



ALL-PARTY PARLIAMENTARY GROUP ON
PENAL AFFAIRS

PRISON OVERCROWDING



**A report on the work of the
All-Party Parliamentary Penal Affairs Group
2002 / 2003**

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The work of the Prison Reform Trust is aimed at creating a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, Government and officials towards reform.

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Foreword



The All-Party Parliamentary Group aims to increase its members' knowledge of penal affairs and to work through parliamentary channels for reform of the penal system. With the prison population at an all time high and the prison system suffering from chronic overcrowding, there has never been a greater need for an active and informed Group.

This report focuses on the dominant theme of the meetings that have taken place during the past year, prison overcrowding. It is hoped that by drawing attention to the nature, extent and consequences of this significant social problem, the legislature will be moved to act. In a House of Commons debate on prisons in 1910, Winston Churchill stated: "The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of civilisation in any country." There can be no doubt that in this important respect we have good reason to be ashamed.

The Group had not met since the General Election of June 2001 and it therefore had to be re-instated on the Register of All-Party Groups and the Approved List.

An inaugural meeting took place in the Moses Room at the House of Lords on 16 July 2002, when I was delighted to be elected as Chairman of the Group. I have greatly appreciated the interest and support I have received from members and my excellent fellow officers. The three Vice Chairs are Vera Baird QC MP, Lord Carlisle of Bucklow QC DL and Baroness Stern of Vauxhall CBE. Mike Hancock CBE MP is the Group's Secretary and Fiona Mactaggart MP was, until her appointment as a Home Office minister in June 2003, the Treasurer. To date 95 Members of Parliament and 55 Peers have joined the Group.

Finally I would like to thank the Prison Reform Trust and its Deputy Director, Geoff Dobson OBE, Clerk to the Group, and the Barrow Cadbury Trust, who fund the Prison Reform Trust to provide the Secretariat, for their help in re-establishing the Group.

Lord Corbett of Castle Vale
Chairman,
All-Party Parliamentary Penal Affairs Group

November 2003

Introduction

On 7 November 2003 the prison population in England and Wales reached a new record high of 74,243, with a combined certified normal accommodation (CNA) of 66,688.

In March 1980, the then newly formed All-Party Parliamentary Penal Affairs Group published its first report 'Too Many Prisoners'. At that time the number of prisoners stood at 44,800 and the combined CNA was approximately 38,500. That report stated:

"Decisive action in the immediate future is essential if the tension in some of our prisons is not to explode into violence, endangering

the life and limb of both prisoners and prison officers alike."

This report uses selective quotes from meetings held during the past year. They demonstrate why parliamentarians and the wider public should be concerned about prison overcrowding and the need for urgent and effective action to alleviate the problem. Each meeting had a separate theme. The quotes in this report are not intended to be representative of the presentation or debate at a particular meeting. They have been chosen solely because of their bearing on concerns about prison overcrowding.

• 16 July 2002: 'Inaugural meeting'

Anne Owers CBE HM Chief Inspector of Prisons

"...the sheer numbers of prisoners and overcrowding are threatening all four parts of the healthy prison concept. Local prisons are becoming like transit camps. Overcrowding undermines the work of good prison officers and affects every aspect of prison life."

"We need to look at how prisons can best protect the public in the long term. Public protection does not just mean sending people to prison: it also means using prison as a space in which some of the factors that have led to crime and which will continue to lead to crime can be dealt with. But it is always disruptive – to jobs, homes and families. And four out of five will be out within a year. They are the most prolific offenders and most likely to reoffend. Yet for those serving sentences of under a year there is no need for sentence planning or probation supervision after prison – maximum disruption for minimum gain."

"Prisoners have many of the characteristics of social exclusion. Around 70 per cent of prisoners are below basic skills level 1. Eighty six per cent of children have been excluded or excluded themselves from school. It is estimated that 80 per cent of those in prison have some kind of mental incapacity – at the acute end 41 per cent of those in prison hospitals should be in medium secure NHS units and cannot be properly treated in prison. Chronic mental illness is a feature for many prisoners, especially women. Seventy to eighty per cent of prisoners have problems of substance abuse. Fifty per cent of juveniles in prison have been in care. One in five men and one in three women prisoners have attempted suicide. These are clearly people who can and do cause harm within their communities; but are also likely to harm themselves."

"...the whole picture is affected by overcrowding and at times arguing for progress in a few areas can feel like 're-arranging deckchairs'. Safety is compromised

when establishments are receiving up to 80 people a night and cannot properly assess them for risk to themselves or others; and when prisons are in 'churn' with people constantly moving in and out. Decency is not possible if two men share a cell where they sleep, eat and defecate in front of each other. Purposeful activity is reduced if prisoners cannot get out of a cell or access education or work opportunities. Resettlement was always going to be a challenge for the prison system: now, with prisoners being moved suddenly all over the country it is difficult or impossible to make sure they get the right interventions or can make or retain good links with their home area and family."

