

The Green Paper – Breaking the Cycle

The Green Paper 'Breaking the Cycle – Effective Punishment, Rehabilitation and Sentencing of Offenders' was published by the Ministry of Justice in December, 2010. It suggests major changes of the British criminal justice system, in particular reduction of the prison population and emphasis on the rehabilitation of offenders. This Issues Paper comments on selected aspects in the light of the past 20 years of criminal legislation and its results. A brief summary of the Green Paper is set out in the Appendix.¹

The Ministerial Foreword to the Green Paper challenges the seamless policies of Conservative and Labour governments over the past 20 years summed up in the popular if meaningless sound-bites "Prison Works" and "Tough on crime - Tough on the causes of crime". The Forward states boldly that imprisonment does not work "despite a 50% increase in the budget for prisons and for managing offenders in the last 10 years". This is arguable. Crime rates have fallen to a point in 2010 where some commentators describe them as "the lowest ever" by some measurements.² The change in political views has been as sudden as the change to the Coalition Government. It will continue to be argued strongly.

What is clear is that prison does not work if measured by the reoffending rates of people discharged from prisons and from custody. The Green Paper refers to reoffending rates for adults of 50% and young offenders of 75% within 12 months of discharge. Interestingly, it gives reasons for the failures of the existing, very expensive custodial and non-custodial systems starting with a refutation – "A "Whitehall knows best" approach has stifled innovation both at national and local level" and "A top-down approach has concentrated on process (targets) instead of results." Combined with the Green Paper's commitment to a 'principle' of decentralisation, this may suggest a proposed return to the slower pace of criminal legislation more usual before 1991, guided more by practitioners and academics.

The Green Paper criticises the acceleration of criminal legislation leading to 27 major statutes in the last decade – "New laws were regularly presented as solutions to these problems. Rather than improve the situation the result is a sentencing framework which is overly complex, expensive and time consuming to interpret and administer, and difficult for the public to understand." If this is a commitment to a coherent framework and the repeal of unimplemented legislation – provisions waiting to be started by

statutory order of ministers – it will bring a welcome relief to many criminal practitioners.

Unravelling the complexity of current legislation and developing 'a simpler sentencing framework that is easier for the courts to operate and for the public to understand' will require care. It is unlikely to be achieved with further piecemeal legislation. The rush of legislation has produced some absurd results. The Early Release schemes, for example, produce conflicting dates for the release of prisoners depending on whether crimes were committed before or after 4 April, 2005. Since 2005, judges have been required to state how many days spent by an unconvicted prisoner on remand would count to reduce the time spent in prison. This has produced many appeals to correct the calculations. Before 2005 the calculations were produced by officials and dealt with within the prison system.³

The introduction of the 'indeterminate sentence for public protection' (IPP) in the Criminal Justice Act 2003 has by 2011 produced 6,000 of the current 85,500 prison population. It has been widely criticised, even described as an 'unmitigated disaster'. The Green Paper acknowledges the use of the sentence by judges has far exceeded intentions and expectations. Moreover the Parole Board has found the risk to the public to have been reduced to an acceptable minimum in only 5% of the IPP cases which come to it after the minimum sentence, the 'tariff' has been served. Even after reduction of the qualifying offences in 2008, the IPP continues to be over-used by judges imposing more than 4 year sentences of imprisonment. The Green Paper proposes to raise this minimum sentence to 10 years, reserve the IPP for exceptionally serious cases and release 2,400 prisoners. These proposals have been criticised by both supporters and opponents of the IPP – the one side that it fetters the judges' power to protect the public from dangerous people and from the other that it undermines the criminal justice system. How can it be just to sentence such defendants to what might be a whole life in prison, a sentence introduced only in recent years for a few exceptionally serious offenders?

The Green Paper announces the intention of the Coalition Government to remove from courts the option to remand defendants in custody where it is unlikely that a prison sentence will follow conviction. There may be difficulties should the defendant not respond to bail or where there is a risk to witnesses from the defendant, but this will reduce greatly the number of young men experiencing the 'university of crime' in prison. Similarly, it is proposed that the maximum prison sentence which might be suspended should be increased from 12 to 24 months.

On the other hand, short prison sentences up to 6 months are seen as 'a vital option for the courts'. Short prison sentences appear aimed particularly at persistent offenders for whom other penalties have not worked. Clearly, the clang of the cell door in the police station or court is not considered sufficient, notwithstanding that reoffending is highest among released short term prisoners.⁴ A controversial proposal is to increase the discount for a timely guilty plea from 33% to 50% of the usual prison sentence.

A major part of the Green Paper is devoted to strengthening of community sentences as improved alternatives to prison sentences. It quotes successful examples and claims that reoffending in 2007 was 7% lower among those people completing community sentencing. Clearly this seeks to assure a doubtful public who may not be aware that 16% of community sentences are not completed but replaced by other sentences, including prison sentences. Whether the comparison is fair must be doubtful. A prisoner has little or no option but to complete a prison sentence and sentencing, both of prison and community sentences, has inflated considerably over the past decade for similar offences. The Green Paper recognises this implicitly by proposing Probation officers should be returned the discretion whether to breach an offender unsuccessfully carrying out a community order.

