

**CRIME, COURTS AND CONFIDENCE:
THE CHALLENGE OF CHANGE**

CEDRIC FULLWOOD*

“Everybody thinks our system is becoming soft and wimpish. In point of fact it’s one of the most punitive systems in the world.”
(Lord Bingham, Lord Chief Justice, England and Wales, May 2002)

INTRODUCTION

The first part of the title of this paper is taken from Lord Coulsfield’s Report (published in November, 2004) of the Independent Inquiry into Alternatives to Prison, an Inquiry for which I was one of six Commissioners. The second part of my title – “the challenge of change” – allows me to reflect a little on the wider policy and practice context. Whilst I intend to give you a flavour of our report and its conclusion, I thought that the IASD (Irish Association for the Study and Treatment of Delinquency) might be interested in the process of our work and our sponsors, almost as a case study, should you wish to replicate any elements of it. It is always difficult to make connections between different jurisdictions. However one common theme is attempting to answer the questions: who is responsible for the sentencing framework, who is responsible for its interpretation, and what is the nature of the communication between the two?

We have to start with an organisation by the name of the Esmée Fairbairn Foundation, one of the largest grant-making foundations in the UK. It makes grants and loans in four programme areas: Arts and Heritage, Education, Environment, and Social Development. It has, over the years, funded work in the criminal justice field. In 2001 the Foundation decided to set up an initiative which it entitled “Rethinking Crime and Punishment” (RCP) and focussed on prison and other forms of punishment. It was set up as its final report explains: “in response to widespread concern about the UK’s growing reliance on imprisonment.” It explained that despite its financial, social and human costs, prison enjoyed (if that is the right

*Chair, Cheshire Probation Board. Text of an address delivered at the Annual Conference of the Irish Association for the Study and Treatment of Delinquency (IASD), Kilkenny. 4th - 6th November 2005.

word) a growing appeal as a response to crime in many countries. In England and Wales we have seen the custodial population grow from 40,000 in 1980 to 64,600 in 2000, with projections that it could reach 93,000 by 2010.

The vexed question for me is that time after time politicians, policy makers and sentencers stress that one should only use prison when it is absolutely necessary. I noted your own Committee of Inquiry into the Penal System, chaired by Dr Whittaker in 1985 – twenty years ago! – stating: “The ‘principle’ should be that sentences of imprisonment are imposed only if the offence is such that no other form of penalty is appropriate.” However this principle is more honoured in the breach.

The aims and objectives of the RCP project were to:

- Increase and spread knowledge among the public about the most productive use of prison and the effectiveness of alternative punishments such as Restorative Justice and other community penalties;
- Establish good models of practice for actively involving the public in the criminal justice and penal system by stimulating new relationships and activity at local level between civil society groups on the one hand and the prison/criminal justice sector on the other;
- Contribute a body of fresh policy ideas about crime and punishment, in particular rethinking alternatives to prison.

It wanted to give particular attention to children and young people who are subjected to criminal punishment at a much earlier stage in the UK than most other developed countries; those addicted to drugs who account for a high proportion of the prison population; women, whose rate of imprisonment has grown even more dramatically than men and whose offending profile seems much less serious; and the mentally ill, whose detention in penal establishments is widely agreed to be unacceptable in a civilised society.

I. THE WIDER POLICY CONTEXT

Before describing the work of the project in general and the

Coulsfield Inquiry in particular, it may be of interest if I set out the wider policy context which applied in England and Wales from 2001 to 2004. In July 2001 the Halliday Report was published – this had been set up by the government to review the sentencing framework in England and Wales. It identified a number of deficiencies in the system which applied at that time. These included: an unclear and inconsistent approach to persistent offenders; the pointlessness of short prison sentences; the scope to make much more of effective rehabilitation in practice; and the lack of public confidence. The report’s recommendations, its author estimated, might result in a decrease in the prison population of 1,500, or an increase of 9,500! The reason for this remarkable variation depended on both how the new non-custodial measures were used and the prevailing climate of opinion. The Halliday Report’s recommendations, in part, were inserted in the Criminal Justice Act, 2003, currently being implemented.

The second major policy development was the Correctional Services Review whose first stage was completed in 2002, and the second stage (which became known as the Carter Report) was completed at the end of 2003. This led in 2004 to the establishment of the National Offender Management Service, as well as the Sentencing Guidelines Council chaired by the Lord Chief Justice. A third major policy review was the Social Exclusion Unit’s report which led to a Reducing Reoffending Action Plan targeted at improving the prospects of offenders leaving prison. This Action Plan concentrates on seven ‘pathways’: housing and accommodation; employment and education; physical and mental health; drugs and alcohol; finance benefit and debt; family ties and offender attitudes. Of note as well is the equivalent activity in Scotland covering the prison estate, alternatives to custody, and the Children’s Hearings, resulting in the production last year of a consultation document entitled “Reducing Re-offending in Scotland”.

