseekers into sustained employment, with considerable success from both service users and public finance perspectives. Box 4.1 outlines some of the evidence from the UK and Australia.

Box 4.1: Payment-by-results in employment services

Payment-by-result has been tested and implemented in the area of welfare to work in Britain and abroad, and has proven effective. In the UK, Employment Zones, launched in 2000, was a private and third-sector employment programme paid by outcomes and targeted at

disadvantaged jobseekers. It proved to be quite effective in using flexibility to drive innovation and personalisation of employment services. Hales et al. found that for Employment Zone participants, the job entry rate into full-time employment was 28%: 11 percentage points higher than for comparison groups.⁸¹ Evaluations of the Pathways to Work pilots – an employment programme aimed at helping people with disabilities – suggested that they significantly increased the flow rate of people moving off benefit and into work. One key evaluation concluded that, a year and a half after the initial Incapacity Benefit enquiry, “participation in the programme increased the probability of being in paid work by 7.4 percentage points”.⁸²

Evidence from Australia in the same policy area confirms the finding that offering flexibility and strong incentives are effective. In the first year of Australia’s attempt at contracting employment services on this basis, the job-outcome performance was similar to the previous state-run model. Once the system bedded in, cost-effectiveness improved markedly and, with the flexibility to tailor their help to jobseekers, contractors delivered the same rate of job outcomes at significantly lower cost, while also achieving greater satisfaction levels from jobseekers and employers.⁸³ Under the Intensive Assistance part of the programme, specifically targeted at those who were hardest to help, the impact on cost per employment outcome was dramatic: it fell from AUS\$12,100 in 1995–6 to AUS\$5,440 in 2000–1 – a real-terms fall of 58.9%.⁸⁴

However, despite the proven potential for systems that pay for outcomes rather than for processes, payment-by-results is not a

81 National Centre for Social Research, *Evaluation of Employment Zones: Report on a Cohort Survey of Long-Term Unemployed People in the Zones and a Matched Set of Comparison Areas*, by J. Hales et al. (London: National Centre for Social Research, 2003), 136.

82 Department for Work and Pensions, *The Impact of Pathways to Work*, by H. Bewley, R. Dorsett and G. Haile (London: HMSO, 2007).

83 Organisation for Cooperation and Development, *Innovations in Labour Market Policies: The Australian Way* (Paris: OECD, 2001), 20. Productivity Commission, *Independent Review of the Job Network* (Melbourne: Commonwealth of Australia, 2002).

84 S. Cowling and W. F. Mitchell, “False Promise or False Premise? Evaluating the Job Network”, *Australian Journal of Labour Economics* 6: 2 (2003).

simple out of the box solution. Rather, it requires careful system design that allows those who take on the risks and potential rewards to have sufficient control over the offender management journey for real risk transfer to occur. In short, it requires a system that drives accountability for re-offending right through the system.

PREVIOUS ATTEMPTS TO LINK PAYMENT TO RE-OFFENDING OUTCOMES

The Conservative Party has suggested that prison governors be paid by results to encourage them to assume greater responsibility for ensuring effective resettlement of prisoners after release. The Young Foundation and Social Finance, the third-sector finance engineers, have recommended the use of Social Impact Bonds, vehicles to leverage private capital to fund treatment programmes for offenders. SIBs would earn a return through payments from government where improved offender outcomes result in a saving for the exchequer. Boxes 4.2 and 4.3 explain these two models in more detail.

Box 4.2: Paying prison governors by results

The Conservative Party's green paper, *Prisons With a Purpose*, proposed a system of outcome-based payment in offender management.⁸⁵ They suggest reform of the offender management system in order to ensure accountability, bring prison and probation services together and open up the market for private and third-sector providers.⁸⁶ In their proposals, they refer to the payment-by-results mechanism, but it is unclear to what extent it would be employed. Under the green paper proposals, prisons would become fee-earning Prison and Rehabilitation Trusts, which would be responsible for offenders both before and after they have been released, opening up more possibilities for private and voluntary bodies to deliver services.

⁸⁵ Conservative Party, *Prisons With a Purpose: Our Sentencing and Rehabilitation Revolution to Break the Cycle of Crime* (London: Conservative Party, 2008).

⁸⁶ Ibid.

The Prison and Rehabilitation Trusts would be paid in two stages. A basic tariff would be set and awarded to providers to pay for a secure upbringing as well as for rehabilitation. The most prolific re-offenders would attract a higher payment. The way this tariff is calculated would give strong incentives to the trusts to develop more efficient ways of running the processes. If offenders do not re-offend within a certain time, trusts will receive a premium tariff payment, paid from the savings made because this offender did not re-offend, including court costs and the cost of incarceration.

