A Smarter Approach? Sentencing and Politics in England and Wales

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Summary: On 15 March 2021, the Police, Crime, Sentencing and Courts Bill ('the Bill') was introduced into the House of Commons. This was the same day that Members of Parliament debated the police's handling of the Clapham Common vigil for Sarah Everard who had vanished on 3 March and whose body was found a week later in distant woodland (Siddique, 2021). It was a time when unity of purpose and concerted cross-bench collaboration were required. Instead, we witnessed political division and posturing. The Home Secretary, the Rt Hon. Priti Patel MP, accused Labour of being soft on crime — saying that opposing the Government's whole Bill at second reading was tantamount to opposing measures that would ensure that 'vile criminals responsible for [rape] will spend at least two thirds of their time behind bars' (Hansard HC, 2021). As a riposte, Sir Keir Starmer MP, leader of the Opposition (and a former Director of Public Prosecutions), tweeted out that the Bill meant: 'Attacking a statue = 10 years in prison; Rape sentences = 5 years in prison' (Starmer, 2021) It was yet another opportunity wasted, in a long tradition of missed opportunities. As the Bill has progressed through the House of Commons, the two main parties remain locked in what has become the familiar and default political argument when it comes to sentencing policy in England and Wales. This argument, apparently the only real game in town, is to try and 'out-tough' each other in a predictable and reductive game of high-stakes poker: '10 years for attacking a statue.' 'I see you and raise you "Whole Life sentences for abduction and murder of a stranger".' This paper discusses the challenges and opportunities of the Police, Crime, Sentencing and Courts Bill against the backdrop of legislative and policy changes in sentencing over the last three decades.
Keywords: Sentencing; the Police, Crime, Sentencing and Courts Bill; White Paper; justice policy; probation; professionalisation; community; prison; treatment.

Sentencing policy in England and Wales since 1993

An inglorious tradition

The debate around tough sentencing is not new. Sentencing has been a political hot topic for decades in England and Wales. The Prison Reform Trust, a charity,

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estimates that since 2003 sentencing changes alone account for an increase of around 16,000 prison places, largely attributed to a range of increases to those sentenced to 10 years or more (Prison Reform Trust, 2020). The average custodial sentence length for prisoners sentenced to immediate determinate custody has risen annually since, increasing by 5.2 months up to 2019.

The Ministry of Justice's own analysis, in its report titled *Story of the Prison Population*', covering the period from 1993 to 2012, suggests that the primary reason for this sentencing inflation is tougher sentencing and enforcement outcomes. As the report states:

> Legislative and policy changes have made sentence lengths longer for certain offences (e.g. through the introduction of indeterminate sentences for public protection, mandatory minimum sentences and increased maximum sentences) and increased the likelihood of offenders being imprisoned for breach of non-custodial sentences or recalled to custody for failure to comply with licence conditions (as imposed on release from prison). (Ministry of Justice, 2013)

In short, the prison population is primarily a consequence of political choices made in Parliament, not the inexorable consequence of changes in the level or nature of crime in society.

The incentive to make the political choices that have been made is clear enough — in England and Wales, opinion poll surveys throughout this period have shown that the public does not believe that sentences are long or harsh enough (Hough and Roberts, 1999). The public concern is that our existing punishments do not 'fit' the crime — 'People have a firm belief in an "eye for an eye".... They worry that too many people avoid the correct sanction' (Transform Justice, 2017). This well-documented public punitiveness has remained constant, despite the compelling evidence that shows that the public is largely unaware of what actual sentencing practice is and consistently underestimates the length of current sentences. The public's continuous desire for more punishment has remained even though multiple research studies have consistently shown that when members of the public are presented with specific case scenarios and asked to make their own sentencing decisions, many impose punishments less harsh than those actually given by our courts. (Hough and Roberts, 1999)

So, despite the evidence that a more nuanced approach may be possible, political parties have, almost invariably, sought to 'get tougher' on crime. As

a result, custodial sentencing policy has moved in one direction: more people in prison. In a world so heavily dominated by a public perception that the system is too soft, political platforms have overwhelmingly promised more; this, generally, has meant increasing sentencing and introducing new classes of crime, all of which have had the consequence of pushing the prison population up. There seems to be a shared view across the political system that this is what voters want, and a belief that a more nuanced approach to sentencing might result in heavy losses in electoral support.