II. THE RCP PROJECT

Let me now return to the Rethinking Crime and Punishment project. In the four years from 2001 to 2005 it spent £3 million on

57 projects, six publications (apart from the Coulsfield Report and companion research volume), and nine short briefing papers. Obviously I cannot do justice to the scope of so many initiatives but if I were to draw your attention to any the list would include seven items:

- The report by Professor Mike Hough and colleagues - “The Decision to Imprison – sentencing and the prison population”;
- The report by Kate Akestar for Justice on Restorative Justice, its effectiveness based on overseas experience, and the potential for extending it within the criminal justice system;
- A clutch of studies on the media and communications, from Strathclyde University’s Centre for Social Marketing’s report on how to bring about change in attitudes, policy and practice to prison and non-custodial sentences, through MORI surveys on attitudes to prison, to a project in Staffordshire which aimed at training ex-offenders to respond to media requests for case studies (based on the offenders’ own experiences);
- The Fawcett Society Commission on Women and the Criminal Justice System;
- A major study by the Institute for the Study of Civil Society (CIVITAS) into evidence in the UK and US regarding the most effective and efficient use of custody and alternatives;
- A project entitled “Local Crime – Community Sentences”, whereby, under the auspices of the Magistrates Association, magistrates and probation officers were trained to deliver presentations to local groups about how sentencing decisions are reached and what happens when an offender is placed on a community order.

III. THE COULSFIELD REPORT

The seventh would of course be Lord Coulsfield’s Report of the Independent Inquiry into Alternatives to Prison, to which I now wish to turn in a little more detail. In addition to Lord Coulsfield (an

eminent Scottish judge) the other five Commissioners included an experienced magistrate, someone from the private sector and another from the voluntary sector (with experience of the Social Exclusion Unit), a person with a long career in the media (including radio and broadsheet), and myself who had experience of probation and the youth justice system. We held four public meetings (London, Nottingham, Cardiff, Edinburgh) with facilitators and proponents of different positions. We asked for written submissions and received 120, from an individual judge in the Court of Appeal, a permanent secretary at the Home Office and both statutory and voluntary agencies. Some of the submissions were letters, whilst others were voluminous, well researched and powerfully argued.

Ministers and senior officials in the Home Office, Northern Ireland Office, Scottish Executive, and Welsh Assembly were amongst those we met, together with judges, magistrates, and representatives of the probation and prison services. We held meetings with detectives in the Strathclyde, Metropolitan and provincial police forces, offenders on intensive community programmes, prisoners in Wandsworth prison, a group of business people, and a variety of statutory and innovative projects from hostels for abused women to restorative justice meetings. The senior person establishing the Sentencing Guidelines Council, and the MORI lead on public opinion and the criminal justice system, gave detailed presentations to us.

We commissioned Professor Bottoms from Cambridge University Institute of Criminology to put together a volume of articles by the leading experts in various fields connected to our Inquiry. The resulting book “Alternatives to Prison: Options for an Insecure Society” was published along with our report. The Commissioners held a two day seminar with the authors, and I consider the book to be as up to date a study as currently exists on the subject.

Chapter 15 of the Bottoms book reports a year long ethno-methodological study of public attitudes to crime, offenders and what disposals they should receive. We were keen on this because when penal reformers speak to Ministers about offenders or crime they are told something along the lines of: “It is all right you

recommending more liberal approaches but you should come to our surgeries and hear the views of our constituents.”

This part of our work tiptoed into this area. The field work took place in two distinct communities in Sheffield: one a traditional but socially deprived working class area (where criminal damage and vehicle crime were higher), and another a city centre area with a more transient and mixed population (where drugs, violence and some gun crime were higher). Over the year researchers living in the area explored resident’s levels of punitiveness, their support for community sanctions, and views on the scope for rehabilitating offenders. The results of the study showed in both areas high levels of support, in principle, for rehabilitation and community reparation. In one area the experience of lower levels of disorder seemed to lead to a more punitive approach, whereas a perception in the other area of initiatives to enhance social control led to a greater willingness to contemplate an increased use of community penalties. Interestingly the probation service was seen as invisible in both areas, a state of affairs which in my view and that of the authors needs urgent remedy.

In the Coulsfield Report we made 39 recommendations: 19 were for government departments, 12 were for the probation service (or the emerging National Offender Management Service as it is), and 7 were for courts, with one each for the Sentencing Guidelines Council and local authorities. (This adds up to 40, but one of the recommendations was a joint one.) There is not time for me to outline all of them. I would like to summarise our main findings and then highlight some of the specific recommendations. Firstly the key findings:

- There has been an increase in the length and severity of all sentences as a result of public perception that crime rates are increasing and the political desire to be seen to be tough on crime (most clearly evidenced by Michael Howard’s ‘Prison Works’ stance.)
- Short custodial sentences fail either to reduce crime or rehabilitate offenders.
- Increasing confidence in community sentences is central to

delivering crime reduction.