The *Prisons With a Purpose* model is a bold and radical step in the right direction. However, strengthening incentives for prison governors, in the absence of wider reform, faces three accountability problems that stem from the rapid churn of prisoners around the prison estate during their sentences. First, high churn means that governors have limited time to engage with offenders before they are moved on to another prison. So, with the best will in the world, governors are unlikely to have sufficient control even of the prisoner's pre-release environment to make any real difference to their subsequent behaviour. Second, since more than 32% of prisoners end up incarcerated more than 100 miles away from their home,⁸⁷ governors would find it almost impossible to coordinate effectively the resettlement of their prisoners once they are released. Finally, where a complex range of services is required to assist in resettlement – engagement with, for example, primary care trusts, employment services, benefit services and housing – delivery must be coordinated locally to capitalise on the available economies of scale. Without that coordination, and with prisons resettling offenders across wide and overlapping areas of the country, service delivery will inevitably be fragmented and confused, as it is currently.

87 Home Affairs, www.publications.parliament.uk/pa/cm200405/cmselect/cmhaff/193/19302.htm.

Aside from the accountability problems, paying each prison governor by results for the subsequent behaviour of their offenders suffers from the problem of accurately detecting changes in offending behaviour. Work by MoJ analysts suggests that even with a cohort of around 1,000 offenders, a 10-percentage point reduction in reconviction rates would be needed before one could be reasonably confident that the observed change reflected a fall in re-offending rather than random statistical variation.⁸⁸

Finally, paying publicly employed prison governors by results relies on using public money to fund performance improvement. With 24% budget cuts on the horizon at the MoJ, there will be no scope to finance meaningful interventions unless additional finance can be brought to bear. In this regard, the SIB approach has more to offer.

Box 4.3: Social Impact Bonds

Social Impact Bonds⁸⁹ aim to break the cycle of cuts in preventative spending, causing deterioration of social outcomes, which in turn causes further redirection of resources used for prevention into crisis spending. This thinking can be applied across a range of policy areas and one such area is offender management.

Under SIBs, private capital can be attracted in to fund better preventative measures if it is subsequently rewarded with a portion of the money saved through the success of those interventions. SIBs can be initiated by local authorities or third-sector organisations as a means of raising capital.⁹⁰

The advantage of this model, as with any payment-by-results model, is that the risk of providing unsuccessful interventions is transferred to the investor. Large investors would then contract services from smaller specialised organisations (from either the private

⁸⁸ Ministry of Justice internal analysis.

⁸⁹ *Social Impact Bonds* (London: Social Finance, 2009).

⁹⁰ J. Loder et al., *Financing Social Value: Implementing Social Impact Bonds* (London: The Young Foundation, 2010).

or the third sector), which lack the financial capacity to contract with government on the necessary scale.

As other approaches which focus on outcomes rather than on processes, SIBs would incentivise providers to find comprehensive solutions for social problems, rather than enrolling individuals in interventions which prove ineffective. Payments to bond-holders would be made on a proportionate basis, and would take into account the rising costs the further the provider gets into the caseload by increasing payments for every successive percentage point.

SIBs are, in essence, similar to other payment-by-results in that they aim to leverage new finance to deliver services. However, their viability depends on the scale and scope on which they are deployed. Using SIB money to fund specific interventions in a given prison, for example, suffers the same accountability problems faced by paying governors by results. It is currently unclear how extensive these interventions would be. But unless service providers funded by SIB capital have full control over the prison environment, as well as post-release interventions, it is difficult to see them having sufficient control over the offender journey for improvements in outcomes to be traced to their interventions. The accountability is weak; hence the risk transfer to the SIB is illusory. It is therefore insufficient to contemplate the idea of paying for outcomes without implementing much more radical reforms to the way offenders are currently handled.

As with the prison governor model, the measurability of impacts creates problems for SIBs deployed in the current offender management system. Unless wide-ranging interventions can be provided across many thousands of offenders, it seems unlikely that government could be sufficiently certain of any reduction in offending behaviour to justify paying investors on that basis.

But a further problem, which relates to both of the approaches outlined above, is that they preclude any form of competition

between providers. Since prison trusts would remain exclusively in the public sector, provision would be monolithic. Similarly, the interventions funded by a SIB would presumably not be subject to competitive tender. Limiting the competitiveness of the commissioning environment in this way reduces the likelihood that providers will innovate, and relieves the pressure on them to continuously improve their performance. For a social market adherent, payment-by-results must instead be located within a competitive market framework if its innovative potential is to be maximised.

THE SMF MODEL OF PAYMENT-BY-RESULTS

As described above, previously proposed models of payment-by-results suffer from some shortcomings that render the approach unworkable. In order to resolve the accountability, finance, measurability and competition problems of earlier proposals, the SMF advocates a much more radical reorganisation of the offender management system. On top of such a reshaped system, the outcome-based commissioning approach we propose offers the potential for a step change in recidivism.