The result of this is, as we have already seen, that prison sentences have got longer and longer over the past thirty years. Yet sentencing inflation has not quenched this public thirst for more retribution and more deterrence: after thirty years of it, a 2019 poll suggests that 70 per cent of the population still believe the justice system to be too lenient, whilst only 3 per cent of those questioned believed sentencing to be too harsh (YouGov, 2019).

'…where has the Treasury been…?'

Moreover, these political incentives toward sentencing inflation have not been punctured, or even slightly depressed, by countervailing financial incentives. As the dust settled following the financial crash in the late 2000s, it was clearly going to be a time of austerity for public services. At the time, optimistic prison reformers argued that we could not afford the prison population we had (Howard League for Penal Reform, 2015). We needed prison-demand reduction, they argued. Logically, so the argument went, the Treasury and the Ministry of Justice should have argued with Number 10 that if we had fewer people in prison (and, therefore, fewer prisons), this would be a sure-fire way of reducing spending, and for the Ministry to contribute to the broader austerity agenda. Yet, as we know looking back from 2021, it did not happen. At a Criminal Justice Alliance Conference in 2015, Sir Alan Beith, a Liberal Democrat and outgoing chair of the House of Commons Justice Select Committee, said: 'We have known for years that we, as a country, have too many people in prison…. With all the cuts we have had, where has the Treasury been in penal policy?' (Beith, 2015).

The answer is, unfortunately, straightforward. Officials and, perhaps more importantly, Ministers involved in the Spending Reviews of 2010 and 2015 knew the political downsides and electoral risks they would be taking in proposing prison population-reduction policies — it would mean exposing themselves and their party to the charge of being weak on crime. At the

same time, all the principal actors knew that the financial upside of prison-population reduction policies was likely to be negligible. For while the logic of penal reduction makes intuitive financial sense, it takes the closure of prisons and a reduction in prison staff to achieve any substantial saving for the exchequer. Saving hundreds or even thousands of pounds is unlikely to lead to anything other than a little bit of spare capacity in the prison estate.

In this sense, reversing sentencing inflation was not worth it in 2010 or 2015. It was not worth the political fallout of adopting politically unpopular policy choices for small and potentially un-cashable savings. From a financial perspective, the macro-outcome may *look* irrational (prisons are expensive and almost everyone admits that we send some people there who are just caught in tragic circumstances), but the decisions producing that outcome have been arrived at through people's *entirely rational* decisions. In short, the political risks of reversing sentencing inflation are obvious and the financial benefits obtuse and marginal.

A smarter approach?

It was therefore unsurprising that the Government's White Paper, *A Smarter Approach to Sentencing*, published in 2020, and the subsequent Bill currently before Parliament, followed the broad trends that have dominated sentencing for the past thirty years.

From one perspective, the policy outlined in these documents fits easily into that inglorious tradition: policy primarily geared toward ever-increasing use of prison. This is despite the Government's own impact assessment suggesting that Prison Services and the Youth Custody Service will face: 'increased population and longer times spent in custody for some offenders, which may compound prison instability, self-harm, violence and overcrowding' (Ministry of Justice, 2021b). The cost of this political choice is the same as it ever was: the impact will be felt by offenders and their families, as serving longer periods in custody 'may mean family breakdown is more likely, affecting prisoner mental health and subsequent reoffending risk' (Ministry of Justice, 2021a).

Perhaps the most perplexing part of this equation, though, is that there is strong evidence that these approaches do very little actually to make the public safer. The Government's own assessment of the Bill suggests that there 'is, however, limited evidence that the combined set of measures will deter offenders long term or reduce overall crime' (Ministry of Justice 2021b).