"For prisons to work better, two things need to happen. First, prisons need to be only one of the effective interventions available to and used by

sentencers. Community sentences are an important part of the menu and some involve restorative justice initiatives. So too are hostels and other intermediate provisions where people can go for treatment or support. Second, effective work requires more than just the efforts of the criminal justice system and more than focused offending behaviour work. A third of prisoners who have homes lose them while in prison. And two thirds of those with jobs lose them. A fifth of prisoners have financial problems and over two fifths lose contact with their family. So we must also engage housing, education, employment, health and social care sectors. Prisons need to be seen as part of the community, not separate from it. They are part of a continuum that prevents, intervenes and supports, before and after incarceration."

• 14 November 2002: 'Prison Overcrowding'

(a) Bryan Baker, Chair, National Advisory Council, Boards of Visitors (now Independent Monitoring Boards)

"Increasingly over the previous 12 months Boards have expressed their mounting concern over the effects of overcrowding. Some have written to the Minister and spoken to the press, many have made their concerns known to the National Council. The National Council has written to the Minister and has written to the national press expressing its very grave concerns over the situation that was developing at an alarming pace."

"...doubling up in cells designed for one did not uphold the principles of fairness and humanity; transfers a long distance from home affected not

only the prisoner but the family as well adding further pressures to relationships already under strain; increased receptions often late into the evening meant that some prisoners were not processed until the next day or were part processed by tired staff increasing the risk for those first night prisoners; insufficient work meant many prisoners spending long periods in their cells; the pressures of overcrowding meant that the essential remedial works of the prison floundered, staff had to be taken off the providing of courses to manage the greater numbers; association for prisoners was a frequent sufferer often cancelled because of staff shortages; prisoners were transferred when only having part completed a course disrupting both education and a prisoner's sentence plan and his parole prospects."

“A quart never had gone into a pint pot and it would not now.”

“For 108 Boards of Visitors to set out their concerns and fears said very clearly that there was a major problem; that Boards across the country did not feel that decency, fairness and humanity could be achieved in the present circumstances; that the Prison Service faced increasing danger from a prison population rapidly becoming angry at what it perceived as unfair treatment.”

(b) Juliet Lyon, Director, Prison Reform Trust

“...58 per cent of all prisoners are re-convicted within two years of release. Looking at the younger ones, 76 per cent of young men are re-convicted within two years of leaving prison.”

Juliet cited two individual instances because she felt it was easy to lose sight of individuals in the system, particularly at a time of such rapidly rising numbers and continual movement of prisoners. The first concerned a young man at Hull prison. Juliet read from the PRT report ‘Prison Overcrowding: the inside story’.

“We had a young man whose mother was terminally ill. The OCA department managed to negotiate a ‘one to one’ swap with Lancaster Farms which should have happened that same week. However, due to their extra workload, Group 4 was unable to deal with the transport for this prisoner. Each subsequent week he was told he was going to Lancaster Farms and each time he was told the transport could not be arranged. His mental health deteriorated so badly at constantly being ‘knocked back’ that staff and the BoV placed him on a 2052SH [self-harm report]. It took five weeks to get him moved.”

The second example was from her own experience when queuing behind a family at Holloway Prison:

“By the time the family had reached the front of the queue, having waited a long time, they were

told that the woman they were visiting had been moved to Kent that morning. There were tears, there was anger, the member of staff on the gate dealt with it as best he could. He apologised to them and explained that things like that sometimes happened with such short notice that families cannot be notified. It was unbearable to be that close to a family who had already travelled a long way, seemed not to have very much money and were unlikely to be able to get themselves to Kent. Incidents like this perhaps explain why prison visits have dropped by a third in the last few years.”

“Solutions designed to prevent entry to the prison system need to be combined with good quality resettlement work to stop people returning.”

“Prison should be reserved as a place of absolute last resort for serious and violent offenders and, whilst the Government has made a commitment to this in theory, there is little evidence of it in practice, in fact rather the reverse. Until prison is used in this way, it is difficult to see how it can work effectively and avoid damage of the sort already referred to, and which was catalogued in the report on overcrowding, produced by the Prison Reform Trust and the National Advisory Council of Boards of Visitors.”

(c) Martin Narey, (then) Director General, HM Prison Service

“Over the last 10 years the number of people appearing before the courts has remained stable, but there have been very significant increases both in custody rates and sentence lengths. Ten years ago one defendant in 26 would have gone into custody, now it is one in 13. What seems to have happened, since the demise of unit fines, has been an absolute collapse in the use of the fine and consequently offenders have been subject to community penalties earlier and been sentenced to custodial penalties much earlier in their criminal careers.”

