

SENTENCING REVIEW

INITIAL COMMENT FROM THE PRISON REFORM TRUST

The Prison Reform Trust welcomes this timely review which we anticipate will address, on the one hand, the revolving door of short, largely ineffective, prison sentences and, on the other, the increase in mandatory penalties, and the introduction of indeterminacy and risk-based measures, which has led to gross inflation in sentencing. A return to proportionality and fairness in sentencing should act as a guiding principle.

At this stage in the review we should like to draw your attention to pieces of work that the Prison Reform Trust has produced relatively recently that could help shape sentencing to reduce the size of the prison population, provide better value for money, consider the scope for justice re-investment and contribute to a safer, fairer society. For reference we have numbered each section. Sections 9 and 10, covering young adults and children are also the subject of separate submissions from our *Out of Trouble* programme. Links are provided to the Prison Reform Trust website for ease of access to each publication. Hard copies will also be submitted.

1. Imprisonment for public protection:

[Unjust Deserts: imprisonment for public protection](#), an applied research report by Jessica Jacobson and Mike Hough, supported by the Nuffield Foundation and published by the Prison Reform Trust in July 2010, concludes that the Ministry of Justice needs as a matter of urgency to review the social and financial costs and benefits of the IPP sentence, and to examine the available policy options. The main options are to:

- abolish the IPP sentence, and revert to the use of the discretionary life sentence to deal with those who genuinely pose a grave risk to society
- retain the IPP sentence but further narrow its criteria, to ensure that it is used less often, and targeted more carefully on those representing a real risk of serious re-offending
- leave the current arrangements in place, but locate sufficient resources to enable the Prison Service and Parole Board to operate release from the sentence in an effective, humane and fair way.

A particular injustice of this badly drafted sentence has been, and remains, that there is too narrow a means of demonstrating reduced risk - via satisfactory completion of scarce offending behaviour programmes, from which you are barred altogether if you are mentally ill, on medication or possess a low IQ. This unresolved breach has been raised with the Ministry of Justice by the Joint Committee on Human Rights.

There is a pressing need to take some remedial action to speed up the release of those sentenced, prior to the amendments to IPP sentences, with very short tariffs for less serious offences. It ought to be possible to give priority in sentence planning to this group and to ensure that their parole hearings are also given priority. A solution would be to make the 2008 amendments apply retrospectively, and to convert IPP sentences with very short tariffs into determinate sentences. Thorough-going reviews must also be expedited of the cases of the full 2,500 people serving an IPP sentence and currently held beyond tariff.

2. Murder

The number of people sentenced to life imprisonment each year has increased from 338 in 1996 to 520 in 2008. As at 1st September 2008, England and Wales had by far the highest number (6,922) of life sentenced prisoners in Europe. It had more than Turkey (2,571), Germany (1,985), Italy (1,396) and France (531) combined.

In 1993 the Prison Reform Trust published a report by the *Committee on the Penalty for Homicide*. This committee, chaired by Lord Lane of St Ippolitits concluded:

- 1) *The mandatory life sentence for murder is founded on the assumption that murder is a crime of such unique heinousness that the offender forfeits for the rest of his existence the right to be set free.*
- 2) *That assumption is a fallacy. It arises from the divergence between the legal definition of murder and that which the lay public believes to be murder.*
- 3) *The common law definition of murder embraces a wide range of offences, some of which are truly heinous, some of which are not.*
- 4) *The majority of murder cases, though not those which receive most publicity, fall into the latter category.*
- 5) *It is logically and jurisprudentially wrong to require judges to sentence all categories of murderer in the same way, regardless of the particular circumstances of the case before them.*
- 6) *It is logically and constitutionally wrong to require the distinction between the various types of murder to be decided (and decided behind the scenes) by the Executive as is, generally speaking, the case at present.*
- 7) *Logically, jurisprudentially and constitutionally, the decision on punishment should be made in open court by the judge who passes sentence. He should be enabled to pass such sentence as is merited by the facts of the particular case, whether a hospital order, a determinate period of imprisonment or, in the type of case which attracts most attention from the media, the wicked 'contract' killings or those for gain, life imprisonment.*
- 8) *Such a change in the law would have a number of advantages:*
 - (a) *It would make it unnecessary for unsavoury devices to be adopted to evade the difficulties posed by the mandatory life sentence. Manslaughter on the grounds of diminished responsibility is the prime example. It is a device which is understandably unpopular with the psychiatrists who have the unhappy task of stating on oath their views on matters which are often on the fringe of their professional competence.*
 - (b) *It would enable the Prison Service to devote more time and resources to prisoners serving long determinate sentences who may well present a greater risk to society on release than does the average lifer.*
 - (c) *It would, by providing more certainty, tend to alleviate some of the anxieties of offenders and therefore indirectly make for easier prison management.*

These conclusions are as relevant today as they were fifteen years ago. Indeed, the minimum terms in relation to mandatory life sentences introduced by the Criminal Justice Act 2003 have greatly exacerbated the situation.