In answer to a Parliamentary Question on 1 March 2021, Minister Chris Philp suggested that:

> [T]he deterrent effect of sentence severity has received a high level of attention in wider research literature. The evidence is mixed, although harsher sentencing tends to be associated with limited or no general deterrent effect' (Hansard, 2021).

Consider, for example, the Government's proposals on minimum custodial sentences. This will change the current law and restrict the courts' discretion to depart from mandatory minimum custodial sentences: unless the court is of the opinion that there are 'exceptional circumstances' to do so. This change, which will apply to 'three-strike' offences of drug trafficking and burglary, and to 'two-strike' offences involving knives, has been advanced without any real argument as to why it is necessary. Such minimum custodial sentences are unlikely to deter crime and reoffending and are likely to impact disproportionately on specific communities. The Government's Equality Impact Assessment states that '30- to 39-year-olds are overrepresented in the total population of those sentenced for these offences' and that 'BAME (Black, Asian, Minority Ethnic) individuals appear to have high representation in the Class A drug trafficking cohort and possession of or threatening with a blade' (Ministry of Justice, 2021a). The proposed changes are therefore likely to impact further on these groups, accentuating existing disparities, for very questionable public-protection benefits.

A Bill of two halves

It is easy to feel a certain amount of despair at the continuing inability of the English and Welsh polity to have a constructive conversation about law and order and public protection. However, I would argue that there are, in the less-noticed provisions of the Bill and in the Government's White Paper, grounds for hope. The Government's White Paper admits that:

> …failures in sentencing lead to never-ending cycles of criminality, with low-level offenders stuck in a revolving door of crime … our system of sentencing is not properly equipped to support them to address … [the] causes of their offending. (Ministry of Justice, 2020)

In recognition of that, the Government recognises that it needs a far-reaching set of reforms to community supervision.

The return of probation

Arguably, a functioning probation service is the most important part of delivering a criminal justice system that rehabilitates and reintegrates. However, the last eight years of community supervision policy have been dominated by coping with the ill-thought-through reform of probation, known as 'Transforming Rehabilitation'. At the centre of these reforms was a policy of part-privatisation: in 2013, the reforms dissolved the extant 35 self-governing probation trusts and created 21 Community Rehabilitation Companies (CRCs) to manage offenders who pose a low or medium risk of harm. It created a public-sector National Probation Service (NPS) to manage offenders who pose higher risks. The purpose of this reform was to reduce reoffending by opening the market to a range of rehabilitation suppliers from the private and voluntary sectors; it was believed that paying providers by results for reducing reoffending would encourage innovation.

From its earliest days, the reforms were problematic. In 2017, the National Audit Office reported that CRCs were not achieving performance targets and that, despite the Ministry's interventions, the underlying financial model meant that CRCs carried significant and unsustainable risks to their income, which was undermining their ability to transform their businesses (National Audit Office, 2017). In July 2018, the then Justice Secretary, David Gauke, acknowledged that the quality of probation services being delivered was falling short of expectations; he announced that the Ministry would terminate its CRC contracts 14 months early, in December 2020 (National Audit Office, 2017). In March 2019, Dame Glenys Stacey, Chief Inspector of Probation, concluded that:

> …both the public-sector National Probation Service (NPS) and privately-owned Community Rehabilitation Companies (CRCs) are failing to meet some of their performance targets … the probation profession has been diminished … in the day-to-day work of probation professionals, there has been a drift away from practice informed by evidence. The critical relationship between the individual and the probation worker is not sufficiently protected in the current probation model. (HMI Probation, 2019)

Against that backdrop, the current Lord Chancellor, the Rt Hon. Robert Buckland MP, took the brave decision in 2020 to reverse the previous probation reforms completely, and re-unify and nationalise the probation service, including bringing the delivery of unpaid work and accredited programmes back into the public sector.