The key elements of the SMF accountability model are the following:

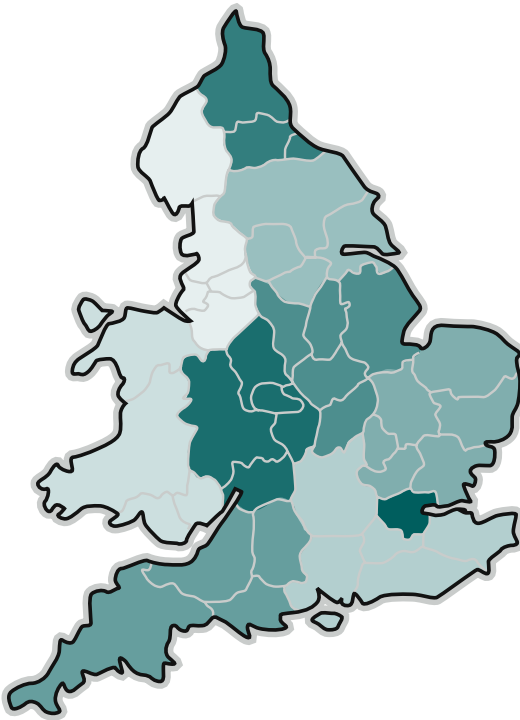
- **New capacity use to split short- and longer-term prisoners.** New and replacement capacity in the prison system that is set to come on stream over the next four years will be sufficient to accommodate the entire stock of sub-12-month prisoners. It should therefore be strategically distributed across the UK to allow the separation of short- and longer-term prisoners. This would have two benefits: it would enable the design and operation of dedicated rehabilitation prisons; and it would ensure that the target group is held and resettled entirely within their home region.

- **Contract out all offender management for sub-12-month prisoners.** The MoJ should contract out responsibility for the entire prisoner journey, from incarceration to resettlement, to one public, private or third-sector provider in each region of England and Wales, for all offenders sentenced to prison terms of less than 12 months.
- **Ten regional prime providers.** Ten commissioning regions of the UK would be based on the existing offender management regions, shown in figure 4.1. Each regional provider could expect to handle some 7,000⁹¹ offenders each year. This would provide both economies of scale and sufficient volume for the MoJ to discern real improvements in performance as distinct from statistical blips. Internal MoJ analysis suggests that with a cohort of this size, a reduction in recidivism levels by around six percentage points could be detected with a high degree of confidence.⁹² For multi-year contracts, detecting reductions in recidivism at an even finer level would be possible.
- **A two-part payment.** Providers would be paid for achieving reductions in two-year reconviction rates, receiving a two-part tariff. The first element would be paid for achieving the secure and humane incarceration of each offender. The second part would be paid conditional on offenders not being reconvicted.
- **Staged outcome payments.** The second part of the payment to providers would take the form of a staged payment, rewarding them every six months, for up to two years if the ex-offender has not been reconvicted. In addition to easing possible cash-flow problems for providers, this approach would mean that providers are also rewarded for reducing the frequency of offending – a socially interim goal – not just for stopping it entirely.
- **Revenue neutral or better for the exchequer.** Payments to providers would be structured such that the programme cost for the department would be no higher than current expenditure, unless recidivism rates fall among comparable offenders.

91 Total number of sub-12-month sentences divided by the 10 regions.

92 At the 90% confidence level.

Figure 4.1: The ten offender management regions across England and Wales



Source: National Offender Management Service, NOMS Regions, <http://noms.justice.gov.uk/noms-regions/>.

In commissioning for outcomes and paying for their achievement, this model offers the prospect of introducing private investment into the offender management system at a time when departmental spending will be slashed. But it will do so in a much more accountable way than any approach suggested to date. This will allow the state to transfer the risk for reducing re-offending onto private and third-sector providers and, in doing so, give frontline staff greater flexibility to deliver a better service. On the basis of the academic literature on the impact of effective interventions, if implemented, this model could bring about a substantial reduction in recidivism, offering immediate cost reduction for the criminal justice system of up to £1bn per year and additional savings to wider society of £2bn per year.

By giving providers complete control of the pre- and post-release environment for offenders in their region, the SMF model drives much stronger accountability for results. Only with this level of accountability can outcome-based commissioning be made to work. The model proposes a scale of operation that is both big enough to capitalise on the available economies of scale and to satisfy measurement requirements, while, at the same time, small enough to facilitate local solutions to offending behaviour. As with the DWP's commissioning strategy for employment services for the long-term unemployed, the *regional* provider model allows the involvement of *local* private and third-sector specialist subcontractors, ensuring that it draws out local expertise and knowledge.

In December 2007, Lord Carter suggested building three new Titan prisons with the capacity to house 2,500 prisoners each.⁹³ In April 2009, the government announced plans for the building of five prisons, each with a capacity of 1,500 places.⁹⁴ In January 2010, the planning application for the first new prison site was submitted. These extra places – of which there will be 7,500 – can and should be dedicated to prisoners who receive sub-12-month sentences – currently some 9,000 at any one time.

Ensuring that new capacity is used to separate long- and short-term prisoners has advantages beyond helping to strengthen accountability for providers. It will allow for lower-security prison specifications, hence reducing building costs. It will also make it possible for such facilities to be purpose-built around the needs of rehabilitation interventions, rather than continuing to rely upon the crumbling, expensive and inappropriate Victorian and pre-Victorian infrastructure in which prisoners are currently held.