Concerns that a court might pass an excessively lenient sentence, are no longer valid since the Attorney-General can refer to the Court of Appeal sentences which appear to be over-lenient.

The Prison Reform Trust recommends the abolition of the mandatory life sentence for murder. Various contributions to the debate on 'Law Reform: Murder' in the House of Lords on 1st March 2007 set out the background to the present arrangements and the arguments in favour of a discretionary sentence for the single offence of homicide. Among the many relevant comments were:

Lord Lloyd of Berwick: *"..the mandatory sentence is inherently unjust.."*

Lord Dholakia: *"..intentional killings vary greatly from planned and calculated killings for material gain or political motives to those committed under severe pressure and in emotional circumstances of great stress. Judges should be able to reflect these variations in their sentences."*

Lord Dear: *"I do not believe that there is any deterrent value in the mandatory life sentence It is the certainty of arrest and conviction that really deters, together with a sentence that is proportionate to the gravity of the offence."*

Lord Woolf identified two important changes in the sentencing process for those convicted of murder: *"..it is no longer the province of the Home Secretary to decide when a convicted person is to be released. If the Home Secretary, not the sentencing judge, were to determine when a person should be released, there would be some logic in curtailing the role of the sentencing judge.... The second significant change that has taken place is the development of guidelines....The mandatory sentence is a blunt instrument."*

Lord Thomas of Gresford: *"..we are bound by the straitjacket of statutory guidelines laid down in Schedule 21 to the Criminal Justice Act 2003....Diminished responsibility and provocation would not be necessary as partial defences if we did not have the mandatory sentence distorting the criminal law of murder."*

The Prison Reform Trust calls for a review of the law for murder and recommends fundamental and transparent reform:

- to abolish the mandatory penalty for murder;
- to replace offences of murder and manslaughter with a single offence of homicide;
- to introduce a discretionary sentence for homicide;
- for the discretionary sentence to operate within guidelines provided by the Sentencing Council.

These reforms would ensure justice in individual cases and would also be of great benefit to the management of the lifer prison population. Over time increasing numbers of offenders would be dealt with by determinate sentences, because judges would be capable of assessing the extent of culpability and the seriousness of the offence in most cases. For those cases where a real and prolonged risk of serious harm is evident an indefinite sentence would be passed.

3. Community sentences:

The Criminal Justice Act 2003 created a single, generic community order, albeit with a number of requirements. During the course of the Bill, the Prison Reform Trust had expressed a number of concerns about this measure. PRT retains these concerns and

would like the sentencing review to consider the case for re-establishing a menu of discrete community sentences. The advantages of such an arrangement would be to:

- Avoid the false but widely accepted notion that a court faces a simple choice between a prison sentence and a community order
- Create a wide range of options for the court, with imprisonment reserved for the most serious offences
- Allow the development of a hierarchy of disposals, each with a distinct purpose and impact
- Enable each disposal to be promoted as a valid option in its own right
- Allow a court to consider a range of community sentence options when one has not proved successful
- Avoid overloading defendants with unrealistic demands, which can arise from a single order with a lengthy list of possible additional requirements.

The following are examples of orders which are sufficiently substantial to merit independent status:

- Unpaid work order
- Probation order
- Drug treatment and testing order
- Curfew order
- Attendance centre order.

There is scope to develop this list further and to consider the branding of each order. In terms of fairness, effectiveness and confidence in the system it would clearly be important that each option is available to all courts and is properly supported.

Where appropriate and safe accommodation is identified as a block to community sentencing, greater use could be made of halfway houses run by voluntary sector organisations. Compared to any needless use of imprisonment, the development of an 'intermediate estate', recommended in the Halliday review of the sentencing framework, would be a cost effective option.