“The need is for sentences to be no longer than is absolutely necessary and short sentences need to be replaced in very large numbers by community penalties.”

“...sentencers might be using short sentences in the mistaken belief that they might do any good. They could not. They probably damage people and probably send them out more criminal than when they arrived. It also distracts the Service from work that it could do with longer term prisoners.”

“In 2001 there had been 14,000 sentences of one month or less, 40,000 of three months or less and 80,000 (75% of all sentences) for 12 months or less. At any one time, 11 per cent of the prison population, (about 8,000 prisoners at the present time), would be serving sentences of six months or less. If only half of those sentences were to be converted to community penalties, the prison population would fall by 4,000. If the increase in sentence lengths were arrested and reversed, just a touch, if average sentence lengths were to fall by only one month, the prison population would fall by about 3,500.”

Overcrowding was threatening basic decency. On the evening of this meeting, there would be 14,000 prisoners - two to a cell meant for one - cells which, in the optimism following the Woolf Report, had integral sanitation inserted in the belief that people would never be doubled up in them. Although obviously Martin Narey welcomed the abolition of ‘slopping out’, the reality was that when cells were overcrowded it was arguably very little better, if better at all. Fourteen thousand, mainly men, that evening would share a cell meant for one. They would eat together in that cell and if necessary, they would have to defecate in front of one another in that cell. Although Martin Narey had been assured by his lawyers that that was not inhumane or degrading treatment under the Human Rights Act, it was, by any definition, gross and unacceptable. He found it very hard to convince parents that the Service might treat their sons and

daughters decently when they realised the conditions in which they were living were so unacceptable to everyone.

“What makes matters more difficult is the nature of the population which, in turn, makes overcrowding even more difficult to manage. Ninety per cent or more of people entering custody display one or more signs of mental disorder. Five thousand of the prison population are profoundly mentally ill. More than 300 at any one time have been sectioned under the Mental Health Act and are awaiting transfer to a secure psychiatric hospital. The 5,000 mentally ill in prison get worse whilst there. Although a great deal of support is being received currently from the Department of Health with the first of 300 psychiatric nurses coming from the NHS to work in prisons, there is a limited amount that they can do. The mentally ill cannot be given medication against their will; that power is not sought. The result is that many of them are getting much worse.”

“The worst aspect of all, from overcrowding linked to mental illness, is seen in relation to suicides. Twenty per cent of men coming into custody have admitted to trying to take their own lives. Incredibly, 40 per cent of women coming into custody said they had previously attempted suicide.”

On coming into the job four years previously, Martin said that he had committed himself, above all, to reducing the number of suicides. The number dropped from 91 in his first year to 82 in his second year and to 72 in his third year. A drop of more than 20 per cent in the number and a drop of approaching 25 per cent in the rate. That evening, 14 November, there had already been 83 suicides in 2002.

“The reality, because of the numbers coming into custody, because people are having to be moved up and down the country to wherever there is a bed, is that the vulnerable can no longer be recognized and protected.”

Martin Narey said he passionately believed that an effective Prison Service which could genuinely rehabilitate large numbers of prisoners, instead of a small number, was not beyond them.

But growing overcrowding was significantly slowing the rate of improvement and if it got much worse would bring the improvements that had been made to a grinding halt.

• **3 December 2002: 'Out for Good - the dilemmas of housing ex-prisoners'**

(Joint meeting with the Homelessness and Housing Need Group)

(a) Paul Cavadino, Chief Executive, Nacro

"A third of prisoners are homeless on release because they can't get adequate help with their housing problems. Some prisons do have good services which offer housing advice but these are a minority."

"In a recent Home Office survey, fewer than a third of prisoners had said that they had been able to discuss their problem with somebody in prison and fewer than one in five had said that they had received help."

Paul Cavadino suggested the following solutions:

- Every prison should have a housing advice service
- More use should be made of temporary release shortly before final release
- More investment in social housing was needed
- Local Authority housing needs assessment should include the needs of prisoners
- More housing support schemes and more specialist accommodation schemes for high risk prisoners were needed
- Determined implementation of the provisions in the Homelessness Act 2000 where prisoners who are vulnerable are brought into the priority list .
- Fewer people should be imprisoned.

(b) Councillor Paul Jenks, Chair, Local Government Association Housing Executive

"The problem with housing ex-offenders is that they are often perceived by the public as 'knife-wielding maniacs who are about to destroy the fabric of society'."

"Council representatives feel vulnerable in the face of media criticism and pressure exerted at public meetings that there are always more deserving cases for housing than ex-offenders."