93 House of Commons Justice Committee, *Cutting Crime: The Case for Justice Reinvestment*, 34.

94 Jack Straw, Statement on Prison and Probation, 27 April 2009; www.justice.gov.uk/news/announcement270409a.htm.

The focus on the sub-12-month prisoner category is justified for a range of reasons:

- First, as described in chapter 1, the sub-12-month group of prisoners is the most costly group, comprising as it does some 70% of prison sentences handed down each year.
- Second, it is also the group with by far the highest rates of re-offending behaviour and the group at highest risk of going on to commit further, more serious crimes.
- Third, this group of prisoners currently receives no resettlement support from the probation service.
- Fourth, operating the system for this group of relatively low-level offenders who are less likely to present a threat to public safety is more politically viable than doing so for, say, violent offenders: 65% of the convictions in the sub-12 month group are for theft, motoring offences, absconding of bail, public order offences, drug possession and small scale supply.
- Fifth, the timeline to full payment for providers is less than three years under the SMF accountability model (one year's incarceration followed by a two-year monitoring period), making it viable for private investors to be involved. Prisoners with longer sentences pose greater problems for private investment because final outcome payments will often not be paid until many years down the line.

Nevertheless, while sub-12-month prisoners are the most obvious group to tackle, for all the reasons outlined above, if the new approach proves to be successful, extending it to longer-term prisoners might be considered.

CONCLUSION

As many have argued before, the key to tackling recidivism and the burgeoning costs of the criminal justice system in the UK is to align all parts of the system with the ultimate goal of reducing

re-offending. But the way to implement that insight has evaded policymakers for years.

The idea of paying someone for reducing re-offending among “their” offenders has been raised before. But it is unworkable unless the fundamental problems of accountability and measurability in the prison system are tackled; sources of new, non-public money are found; and market mechanisms are brought to bear.

The SMF accountability model proposed in this chapter tackles each of those questions and draws out the reforms to the prison service that will be needed to make commissioning for outcomes a reality. If implemented, we can expect to see a substantial reduction in recidivism, offering immediate cost reductions for the criminal justice system of up to £1bn per year and additional savings to wider society of up to £2bn per year. The final chapter examines some of the other objections that are often raised in opposition to implementing outcome-based commissioning in this area of public policy, and offers solutions.



5. OVERCOMING BARRIERS TO PAYMENT-BY-RESULTS

The previous chapter set out how the SMF accountability model of payment-by-results can drive a cheaper, more responsive and more effective offender management system to crack the problem of persistently high recidivism rates. In doing so, this approach could cut costs to the public purse by around £1bn per year, and the broader social costs of crime by substantially more.

This chapter takes a look at some of the commonly raised criticisms and challenges for deploying this kind of approach in offender management. That the conditions for payment-by-results in offender management are not perfect does not mean that the approach cannot substantially improve the cost-effectiveness of the system. And as we have seen, the status quo is not just failing: it is rapidly becoming untenable. Nevertheless, it is important to consider whether these challenges pose real barriers to the policy or whether they can be mitigated.

Two of the most substantial obstacles to implementing an outcome-based payment system are the accountability and measurability issues discussed in the previous chapter. But the SMF accountability model overcomes these shortcomings by ensuring that the scale of commissioning areas is large and that providers have far-reaching control of all aspects of the offender journey within those areas. These are key elements of any viable payment-by-results system. The remaining challenges for the policy are around the following areas:

- **Proxies for re-offending:** are reconviction measures good enough for measuring success in tackling re-offending?
- **Knowing the baseline:** do external influences on re-offending confound attempts to measure success against a reliable baseline?
- **Rewarding partial success:** should payment-by-results recognise partial success of interventions to reduce re-offending? If so, how?

- **Creaming and parking:** how should interventions be allocated among prisoners in a world of scarce resources?
- **Exchequer savings:** if the accountability model succeeds, will the system save the exchequer any money?

This final chapter considers each of these issues from the perspective of the SMF accountability model and, where possible, offers solutions to mitigate them.

ARE RECONVICTION RATES A GOOD ENOUGH PROXY FOR RE-OFFENDING?

One of the biggest obstacles faced by government over the question of paying providers for outcomes across a range of public services is that of measurement. ‘Success’ in service provision is often nebulous and hard to define objectively. In offender management the desired outcome is clear and simple to define – to stop someone re-offending – but it is impossible to observe directly because not all offences are brought to justice. The only observable outcome is reconviction.

It is estimated that only 7% of all the offences committed ever actually result in a conviction or a caution. This is either because they are not reported to the police or not recorded as offences by the police for various reasons (e.g. a lack of evidence), or because the police were simply unable to bring the culprit to justice.⁹⁵ Of those crimes that are reported, the police detection rate in the UK is somewhere in the region of 30%.⁹⁶

95 M. Thomson, *Reducing Re-Offending: Calculating Reconviction Rates* (York: Clinks, 2009).

96 I. Ogunbor and P. Robb, “Detection of Crime”, in A. Walker et al. (eds.), *Crime in England and Wales* (London: Home Office, 2009).