Our SmartJustice opinion polls, conducted by ICM and supported by the Network for Social Change, indicate that there is public support for well supervised community penalties as well as social policy and public health measures to cut crime such as better supervision of young people by their parents, treatment for addicts and mental healthcare (see for example [Criminal Damage – why we should lock up fewer children](#) 2008). The Prison Reform Trust can use the SmartJustice initiative to draw to public attention those community sentences that are well evaluated, convincing and effective. For the Ministry of Justice it is imperative, not only to promote but, to develop, monitor and support effective, geographically spread community penalties that engender judicial and public confidence.

4. Remand and breach:

The Bail Act 1976 asserts a presumption in favour of bail for all people awaiting trial except those on charges of murder, attempted murder, manslaughter, rape or attempted rape. The legislation presumes that an individual will be remanded on bail with various conditions

attached unless there are strong reasons to remand them into custody. However at the end of April 2010 the remand population in prison was 12,814. Just under two thirds of people in prison on remand are awaiting trial for non-violent offences.

The Prison Reform Trust is particularly concerned about the use of remand for people that are mentally ill and may also be homeless or otherwise vulnerable. We know that often courts remand vulnerable people to prison believing it is a place of safety or pending psychiatric reports that could be done more easily and quickly in the community. The Office for National Statistics found that more than three quarters of men on remand had a personality disorder, one in 10 had functional psychosis and more than half were experiencing depression.

For women on remand nearly two thirds suffer from depression. This is a higher level of need than in the sentenced population. In 2004 the Prison Reform Trust published [Lacking Conviction: The rise of the women's remand population](#). Our subsequent survey conducted for the Corston review identified breakdowns in bail provision, support and information.

Our *Out of Trouble* report [Children: Innocent until proven guilty? A report on the overuse of custodial remand for children in England and Wales and how it can be addressed](#) (2009) revealed the exponential rise in the imprisonment of children on remand, three quarters of who are either acquitted or go on to serve a community penalty. It presented a set of practical solutions including incentives for local authorities, improved training for justice professionals, calling a halt to 'remands of convenience' by Saturday courts, better bail supervision and a review of the disproportionate number of black children locked up on remand.

Over 10% of the local prison population are serving sentences for breach of community orders, the majority for technical breach of license. This expensive, and often counter-productive, use of scarce resources should be reviewed. In 2005 the Prison Reform Trust published 'Recycling Offenders through Prison' (hard copy to be forwarded). Currently our *Out of Trouble* programme has commissioned the National Children's Bureau to investigate the very high use of breach as a driver of child imprisonment and make recommendations.

Under 'zero tolerance' in New York the cancellation of imprisonment for technical breach of license was one of the key factors that led, as crime fell, to a reduction in prison numbers (the other factors being police visibility, improved public confidence and a drop in crime reporting in the popular press together with an investment in residential and community drug treatment (see 'Downsizing Prisons' Jacobson).

5. Restorative justice:

The Prison Reform Trust takes the view that restorative justice should be at the heart of our criminal justice system. As part of the sentencing review a transition from an adversarial system to one that is more inquisitorial, and ultimately restorative, should be explored.

Our *Out of Trouble* programme, which has contributed to the welcome reduction in the number of children in custody, taking lessons from low custody to high custody areas, has published [Making Amends: restorative youth justice in Northern Ireland](#). This report presents sound evidence that victims who attend conferences express up to 90% levels of satisfaction with the process and outcomes, and levels of participation are reasonably high. There are encouraging findings that youth conferencing is leading to a reduction in reoffending rates. The establishment of the Youth Conferencing Service has also contributed to an overall

decline in the use of custody for young offenders, and to an increasing rate of diversion of young people out of the formal criminal justice process.

6. Defendants with learning disabilities

The Prison Reform Trust's *No One Knows* programme, supported by The Diana, Princess of Wales Memorial Fund, has looked at shortcomings across the criminal justice system in dealing with people with learning disabilities and difficulties and, following extensive consultation, drawn up recommendations for change. Of particular interest to the review will be: [*Vulnerable Defendants in the Criminal Courts: a review of provision for adults and children \(2009\)*](#);

[*Prisoners Voices: Experiences of the criminal justice system by prisoners with learning disabilities and difficulties \(2008\)*](#)

[*Police responses to suspects with learning disabilities and difficulties: a review of policy and practice \(2008\)*](#).

The *No One Knows* programme informed Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system.