Prizing professionals

So, we are now, finally, entering a post-probation-privatisation world. Within that context, the sentencing White Paper and its subsequent Bill were, and are, golden opportunities to reimagine and refashion a probation service that is wholly fit for purpose. And, in that more specific area, a number of proposals are welcome. For example, the White Paper signals a clear intent that, as part of rebuilding probation, we need to give properly trained Probation Officers the powers and the flexibility they need to build dynamic, responsive supervision that helps individuals on their path to desistance. The White Paper states:

> We want probation practitioners to vary orders, to have the time, support and tools to develop effective relationships with those they supervise, to deliver effective interventions directly, and to place offenders with other rehabilitative services. (Ministry of Justice, 2020)

The Bill includes powers for Probation Officers to have more discretion, allowing them, for example, to vary and adjust orders based on the changing circumstances of the person under supervision. These powers include flexible enforcement of court-imposed requirements that would allow the Responsible Officer to adjust and vary these requirements to encourage and influence changes in offender behaviour. This focus on Probation Officers' professional skills, and encouragement of professional discretion, marks a significant change in government policy, which hitherto had focused on structural and financial changes to deliver better outcomes. Instead, the White Paper places trust in highly skilled professionals to use their training to make the best judgement calls they can.

Professionalisation

Moreover, in moving to a world where the professional relationship between a Probation Officer and a service-user is seen as the principal agent for

improving outcomes, rather than the incentives of the structural organisation of the service/market, the Government is also recognising that the professional empowerment agenda ought to be accompanied by reform to the ways in which professionals are both supported and held to account for their actions. There is a notable, albeit tentative, commitment in the White Paper to 'explore options to improve the professionalisation of the probation officer and probation support officer role' (Ministry of Justice, 2020). The goal of professionalisation of probation has been a subject of interest for a long time (Howard League for Penal Reform, 2016, and others) There has always been a range of employers operating in the community supervision space, including public-sector, private-sector and voluntary-sector bodies. The split in the probation service brought about by the Transforming Rehabilitation reforms accentuated this diversity, fracturing the probation service into a National Probation Service and 21 Community Rehabilitation Companies.

At the time of the Transforming Rehabilitation reforms, there was discussion about how to ensure that the probation service, as a whole, retained consistent, coherent and agreed standards and qualifications. However, this work never crystallised, meaning that training, job roles and professional development have become highly varied across these organisations. The result is that we have a workforce where some practitioners who manage offenders hold a professional qualification in probation at post-graduate level, but there are also increasing numbers of practitioners with a range of different qualifications and some who have none. The lack of attention to professionalisation has also meant that England and Wales remained an outlier in the British Isles: in Scotland, Ireland and Northern Ireland, Probation Officers are all qualified social workers and are therefore required to be registered on a centrally maintained register of qualified professionals, to engage in continuous professional development that is necessary to maintain registration, and to abide by any identified set of ethical and professional standards.

In the new world of a newly national, integrated probation service, with its emphasis on professional empowerment, professionalisation is back on the agenda. Unlike when it was discussed under the Transforming Rehabilitation reforms, there is now a new and fresh opportunity to set consistent, coherent and agreed standards and qualifications to which all practitioners, managers and leaders in probation can adhere, because of the new emphasis on Probation Officer skills and judgement.

In this new world, mechanisms in which we can both improve practice on a continuous basis and hold professionals accountable for their decisions, through

a central professional registration and de-registration process, make sense, in a way that they never made sense in a policy world focused on marketisation and financial incentives as the main driver of better outcomes. The professionalisation agenda offers the chance to remake probation in England and Wales both an integrated and a *regulated* service, open to external scrutiny and comparison with other closely allied professions, including health, social work, social care and the law. In a recent policy paper on the topic, the author outlined that this can be done by: (i) establishing a new licence to practise for probation and other offender management roles, analogous to those used in social work and other professions; (ii) creating a register to monitor those who can practise; (iii) creating an independent regulatory body to oversee the right to practise and to improve and support standards through requirements for professionalisation (Centre for Justice Innovation, 2020).