Paying providers according to reconviction rates is therefore a proxy for paying them to achieve the socially valuable goal of reducing re-offending. Nevertheless, while we can never be entirely certain, it seems likely that reconviction rates are a reasonably good proxy for re-offending, at least among reported crime.

Moreover, while the ultimate goal must remain the reduction of overall *re-offending*, reducing the *reconviction* rate itself is an important achievement in its own right. Reconviction is (almost) a direct measure of the costs to the exchequer of re-offending. This is because unreported or undetected offences clearly cost the state far less than those brought to justice. So using the proxy of reconviction seems to be sound policy from both a social and a public financial perspective.

WHAT IF THE BASELINE CHANGES OVER TIME?

A major concern among officials about paying for outcomes is, quite rightly, the problem of knowing what would have happened to re-offending in the absence of providers' interventions. External influences, such as changes in policing policy, can have substantial effects on the prisoner case mix, creating risk for providers who are paid for reducing reconviction levels compared to a point-in-time baseline. Such risks must be removed if the Department is to get good value for money from the SMF accountability model.

A changing case mix can make it either easier or harder for providers to hit their targets. If, for example, the police focus their efforts on detecting a certain type of crime that is typically associated with prolific re-offending, this would raise the likelihood that a given prisoner would be reconvicted, hence making it more difficult for providers to hit their targets. On the other hand, if offenders of the newly targeted crime are typically less likely to re-offend, providers might hit their targets more easily, thus benefiting from a windfall profit under such a simplistic payment-by-results model.

Nevertheless, it is possible to remove the risks that derive from a changing case mix. The MoJ has already developed a ‘predicted score’, which represents the anticipated rate of reconviction.⁹⁷ It is based on an econometric model of reconviction probability, which demonstrates what characteristics are associated with increased likelihood of reconviction. Most crucially, for example, we might expect age and past offending behaviour to be two of the biggest predictive factors when it comes to reconviction chances. Based on these and other characteristics, it is possible to see large differences between the reconviction probabilities of different offenders.

Applying the model to a cohort of offenders allows a reasonably accurate dynamic counterfactual to be established. This effectively means that if the actual rate of reconviction for a given cohort is lower than the predicted one, a regional provider can be deemed to have succeeded, even if the headline rate of reconviction has risen. By deploying such a model, the MoJ can therefore take a huge amount of information risk out of the system, making it cheaper to commission, and further strengthening accountability.

This approach can therefore solve one of the major problems associated with a shifting reconviction baseline. But there remains another external pressure that could cause the statistical predictions to break down. It has been argued that the external economic environment – and unemployment levels in particular – has an independent impact on the likelihood of a given person to re-offend.

As unemployment rises, opportunities for legal employment are reduced, which we might expect to lead to an increase in the incidence of illegal means of moneymaking.⁹⁸ Several studies find that this theory holds. Thornberry and Christenson

97 Ministry of Justice, *Improving the Prediction of Re-Offending Using the Offender Assessment System*, by P. Howard (London: Ministry of Justice, 2009). For an explanation, see, for example, Thomson, *Reducing Re-Offending: Calculating Reconviction Rates*.

98 G. S. Becker, “Crime and Punishment: An Economic Approach”, *Journal of Political Economy* 76: 2 (1968).

present evidence showing that unemployment has a significant instantaneous effect on crime.⁹⁹ Fougere et al. found that the number of young unemployed people in France was associated with increases in the level of crime.¹⁰⁰ If, as the studies suggest, re-offending rates do vary significantly with economic output, that would introduce new risks for providers, raising the commissioning costs to government.

However, the literature is far from clear that this effect is proven. A number of studies question the causal relationship between unemployment and crime. Chiricos has argued that evidence on the relationship between the two is “both inconsistent and insignificant”.¹⁰¹ Time series data on the strength of the labour market and crime indicates that although unemployment has risen since the 1950s, the evidence does not suggest that this has contributed to a significant increase in crime. Where a link has been demonstrated, the evidence is fragile at best.¹⁰²

Figure 5.1 plots the crime rate for England and Wales, as recorded by the British Crime Survey, against the national unemployment rate for available years of data. This simple analysis suggests that there is little reliable correlation between the two. Crime figures for 2009, for example, show that burglaries have fallen by 8% over the past year, despite the recession and soaring unemployment.¹⁰³ Economic effects therefore do not appear to present a major problem for paying according to reconviction outcomes.

99 T. P. Thornberry and R. L. Christenson, “Unemployment and Criminal Involvement: An Investigation of Reciprocal Causal Structures”, *American Sociological Review* 49: 3 (1984).