We should like the sentencing review to:

- Recognise and enforce the need to identify when a person has learning disabilities¹ in order that appropriate action can be taken, for example diversion away from the criminal justice system into social care, appropriate support to ensure effective participation in court, extension of existing provision for vulnerable witnesses to vulnerable defendants and informed sentencing.
- Ensure that sentencing requirements are appropriate for people with learning disabilities and are adapted as necessary, for example to avoid unreasonable or unrealistic expectations being imposed without appropriate support also being put in place.
- Given the inappropriateness of custody for offenders with learning disabilities (*Prisoners' Voices*; JCHR, March 2008:212), to prioritise community sentence options over the use of custody.
- Community sentences to include explicitly participation in community learning disability services as part of the pre-existing mental health treatment option and to introduce the option of support with daily living².
- Highlight the pre-existing option of a guardianship order (Mental Health Act 1983) for people with learning disabilities.

¹ The learning disability screening questionnaire (LDSQ) is a quick and easy to use tool with minimal training required. It has recently been successfully piloted at three prisons under the auspices of Offender Health.

² KeyRing Living Support Networks is a good model.

6. Mental health:

The Prison Reform Trust has undertaken a number of mental health applied research studies, which have informed Lord Bradley's review. Three reports, supported by the Nuffield Foundation, showed the prevalence of mental health need, and the suffering of those who were imprisoned, and set out detailed solutions for reform of the system, placing greater responsibility on the Department of Health for delivery of treatment and care within the NHS: *Troubled Inside: Responding to the Mental Health Needs of Children and Young People in Prison* (2001 – available in hard copy only); [Troubled Inside: Responding to the Mental Health Needs of Women in Prison \(2003\)](#); and [Troubled Inside: Responding to the Mental Health Needs of Men in Prison \(2005\)](#).

In 2009 the Prison Reform Trust, supported by the Mercers' Company, published [Too Little Too Late: an independent review of unmet mental health need in prison](#). This report, conducted with the National Council for Independent Monitoring Boards, made clear recommendations for change, which informed and accorded with the Bradley review. Chief among these was the need to establish a proper network of court and police diversion and liaison schemes (see also 'Outcome of Psychiatric Admission through the Courts' (2002) James D. RDS occasional paper 79 Home Office).

Courts should be enabled to make an order for diversion into treatment if the clinical evidence supports the need for such action. The National Federation of Women's Institutes, the WI, is running a *Care not Custody* campaign across England and Wales following the tragic death by suicide in prison of the mentally ill son of a WI member (www.nfwi.org.uk). The ambit of the inquest and coroners' powers should be extended to inquire into sentencing decisions in such cases.

7. Women:

More than half of women prisoners have suffered violence at home. One in three has experienced sexual abuse. A quarter has been in local authority care. Two-thirds have a neurotic disorder, such as depression or anxiety. Women prisoners have a much higher rate of severe mental illness such as schizophrenia: 14% compared with less than 1% in the general population. Over a third of women who are imprisoned will already have attempted suicide. Women, who make up only 5% of the prison population, account for half the incidents of serious self harm in custody.

An equality impact statement would highlight the disproportionate punishment of imprisonment far from home. When women do go to prison it has a huge impact on family life because so many are primary carers of dependent children. Just 5% of children stay in their own home when their mother goes to prison. Imprisonment will cause a third of women prisoners to lose their homes, reducing future chances of employment and shattering family ties. Reconviction rates are high.

Most women in prison have committed petty offences. About 40% serve three months or less. Almost two-thirds of women enter prison on remand. When their cases are considered, one in five is acquitted and over half go on to serve a community penalty. The big gains from the sentencing review will be in reducing remand, adopting progressive courts systems with mental health expertise, considering introducing all women courts, developing proportionate response to breach, treating addiction as a public health rather than a justice matter.

Baroness Corston's government-commissioned report, published in 2007, presented an unequivocal case for avoiding the huge public cost of custody for women offenders who pose no risk to the public. It called for the closure of women's prisons over a 10 year time period and their replacement with some small custodial units for serious and dangerous offenders, and, for most women offenders, a larger network of support and supervision centres in the community providing access to services to help women deal with addictions, mental illness, rape and domestic violence, trauma and debt, while also helping them to gain skills and take responsibility for their families.

Baroness Corston concluded that there first needs to be "a strong, consistent message from the top of government ... that prison is not the right place for women offenders who pose no risk to the public". A conclusion reached by, amongst others, the Prison Reform Trust's independent commission, chaired by Professor Dorothy Wedderburn, and the Fawcett Commission.