Improving probation's role in court

Away from that broader probation organisational reform agenda, the nationalisation of the probation service, combined with the thrust of the White Paper's proposals on community supervision, means that we can now finally deliver some common-sense, practical changes.

A good example is probation's role in court. Our research (Whitehead and Ely, 2018) found that the relationship between courts and probation had been buffeted by a number of reforms since 2012, most notably the split of probation into Community Rehabilitation Companies (CRCs) and the National Probation Service (NPS). Moreover, court timeliness targets and the court service's programme of court closures had hampered the ability of probation to deliver high-quality pre-sentence advice. For example, the use of the most comprehensive written reports (Standard Delivery Reports) has fallen by 89 per cent in six years and now stands at only 3 per cent of all reports — less than a third of the national target. While, in our own work, we had noted that English and Welsh probation practitioners already had to deliver pre-sentence reports much quicker than fellow professionals in Ireland and Northern Ireland, our findings painted a worrying sense that trust of sentencers in the delivery of community sentences was fraying, in large part because of the perceived quality of probation's performance in delivering reports at court.

Therefore, it is welcome that, in April 2021, the Ministry of Justice, HMCTS and the Probation Service announced the development of an Alternative Delivery Model, designed to improve the quality of information presented to

court in 15 pilot sites. The Alternative Delivery Model comprises three components: (i) encouraging and monitoring a before-plea PSR process (set out in the nationally available PSR before plea protocol) — seeking to identify defendants earlier in the criminal justice system; (ii) maximising the capability of the National Probation Service to deliver higher-quality reports on the day, through targeted training and development; (iii) delivery of short-format written reports for three priority cohorts that are understood to have more complex needs. These are female offenders; young adult offenders (18–24 years of age); offenders who are deemed to be at risk of custody. The priority cohorts were identified as commonly having complex needs, and therefore requiring a more comprehensive, written PSR, rather than an oral report. It is important to note that Black, Asian and Minority Ethnic populations generally show an over-representation in the offender population, and the evaluation of the pilot will analyse the data to identify if it is possible to discern any impacts for people from ethnic minority communities.

Restoring the Probation Service's emphasis on expert advice to judges about their sentencing options, through high-quality oral reports and pre-sentence reports in court, is a vital step in winning back judges' trust in community supervision. And these moves are possible only in a world in which probation is being put back together again, and where the emphasis is on improving practice, and not on marketisation.

Investing in treatment

Another welcome development is the White Paper's signal that the Ministry is seeking to re-invest large sums of money in offender treatment. If we now know one thing that makes a real difference to reoffending rates, it is the importance of swift access to high-quality treatment. Recent research for the Ministry of Justice and Public Health England suggests that drug and alcohol treatment lead to a 33 per cent reduction in reoffending in a two-year period (49 per cent for individuals with alcohol misuse problems) (Ministry of Justice and Public Health England, 2017). Recent research into the Mental Health Treatment Requirement found a clear positive impact on anxiety and depression, social problem-solving, emotional regulation and self-efficacy (Long, Dolley and Hollin, 2018). It also found improvements in work and social adjustment, as well as in criminogenic risk factors.

However, the three treatment requirements (known collectively as Community Sentence Treatment Requirements (CSTRs)[1] that courts can use as part of a community sentence are rarely used as part of community sentences — the latest available statistics show that alcohol treatment, drug treatment and mental health treatment requirements were part of only 3 per cent, 4 per cent and 0.5 per cent of orders respectively.

The low use of treatment requirements has primarily been driven by a lack of treatment provision — for example, Dame Carol Black's review of drugs concluded that: 'the amount of un-met need is growing, some treatment services are disappearing, and the treatment workforce is declining in number and quality' (Black, 2020, p. 3). Moreover, the removal of the previous ring-fence on treatment spending for offenders has been associated with these decreases (Centre for Justice Innovation, 2021).