Groups of offenders receive special mention including the mentally ill and those with alcohol or drug addictions for whom diversion from prison into treatment will be a favoured option when sentencing takes place. Secure conditions with facilities for treatment will be expanded. Since the percentage of prisoners with treatable mental illnesses or addictions has remained at 60 – 70% for more than 20 years, this proposal is overdue. However, there has been a recent rise in the number of mental health patients held compulsorily and a parallel rise in the number of secure hospital beds for patients convicted of offences. There is a danger the two groups will be conflated.

Women in prison have special problems recognised by the Green Paper but its most radical proposals concern young offenders. Despite great expenditure by previous governments the reoffending rates of young offenders have remained stubbornly high. About 75% leaving custody and about 68% on community sentences reoffend within 12 months. The Green Paper proposes a major shift of responsibility to local Youth Offending Teams and the local authorities which supervise them including the setting up of 'payment by results' schemes. Instead of the cost of a young person in custody falling wholly on central government, local authorities will become financially liable for a young person going into custody and rewarded for avoiding custody. The Green Paper encourages 'out of court' disposals by the police and

prosecutors and increased use of 'restorative justice', guided settlements between victims and offenders.

This is a return to past policies concerning young people whose crimes are usually of a minor nature. Until a major change of policy in the 1980s, immediate disposal and the avoidance of formalities, especially appearance before a court, was the aim. The changes, the Green Paper announces, will give rise to scrapping the Youth Justice Board, with its history of major disagreements with the Home Office and ministers, and 'slimming down', of NOMS, the National Offenders Management Service. The changes are a bold and imaginative return to local administration.

Conclusions

The Green Paper is a careful analysis of the ways in which the criminal justice system has gone wrong over past decades, usually as a result of political redirections. Most of the proposals are moderate and welcome but together amount to root and branch change with the consequent high costs. Some proposals are radical changes and likely to meet opposition. For example, the senior judges have stated publicly they oppose increase in the discount for a guilty plea.⁵

Most welcome of all is the Green Paper's concentration on steps to rehabilitate and integrate offenders into society through services provided by private and voluntary organisations as well as public bodies. Pilot schemes have started and the Coalition government promises a 'crime strategy' in 2011. Will the devil be in the detail?

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1. Thanks to Tony Cann of the PAP and a friend for the Appendix.
2. British Crime Survey. See www.bbc.co.uk/news/10645702
3. See article D.A. Thomas, Editor of Current Sentencing Practice, at www.bbc.co.uk/news/10645702
4. See www.howardleague.org/short-sentence-research/
5. See www.bbc.co.uk/news/uk-12993586

Appendix

Summary of '**Breaking the Cycle – effective punishment, rehabilitation and sentencing**' **Green Paper**, January 2011

The Green Paper is wide-ranging and includes proposals in relation to sentencing, delivery of services, and commissioning of interventions. Taken as a whole, this is a progressive set of proposals with positive messages about the benefits of diversion away from the Criminal Justice System where appropriate.

Prisons

There is a commitment to change prison regimes to make them much more productive environments.

Curfews and Tagging

There is a clear commitment to increase the use of curfews and electronic monitoring (tagging) as a strategy to reduce the use of custody and increase compliance of court orders.

Restorative Justice

Reparation and Restorative Justice (RJ) feature throughout the Green Paper and there are proposals for using RJ and reparation at every stage of the criminal justice process.

Community Payback

Community Payback is the ‘flagship’ of community sentencing and there are proposals for ‘tougher’, more rigorous and intensive delivery, more physical kinds of work, and the increased use of competition to drive down costs, etc.

Rehabilitation

Integrated Offender Management (IOM) is strongly endorsed and there will be greater co-operation between police, probation, local authorities and the Third Sector.

Drug Treatment for offenders

The Green Paper has a strong focus on the importance of drug treatment. There are commitments to extend the provision of ‘drug free’ wings in prisons. Community based treatment will be further developed.

Women offenders

There is support for the ‘one-stop-shops’ holistic approach to the management of women offenders, and the diversion of women from custody

Employment

Employers will be encouraged to engage with prisons to develop training and employment opportunities. There is a commitment to review the provisions of the Rehabilitation of Offenders Act to reduce the barriers to offenders gaining employment

Accommodation

There is renewed commitment to ensure that prison and probation staff provides effective housing support.

Mental Health

There is a strong commitment to continue with the proposals in Lord Bradley’s report, including the swift access to assessment and treatment.

Payment by Results (PBR)

It is intended to introduce six new PBR projects covering a wide range of offenders.

Sentencing Reform

There is lengthy and detailed discussion about a range of issues related to sentencing reform and implementation of sentences. The cumulative effect of all these proposals should be to reduce the numbers of offenders entering prison and also reverse the increase in the time some longer term offenders spend in custody.

Youth Justice

The Green Paper has a strong focus on the prevention of youth offending. There are proposals to encourage more ‘out of court disposals’ to try to keep young people out of more formal justice processes. Restorative Justice will be strengthened. Youth sentencing will be reformed to reduce the numbers of young offenders unnecessarily sent to custody.

Working with communities and supporting effective court There is continued support for domestic violence courts, dedicated drug courts, and Community Justice panels.

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