The Corston review gives the government the chance to join up its social and criminal justice policies. It has attracted considerable cross-party and public support. An ICM opinion poll commissioned by SmartJustice found that, of 1,006 respondents, 86% supported the development of local centres for women to address the causes of their offending, while more than two thirds (67%) believed that prison was not likely to reduce offending ([Public Say: Stop Locking Up So Many Women](#)).

Research by the new economics foundation has identified the cost effectiveness of community solutions to women's offending. Up to thirty of the largest and most respected charitable foundations and trusts have formed an unprecedented independent coalition to support implementation of the Corston reforms.

The All-Party Parliamentary Penal Affairs Group and the Women's National Commission met on 22 June 2010 to consider [Vulnerable women in the justice system: Womens' centres and the Corston agenda](#). The minutes of the meeting, which include powerful testimonies from three women who attend centres, provide evidence of the value of a network of womens' centres. They argue for a concerted effort to divert women with histories of abuse, self harm, mental health problems, learning difficulties and disabilities away from the criminal justice system and into more appropriate treatment and care facilities.

The Corston reforms were accepted by government but progress has been slow, with receptions into custody continuing to rise, not least because the driving mechanism in central and local government has been weak and cross-cutting measures are hard to implement. In September, supported by the Bromley Trust, the Prison Reform Trust is launching a time-limited, high level, independent Women's Justice Taskforce to make sure that vulnerable women are a priority for government, and to map out the means by which ministers, officials and local government can build on the Corston blueprint for reform in changed economic and political times and forge better links with sentencers and the new sentencing council to secure a measurable reduction in women's imprisonment.

(Parts of this section on women have been reproduced from The Magistrate 'Women offenders: is the current strategy fit for purpose?' winter 2009)

8. Foreign national prisoners:

Foreign national prisoners are currently 13% of the prison population. The sentences for drug importation are disproportionately long and unlike other sentences do not qualify for mitigation. In addition, sentences for passport offences have become longer. The rationale given for increasing the length of these sentences was to act as a deterrent but there is no evidence that this is effective. Numbers of foreign national prisoners continue to grow.

We suggest two measures that could be incorporated within the sentencing review. Firstly, sentences for 'immigration offences', often possession of false documents have risen sharply in number and severity. In 1994, 229 foreign national prisoners were charged with these offences, but by 2005 it had risen to 1,995. People entering the country and convicted of a first, less serious offence could be deported quickly without serving a sentence in a UK prison.

Secondly, people found to be coerced or trafficked into importing drugs, cannabis 'gardening', sex work, bonded labour or other employment in illegal activities should be treated appropriately. Some will qualify for protection. Others found guilty of these activities should be repatriated to a prison in their own country. Those already in prison, many serving disproportionate terms, should have their sentences reviewed for conditional early release and deportation.

The Prison Reform Trust is preparing a briefing paper with Hibiscus to show the impact of current sentencing practice on foreign national women, many of whom have been trafficked into offending. Our draft recommendations include a re-assessment of sentencing guidelines taking into account mitigating factors, welfare of dependent children and any evidence of coercion in compliance with CEDAW. Foreign national women in the justice system should have access to independent legal support and immigration advice. Those arrested on passport charges on point of departure should be allowed to leave the country rather than being brought back to face charges and the prospect of an expensive custodial sentence.

9. Young adults:

Young adults account for a tenth of the prison population and one in five receptions into prison. Despite much evidence suggesting the needs of 18-20 year olds are closer to those of children than of adults, the criminal justice system makes few adjustments for the developmental immaturity of this age group. In order to meet the needs of young adults offenders more effectively, and to reduce the number who are sentenced to custody, we would advocate the following:

- Diverting first-time and low-level offenders out of the criminal justice system through the introduction of a restorative pre-court disposal similar to the Youth Restorative Disposal
- Expanding the age-remit of youth offending teams (YOTs) to accommodate 18-20 year olds – this would enable health, welfare and social care needs of this age group to be more effectively addressed through the multi-agency structure of YOTs
- The development of Sentencing Guidelines specific to young adults – in recognition of the age, maturity, intellectual and emotional capacity of this particular group
- Introducing a robust community sentence, tailored to the specific needs of this age group, as an alternative to custody – this could take the form of the Intensive Alternative to Custody Order (IAC) currently being piloted.