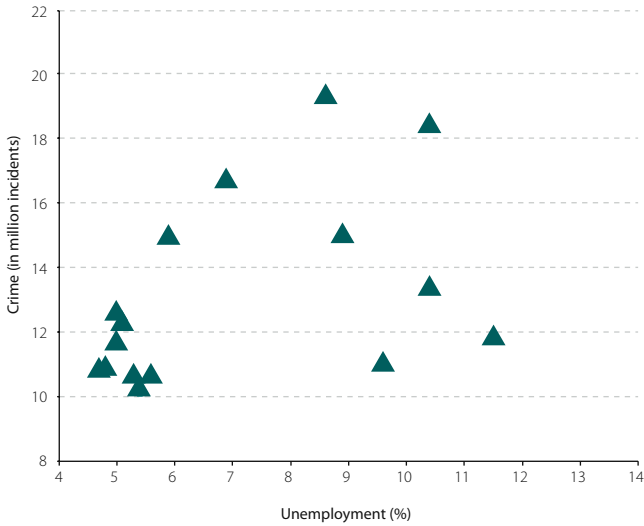
100 D. Fougere, F. Kramarz and J. Pouget, “Crime and Unemployment in France”, *Journal of the European Economic Association* 7: 5 (2009).

101 T. G. Chiricos, “Rates of Crime and Unemployment: An Analysis of Aggregate Research Evidence”, *Social Problems* 34: 2 (1987), 188.

102 R. B. Freeman, “The Economics of Crime”, *Handbooks in Economics* 5: 3, Part C (1999).

103 D. Casciani, “Crime Figures Show 8% Fall in England and Wales”, BBC News, 21 January 2010, Home Office, Statistical Bulletin, Crime in England and Wales: Quarterly Update to September 2009 (London: Home Office, 2010).

Figure 5.1: Crime and unemployment in England and Wales – recent years



Source: International Labour Organisation, LABORSTA, Labour Statistics Database. Home Office, *Crime in England and Wales 2008–09*, 47.

But even if there is a link between the economic cycle and crime levels, this would not render the SMF model unworkable. Recidivism is clearly less sensitive to the economic cycle than employment. Nevertheless, one of the areas where payment-by-results has been rolled out recently is in welfare-to-work policy, under which regional providers are paid for achieving sustained employment outcomes for jobseekers. This is clearly something that gets harder in a recession and easier in a boom. One way to mitigate the economic risk is through contract length: providers and government are partially insured against economic volatility by having contracts that run for up to seven years, hence spanning the up-side and down-side risks of the economic cycle.

REWARDING PARTIAL SUCCESS

One objection to paying for outcomes is that contractors' attention is then focused on a blunt, measurable outcome, while the really socially

valuable outcome, being more subtle and nebulous, gets neglected under such a system. In the case of re-offending, a binary measure of success in preventing reconviction does allow for the possibility that a provider may have made significant progress in reducing the frequency and the seriousness of subsequent offending behaviour. Could pursuit of these valuable outcomes be distorted by a relentless focus on stopping all re-offending? There are a number of ways to measure more refined outcomes, some of which are more viable than others.

Paying for processes?

One approach is to establish additional criteria on which providers might be paid, in conjunction with reconviction rates. Providers could, for example, be paid for successfully arranging accommodation or when the offender attends a drug rehabilitation course.

While achieving such milestones may be an important step on the road to reducing re-offending, this should not be what government rewards providers for doing. Such an approach would weaken the potential impact of a payment-by-results model, turning it back into a payments-for-processes approach. Instead of giving frontline providers the freedom to determine the best approach themselves, and holding them to account for achieving the ultimate policy goal, Whitehall would once again drive the process from the centre, by setting out additional targets for providers to meet. This is precisely what payment-by-results attempts to move away from. Payment-for-processes cannot be the solution to doing more with less public money for reasons outlined above, and should therefore not be considered.

Paying for reduced crime severity or frequency?

Alternatively, the MoJ could base a proportion of the bonus payment on other interim reconviction outcome – often referred to as ‘distance travelled’ measures. One example of such a measure is achieving reduced the severity of the crime for which an offender is reconvicted; another is the frequency with which former prisoners

re-offend. It is clear that such distance travelled measures are important, and that providers who manage to reduce the severity and frequency of an individual's offending, even if they don't prevent them from re-offending within two years, has achieved an important social good. But can these be used as a basis for paying providers?

While offence severity is highly subjective, existing solutions are available. Since magistrates base their sentencing decision on the Magistrates' Court Sentencing Guidelines,¹⁰⁴ this could be a relatively reliable route to establishing offence severity. If an offender was reconvicted, the new sentence could be compared to the previous one, with providers paid where severity is reduced.

There are, however, significant problems with using a re-conviction severity measure. First, with detection rates of around 30% of recorded crime, the likelihood is that ex-offenders have been involved in other misdemeanours before they are reconvicted. That makes the observed severity of the offence for which they are caught somewhat arbitrary. One wouldn't have wanted Al Capone's case-worker to have received a bonus just because he was finally convicted of tax evasion, rather than for one of the many more serious crimes for which he was known to be responsible.