In this crucial area, the Government has committed in its White Paper to the expansion of its treatment provision (Ministry of Justice, 2020). It has promised to 'achieve 50% coverage of mental health provision by 2023/24' and to expand drug and alcohol treatment (though we await more detail). The noise currently emanating from officials is that, given the upcoming Spending Review, there will be a real, clear commitment to ensure that, by the end of this Parliament, higher-quality offender treatment provision is rolled out nationally. Certainly, in this author's view, the roll-out of Community Sentence Treatment Requirements nationally would be a crucial step on the way to getting back to a place where probationers can rapidly access the treatment where and when they need it.

Problem-solving justice

Alongside reforms to probation practice, changes to its role in court, and a reinvestment in treatment provision, the Government's reforms embrace, in a number of ways, problem-solving justice reforms, designed to divert, resolve and de-escalate criminality. For example, the White Paper and the Bill set out a new framework for 'out of court disposals' (OOCD), designed to help police forces and others to maximise the opportunities to place vulnerable, complex

[1] The three types of CSTR are: Mental Health Treatment Requirements (MHTR), Drug Rehabilitation Requirements (DRR) and Alcohol Treatment Requirements (ATR). They consist of treatment that will be arranged as part of the sentence and can last a maximum of three years as part of a Community Order and two years as part of a Suspended Sentence Order. (Related to CSTRS, Rehabilitation Activity Requirements — RARs — were introduced in 2015 and are intended to address non-dependent alcohol misuse, and emotional/mental health needs that do not involve a diagnosis. RARs have seen significant uptake but are distinct from CSTRs because they involve a lower level of need and intensity of intervention.)

and low-risk offenders into effective, evidence-led out-of-court disposals and diversion schemes. The Government's move to this simplified OOCD system stems from the National Police Chiefs Council recommendation to do so in 2016, and 15 forces already operate a simplified framework, designed to provide: 'a simplified framework for the public and practitioners to understand and work from, and will provide wider national consistency and scrutiny; simpler charging processes will allow more efficient and streamlined processes' (NPCC, 2017, p. 5). By moving to a new framework, in which there will be two statutory tiers and the continuation of an informal tier of diversion away from any formal disposal, the Government is largely meeting that aim.

Another reason to be hopeful relates to the Government's commitment to make more creative use of problem-solving approaches at court, using opportunities at court to tackle reoffending and provide opportunities for reparation. As the White Paper outlines, there is a broad and developed international evidence base on different types of problem-solving courts. The strongest body of evidence is for adult criminal substance-misuse treatment courts, which seek to reduce the substance misuse and reoffending of offenders with substance-misuse needs who are facing custody. In this area, the Government proposes to pilot a substance-misuse model, which aims to draw people out of short- to medium-length custodial sentences (0–24 months' custody), by targeting repeat and prolific acquisitive offenders who have substance-misuse issues and providing access to treatment and other services to improve their wellbeing. A number of other jurisdictions, including Scotland, Northern Ireland, Ireland, Australia, Canada, New Zealand and the USA, deploy problem-solving court models to promote rehabilitation and provide alternatives to custody (O'Hare and Luney, 2020). England and Wales are significantly behind other jurisdictions in using this type of approach.

Conclusion

The White Paper and the Bill demonstrate that there remains a conflicting approach to sentencing and offender-management policy in England and Wales. Within the Bill, we can see the continuation of a custodial sentencing policy, driven by a penal politics, both of which are substantially unchanged from the broad trends set thirty years ago. For example, the fettering of judicial discretion around minimum sentencing is depressingly familiar territory and could have been issued by any Lord Chancellor who has held the post over the past thirty years.