The Prison Reform Trust is a member of the Transition to Adulthood (T2A) alliance, supported by the Barrow Cadbury Trust. For the latest research on young adults in the criminal justice system we would recommend the following T2A publications to this review:

[Young Adult Manifesto](#) (2010)

[Why is the criminal justice system failing young adults?](#) (2010)

A briefing, supported by the Barrow Cadbury Trust and drafted by ICPS and the Prison Reform Trust on 'Young Adults and Criminal Justice: International Norms and Practice' will be forwarded to the review team.

10. Children:

England and Wales has one of the highest rates of child imprisonment in Western Europe. Imprisoning children is expensive, damaging and doesn't work, with three-quarters reconvicted within a year of release. The Prison Reform Trust believes that child imprisonment should be reserved for the minority of children who commit serious, violent crimes and who pose an ongoing risk to themselves and to their communities.

To ensure child imprisonment can only ever be used as a last resort we advocate the following:

- Raising the custody threshold in primary legislation to prevent the imposition of custodial sentences for non-violent offences
- Raising the age of criminal responsibility to at least the age of 14 – this would bring England and Wales in line with the rest of Europe and would comply with the UN Convention on the Rights of the Child
- Reforming bail legislation to ensure custodial remand is reserved for children who are accused of committing serious, violent offences and who threaten to commit further violent offences whilst on bail

An analysis of the backgrounds and offending history of all those under 18 entering custody in a given period and a report on the pathway from local authority care to custody are in preparation. For further information, please see the full submission from *Out of Trouble*, the Prison Reform Trust lasting legacy campaign, supported by The Diana, Princess of Wales Memorial Fund, to reduce child and youth imprisonment (sent under separate cover).

The following applied international research report, outlining policy implications for England and Wales, will be of interest to this review:

- [Reducing child imprisonment in England and Wales - lessons from abroad](#)
Prison Reform Trust (2009)

11. Rehabilitation of Offenders Act 1974:

This arcane, complex piece of legislation was subject to a Government review in 2000. PRT approved the resulting report *Breaking the Circle*, published by the Home Office in 2002. Regrettably, the legislation has not been revised and the Act remains an obstacle rather than an aid to the reform of former offenders.

Earlier this year a private member's bill, the *Rehabilitation of Offenders (Amendment) Bill*, based on the *Breaking the Circle* reforms, was introduced to Parliament by Lord Dholakia. The Bill was presented to the All-Party Parliamentary Penal Affairs Group in January [All](#)

[Party Parliamentary Penal Affairs Group in January 2010](#). Reform of this legislation is urgently required if the 'rehabilitation revolution' is to take place.

12. Sentencing framework:

PRT has, in partnership with Professor Mike Hough and Dr Jessica Jacobson at ICPR, published a series of reports which should inform the sentencing review. The reports are:

- [The Decision to Imprison: sentencing and the prison population \(2003\)](#)
- [Mitigation: the role of personal factors in sentencing \(2007\)](#)
- [Creating a Sentencing Commission for England and Wales: an opportunity to address the prisons crisis \(2008\)](#)

The Decision to Imprison states:

"There are two main reasons why the prison population has grown. Sentencers are now imposing longer prison sentences for serious crimes, and they are more likely to imprison offenders who 10 years ago would have received a community penalty or a fine."

The report concludes:

"The analysis presented here suggests that policies to restrict prison numbers should involve three levels of intervention:

- *Adjustment to the legal and legislative framework of sentencing, so as to bring down custody rates and sentence lengths.*
- *Softening of the climate of public and political opinion on crime and punishment, so that sentencers feel at liberty to make more sparing use of custody, and greater use of the alternatives to custody.*
- *Improving understanding of the range of non-custodial penalties – including the fine – both among sentencers and the wider public.*

However, none of these interventions is likely to meet with much success unless there is clear political will to stop the uncontrolled growth in prison numbers, and visible, consistent, political leadership in stressing the need to do so."

The Sentencing Commission report informed the establishment of the new Sentencing Council and outlined its pivotal role in sentencing reform. The responsibilities of the Council include to *"be required to assess the impact of sentencing practice and promote awareness of sentencing matters; it may also be required to consider the impact of policy and legislative proposals relating to sentencing, when requested by the Government"*. Had such a power been exercised at the time of the 2003 Criminal Justice Act, it is arguable that the sentence of imprisonment for public prosecution would not have been introduced.

Juliet Lyon
30 July 2010