Paying according to the frequency of re-offending is also problematic for two reasons. First, since re-offending behaviour is unobserved, *reconvictions* may not be a particularly good guide to actual *re-offending* frequency. Second, since a person in prison is unable to re-offend, frequency measures are distorted by periods of punishment, making these a poor basis for payment.

For these reasons, most distance travelled measures are poor outcomes to contract for. Besides these issues, where providers have large enough case loads, a binary measure is less blunt than its

104 Sentencing Guidelines Council, *Magistrates' Court Sentencing Guidelines* (London: Sentencing Guidelines Council, 2008).

detractors claim. Over the cohort of offenders in aggregate, success at distance travelled will be reflected in success at reducing re-offending. Providers that are good at the former will inevitably be good at the latter. Therefore, as long as providers offer services for enough offenders, their efforts at reducing re-offending in absolute terms will inevitable result in lower severity and frequency among those who do re-offend.

So while re-offending rates are not a perfect measure for the success of offender management services, in aggregate they are by far the best measure to contract for to address the key metric of reconviction rates.

CREAMING AND PARKING: HOW SHOULD RESOURCES BE ALLOCATED?

For profit-maximising providers, exactly how they are paid for outcomes will have an impact on which offenders they prioritise for interventions. Offering a flat bonus payment for each person who does not re-offend will clearly drive providers to focus on the easy cases first – perhaps older offenders with more stable home lives, for example. This behaviour is often referred to as ‘cream-skimming’ (helping the easier cases) and ‘parking’ (leaving the harder ones), and is usually considered to be a problem associated with paying on outcomes. But whether parking is in fact a problem in any given policy setting depends on the policy context and political perspective.

First, with re-offending rates at over 70% for sub-12-month offenders, together with the fact that they are not released on licence, it is clear that this group is effectively parked by the existing system anyway. Hence, fears about providers starting to help some offenders but not others are perverse, and make the best the enemy of the good.

Second, whether parking is acceptable or not depends on an essentially political judgement about where resources are best directed. Before implementing a payment-by-results system,

government therefore has to be clear what it wants to achieve with it and, crucially, how it wants resources to be allocated among those receiving the services. The payment structure can then be used to incentivise the provider to follow these objectives.

To reduce re-offending, some argue that resources are best directed at where they will have the largest marginal impact on re-offending rates. Since re-offending becomes less likely once people reach the age of 25, efforts directed at people just below this age, to bring forward the time when they desist, might be the most effective use of money to tackle headline rates. This could be achieved with a flat payment structure, under which every offender who does not re-offend yields the same payment.

But effectively encouraging parking in this way raises some questions that should be considered. In the specific case of offender management, a failure to help those who are most likely to re-offend might pose a threat to public safety. However, if a payment-by-results approach focuses on those who are sentenced to 12 months or less, the threat to public safety seems negligible.

On the other hand, parking behaviour may be a concern from a social justice perspective or because stopping the easiest cases may not represent as good value for public money as tackling the harder cases. The social justice case against parking offenders seems less compelling than that for allowing parking among, say, unemployed people. Either way, the important insight is that parking is not an inherent characteristic of payment-by-results mechanisms, but is, rather, a function of system and payment design, and therefore a matter of political choice.

One suggestion often made to counter parking, should it be deemed undesirable in this case, is to segment the clients – in this case offenders – into groups of easier- and harder-to-help clients, which then would each yield a different payment for success. While

offering higher payments for those cases that appear to be harder may improve the effectiveness of the system, if it is based on only a few different categories, parking will tend to recur within those categories, since the likelihood of re-offending will differ between superficially similar offenders.

A solution for this problem, advocated by the SMF for the Government's Flexible New Deal programme for tackling long-term unemployment, is a payment escalator. Rather than segmenting offenders into price brackets, providers would be paid more per re-offending outcome, the more they reduced the re-offending rate within the cohort. The per person payments would increase with proportion of offenders who have not been reconvicted. This creates strong incentives to providers to tackle re-offending behaviour across all offenders, rather than just the easiest ones.

How payments are structured and resources allocated to prevent recidivism are ultimately political decisions about the relative merits of cost-effectiveness and social justice. The key conclusion, however, is that a payment-by-results system can accommodate any political preference.

WHERE WILL EXCHEQUER SAVINGS COME FROM?

A final objection to payment-by-results that is sometimes raised relates to its capacity to reduce costs to the exchequer. There are two elements to the cost-reduction problem. First, it is sometimes argued that reducing re-offending might not reduce the volume of criminals flowing through the criminal justice system. Second, the objection can be raised that since prison operating costs are largely fixed, reducing numbers of prisoners at the margin will save very little cash.

The “They’ll just catch more offenders” objection

Proponents of the first objection argue that, if the SMF accountability model works to reduce re-offending, and consequently frees up

police resources to catch more first-time criminals, the volume of people going through the system – and therefore the cost to the exchequer – could conceivably remain unchanged. This is a problem sometimes described as ‘backfill’.