Yet, what I have also tried to argue is that, in the proposals they advance about the future of community supervision, they also constitute a new shift. At the very least, the community-supervision aspects of the White Paper and the Bill, when viewed alongside the nationalisation of probation and the broader trends of Ministry of Justice policy in this area, build a picture which suggests that the last eight years of chaotic privatisation are definitively over. More positively, one can see in these policy shifts a new emphasis on the centrality of probation professionals, on their ability to use their skills and judgements to make better decisions to change outcomes. Within that context, the probation professionalisation agenda is a natural policy outgrowth, and, arguably, there are now the environmental factors around that suggest that, this time, it may well happen.

Both these trends strongly suggest that there has also been a shift in policy thinking within the Ministry, from a model of transformation in which marketisation was supposed to drive better outcomes and accountability, to one in which the professional, and, by implication, their relationship with service-users, is seen as the cornerstone of change. This shift is a welcome rejection of the theory that market-like structural changes are the key to transforming rehabilitation, and it suggests a realisation within the Ministry that sound policy should be founded on an evidence-based, human-centred approach to community supervision.

Moreover, the proposed investment in increasing the treatment services available, increasing the use of out-of-court disposals and diversion, and piloting new problem-solving justice initiatives are suggestive of a new approach to community supervision focused on improving the lives of some of the most vulnerable, trying to steer as many of them as possible away from prison, and away from harmful collateral consequences of the deep and longer-term criminal justice system involvement.

Admittedly, some people will feel that these reforms are a tale of going back to the future — indeed, a criminal justice system marked by a national probation service, empowered to exercise its professional judgement, supported by adequate treatment resources and sat within a broader criminal justice system that tries to divert and de-escalate and problem-solve, does not sound too far from the system that was present in the mid-2000s. After the last eight years of reform, however, that is not a bad place in which to end up.

Of course, we need to recognise that the hope of these parts of the 'smarter approach' being advocated for by Government is just a start. The scars of probation privatisation and the operational challenges posed to all criminal

justice systems by COVID-19 are significant challenges in their own right, and they have the potential to slow down and undermine the successful implementation of these reforms. There are already concerns that there are not enough probation professionals to deliver change (HMI Probation, 2021), though the Ministry is investing in Probation Officer recruitment (Dunton, 2021).

Moreover, there are systemic challenges posed within the new model of probation — it suffers, in this author's view, from no real commitment to or accommodation with the localism agenda that we have seen in English and Welsh policing. In my view, probation is fundamentally a community service — people who commit crime invariably are from our communities, they offend in our communities, and if they go to prison, they will return to our communities. Therefore, probation is crucially a local, community agency, relying on local collaboration between services, including the police and others. However, there is a risk that what we will have is a fundamentally national probation service driven top-down from HMPPS headquarters in London, and where the ties to local communities and local agencies, perhaps most importantly the police, are weaker than they ought to be.

We should also not be so naïve as to think that all of this positive progress is inevitably going to make a difference to the impact of the custodial sentencing provisions, and the negative effects they are likely to have on the prison population and on marginalised communities. Even if the community-supervision reforms are successfully implemented and they do deliver improvements to community supervision and prevent some people from receiving damaging prison sentences, we know that a healthy and effective probation system does not axiomatically produce lower prison populations. Sentencing inflation, especially for serious and violent offenders, has been shown in the past to override all this good work, and we can anticipate this happening again.

Yet, seeing community-supervision policy only in the context of its influence on the use of incarceration is, in my view, a fallacy — or, at least, far too narrow an approach to community supervision. It is difficult to envisage a future justice system that does not need an effective community-supervision system in its own right, regardless of the state and level of incarceration. There will always be offences and offenders whose offending requires a response that involves combinations of restrictions of liberty in the community and ones that are less intrusive than incarceration, reparation in and to the community, and purposeful supervision and intervention to change the life course of the offender. Community supervision is not there simply as an

alternative to custody but as a set of sentences which have their own moral, ethical, transformative and instrumental value. The White Paper and the Bill have some serious shortcomings, but both at least have the virtue of setting out a new shift toward a smarter approach to community supervision. For England and Wales, those are virtues worth recognising.

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