- It makes sense for the community which has been affected by a crime to benefit from the punishment of the person found guilty of that crime. Therefore members of the community should play a key part in deciding how to use the eight million hours of work that offenders will undertake as part of community punishment orders (your community service orders).
- Judges and magistrates should be required regularly to visit the various programmes and projects in their areas and get feedback on their effectiveness. More use should be made of 'Review Hearings'.
- Community sentences or a fine should be the first option for most non-violent offences. In fact we said that there should be a sentencing framework which restricts the imposition of custody and which embraces alternatives whenever possible. RCP in their own report went further and recommended "the setting of custody reduction targets and a public commitment from Government to reduce the role of custody."¹

Our report promoted a variety of projects that we visited or had detailed information about. Case vignettes are used to give a flavour of their distinctive features. I want to mention one that is currently being developed here in Ireland under the auspices of Youth Advocate Programmes (YAP), Ireland. In 2002 the Northern Areas and the Western Health Boards both introduced a new programme that promoted a mentoring-based form of intervention to tackle the needs of 'out-of-control' young people who had become well known to their services, to the Gardaí and the Probation Service. It involves a mix of individualised in-home and community-based services developed around each young person and their family. At the core of the service is the matching of a locally recruited adult 'advocate' who will advise and guide the young person away from anti-social behaviour and into a positive life style. It differs from most other services in that it offers 24-hour intervention, seven days a week, the

¹ Report of the Independent Inquiry into Alternatives to Prison, p. 68.

advocate always being available to the young person when needed. They have plans for expansion next year. They are in the process of establishing a board of directors to oversee an independent YAP Ireland Ltd, and, if you are not already involved I would recommend that links between them and members of IASD are pursued.

With regard to sentencing we recommended a new system of unit fines (which is currently being pursued). We tackled the vexed issue of sentencing guidelines but, whilst endorsing them in principle, we issued a note of concern that in other jurisdictions they had led to upward pressure on the sentences given – and were particularly critical of the Magistrates’ Association Guidelines. We saw that preventing this from occurring in England and Wales was a major challenge to the new Sentencing Guidelines Council. We emphasised the leadership role of Government in both not giving mixed messages to the public and courts about sentencing, and often failing to take account of the research evidence that the Government itself had sponsored. There was consistent evidence presented to us that the public were far less punitive than the politicians and the media were apt to portray. One can only be dismayed at the lack of ministerial support when the Lord Chief Justice promulgated the SGC Guidance on burglary – the tabloid press rounded on him and one could not see the Home Secretary or his Ministers for dust!

Many of our recommendations centred on the challenge to increase confidence in the criminal justice system. Some of the points that we made are as follows:

- There is confusion about the true length of custodial sentences and we suggested ways of making them more transparent;
- We felt that since the introduction of the National Probation Service in 2001 some community orders had become very bureaucratic, with targets and performance indicators which prevented a real match between interventions and the complexity of offenders’ lives in troubled communities;
- We suggested that measures of effectiveness should be more sophisticated, not the simplistic commission of a further offence, but rather measures of reductions in frequency,

seriousness as well as the acquisition of skills as well as reparative work undertaken in and for the community.

- We stressed that we all (politicians, members of the criminal justice system and the media) should be more honest about what could be achieved by imprisonment and community interventions, and use information and data in a more readily understandable form;
- The demanding aspects and positive benefits of community orders should be emphasised.

We stressed the need for prevention of crime and the reduction of re-offending not to be left entirely to the courts, the police, prisons and probation, because: “It also requires the cooperation of local authorities, mainstream services such as health and education, voluntary organisations and the active interest and participation of members of the public generally.”²

Many reports, well meant and carefully worded, are often praised in the short term and gather dust in the longer term. The Esmee Fairbairn Foundation has committed itself to follow up work to try and implement at least some of the Report’s recommendations. Three elements have been chosen. A large scale pilot project is to involve the public in choosing what forms of unpaid work should be available for offenders, and helping to form the nature of the reparative or community work to be undertaken. A second project will target increasing sentencers’ knowledge of and involvement in community sentences. Thirdly there will be an awards programme to recognise, encourage, and publicise best practice in community work with offenders.

CONCLUSION

I started by saying that I wanted to begin and end with a quotation from a Lord Chief Justice. At the beginning I quoted Lord Bingham on how punitive our system actually was despite the common view that it was ‘wimpish’. Lord Woolf, in introducing the final report on RCP’s work, said that it had “provided a salutary

² Report of the Independent Inquiry into Alternatives to Prison, Executive Summary, p. 5.

reminder that public attitudes are complex and inconsistent but certainly not as uniformly punitive as is often supposed.” He commended the practical work that had been done “to explain to the public what community sentences actually involve, the demands they make on offenders and the benefits they can produce for victims and local neighbourhoods.” He concluded his remarks by hoping very much that the Government, politicians of all parties, and sentencers would take notice: *“that we must restrict the use of imprisonment to cases where there is genuinely no alternative.”*

Back to your Committee of Inquiry into the Penal System twenty years ago! But this wish will not come to pass unless a coherent strategy is put into place which consistently implements the many and diverse elements of the Coulsfield Report. I hope the work of the Coulsfield Inquiry will help us in small but important ways to bring this restriction in the use of custody to pass, and I hope my description of our endeavours is of some interest to you.