There are three reasons why this argument is unsound. First, we know that a large proportion of those sentenced to sub-12-month prison terms are there because of the persistent nature of their offending behaviour rather than their crime per se. In the first quarter of 2007, one offender given a sub-12 month sentence was responsible for three proven offences, compared to just above one offence per offender who received a prison sentence of between one and two years.¹⁰⁵ Second, it seems inconceivable that a system that effectively prevented re-offending would be inundated one-for-one with new, first-time offenders previously unknown to police. For these reasons, it is likely that the savings to the exchequer from preventing re-offending will be substantial.

Third, fears that a policy is not worthwhile because it saves little public money, even though it is effective at reducing offending behaviour and its huge costs to society, are muddle-headed. Exchequer costs do not constitute the only benchmark for policy success. As chapter 1 outlined, the private costs of offending behaviour are substantially greater than the public ones. If crime is prevented, society benefits from having fewer victims, less damage done and a heightened perception of public safety. Hence, any increase in the efficiency of the criminal justice system, even if its costs did not fall as much as might be hoped, would directly benefit the private realm – the ultimate goal of the criminal justice system. Prioritising exchequer expenditure regardless of service effectiveness is therefore to confuse means with ends.

105 Ministry of Justice, *Reoffending of Adults: Results From the 2007 Cohort England and Wales*, 20.

Does reducing prisoners really reduce costs?

The cost structure argument for why reduced offending may not reduce some costs is closer to the mark than the backfill one. Since a prison's substantial overhead costs are incurred along with the first prisoner incarcerated, releasing savings at the margin is problematic.

However, as chapter 1 set out, the exchequer costs associated with the prisoner group targeted by the SMF model are primarily driven by the costs of bringing offenders to justice rather than by those of incarcerating them. Around half of those given sub-12 month sentences receive a sentence of less than three months, and 86% get six months or less, implying an incarceration cost per conviction around £10,000.¹⁰⁶ By contrast, the process of bringing that person to justice costs the exchequer around six times more – some £60,000 – each time. For this reason, a focus on saving prison-operating costs is not central to the case for improving offending outcomes.

Nevertheless, since incarceration costs stem from the 'lumpy' and inflexible nature of the prison estate, there are ways in which costs could be reduced when marginal reductions in offender numbers are made – something that currently seems a long way off.

To make savings on the operation of prisons, the MoJ could outsource the management of their property portfolio to provide more flexibility. In 1998, the Department for Work and Pensions (then still the Department of Social Security) contracted with a private provider to operate its estate, including office buildings as well as those buildings where frontline services – primarily through Jobcentre Plus – are delivered. One of the department's main objectives was to increase the flexibility of how much of their estate they use, in order to respond to the

¹⁰⁶ Justice Statistics – Analytical Services, Ministry of Justice.

fluctuating demand of employment services over the cycle. In reviewing the value-for-money implications of this outsourcing arrangement from the taxpayer's perspective, the National Audit Office concluded that the department got the flexibility it needed, at a reasonable price.¹⁰⁷

This would appear to be a sensible way to manage the prison estate, allowing fluctuations in the need for prison places to be met. It would be absurd to allow policies to reduce re-offending to be rejected on the grounds that they might make prisons redundant, hence the challenge is to manage the prison estate to release that value as it arises.

CONCLUSION

This chapter has considered many of the common objections to payment-by-results in general, and as they relate specifically to its application in offender management. Most of these objections are either red herrings or are able to be overcome or mitigated by careful programme design along the lines proposed in the SMF's accountability model.

The SMF accountability model argues for a rethinking of the role of prison for short-term offenders, locating it as one part of a much more holistic approach to preventing re-offending. This can only be achieved by separating short-term prisoners from the rest of the prison population, and paying providers by results for tackling recidivism through their interventions in both the pre- and post-release environments. The challenge for a payment-by-results approach is not to be flawless, but to offer a substantial improvement in recidivism rates that have blighted Britain for too long. It is clear that the approach advocated here can achieve that goal over the next decade.

¹⁰⁷ National Audit Office, *Accommodation Services for the Department for Work and Pensions* (London: The Stationary Office, 2005).

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Crime costs the UK some £72bn each year. The failure to crack re-offending among prisoners serving short-term sentences is a key driver of these costs. Offenders with short prison terms comprise the large majority of those handed sentences each year, and more than 70% are back behind bars within two years of release. Each time they return to prison, the cost to the criminal justice system is around £60,000 per person.

A radical new approach to tackle re-offending with much less public money is needed in the decade to come. This publication sets out just such an approach. The SMF accountability model proposes:

- Splitting the short- and long-term prison populations to enable more accountable rehabilitation of persistent offenders on short-term sentences.
- Contracting out end-to-end offender management for all sub-12-month offenders to regional providers paid by results to reduce recidivism.

This new approach offers a step-change in outcomes from the criminal justice system, and substantial savings to both the public purse and wider society.

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ISBN: 1-904899-70-6
£10.00

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