"Help is needed from those in Parliament to point out that all those ex-offenders who are not assisted in being housed are much more likely to re-offend and rehabilitation is much more likely to fail. In essence, a common approach and an 'agreed line' is what is needed."

(c) John Bird, Founder and Editor-in-Chief, The Big Issue

"The chances of becoming homeless are far greater for anyone who has been in prison for any length of time."

"The Big Issue supports the Out for Good campaign because it is time to try and stop the predictability of ex-offenders being homeless. All factors that lead to someone being homeless can be identified before people left prison – they can often be identified before that person is sent to prison."

“Help from those in Government and Parliament is needed to encourage ‘joined-up thinking’.”

On the previous evening, John Bird, had talked with nine homeless people in the West End. All of them had been in prison at some stage during the last five years. They exemplified the depressing connection between prison and homelessness, which in so many cases becomes a vicious circle.

(d) Maria McNicholl, Development Worker, St Giles’ Trust, based at Wandsworth Prison

Maria McNicholl informed the meeting that the St Giles’ Trust had obtained funding two years earlier to set up a unit in Wandsworth Prison to help prisoners and ex-prisoners with housing problems. The criterion had been to work specifically with prisoners on remand and on short sentences because those who were sentenced to over a year had access to help from the Probation Service. It soon became obvious that, even had unlimited staff and funding been available, the problems could never be fully tackled because of the sheer volume. Therefore, it had been decided to look at the most underused resource available – the prisoners themselves. Many of the latter had real skills and real expertise.

She devised a 12-month training programme which included obtaining the services of outside speakers

to talk and instruct on such subjects as Housing Benefit and employment for ex-offenders. Lastly, she investigated a suitable qualification and decided on an NVQ. The Federation for Independent Advice Centres had agreed to be the external assessors of the training.

Does it Work?

To date there are six housing advice workers, five in Wandsworth and one who had moved to Maidstone Prison where he was starting a scheme. It was Maria’s opinion that this gave the trained prisoners a sense of responsibility in an environment which usually created a lot of dependency. Those seeking and receiving the advice were more willing to be completely open about their situations and problems.

Maria summarised the problems as follows:

- there simply are not enough homes available
- assessment – a strong, male, healthy ex-prisoner is bottom of the list when it comes to housing
- the controversy surrounding whether prisoners are ‘intentionally homeless’ – to access local authority housing prisoners have to be unintentionally homeless. In two recent appeals ex-prisoners were deemed as being intentionally homeless because they had committed crimes.
- the length of time that Housing Benefit can be claimed was too short and should be extended.

• 23 January 2003: ‘The Criminal Justice Bill’

Cedric Fullwood CBE, (then) Chair, Penal Affairs Consortium

“The Penal Affairs Consortium is an alliance of over 40 organisations concerned with the penal system. It was established in 1989 partly as a

response to requests from members of both Houses of Parliament to have some co-ordination on the part of the myriad of penal reform organisations when making representations to Parliament. It provides a mechanism whereby its member organisations can work together for penal reform.”

“Its position on the (Criminal Justice) Bill stems from a strong determination to pursue penal (and social/criminal justice) policies that would reduce levels of victimisation. It recognises fully the need for the use of custodial sentences but believes that their use should be more restricted than at present; that there should be a balance between the use of custody and community sentences; and that no offender should be subject to either unnecessarily. Its assessment is that as it currently stood there is a danger that the Bill would greatly increase the use of custody.”

“Like recent contributions from senior police representatives, it believes that in current discourses there is too great an emphasis on ‘retributive punishment’, whereas ‘reparation’, ‘restorative justice’ and ‘rehabilitation’ (each of which could have punitive and demanding elements) should be given equal emphasis – an emphasis which the Consortium believes would be supported by the public, (when a strategic and sustained public education campaign is mounted).”

• 27 February 2003: **‘The work and challenges facing the National Probation Service’**

Eithne Wallis, Director General, National Probation Service

“The Probation Service and community corrections have undergone profound change during the previous two years and there is more to come. The first step change was the creation of the National Probation Service. The second was what is being undertaken currently and the third is the planning for the future through the Correctional Services Review and the Criminal Justice Bill that is wending its way through the parliamentary process.”

“The transition has been from 54 individual, separate Probation Services to a national, integrated Probation Service for England and Wales. The Government has made the decision to make the change because the disparate Probation Services had been seen as not delivering consistently, especially in terms of enforcement of orders and licences. One criticism had been that of “justice by geography” i.e. there had been

enormous discrepancies across the country both for offenders and sentencers.”

“Every day the Service in England and Wales manages and supervises about 200,000 offenders. On one occasion it has been as high as 206,000. Services are also given to about 40,000 victims.”

“The budget is three quarters of a billion pounds which represents an increase over the first three years of 34 per cent and a substantial investment of taxpayers’ money. The returns expected from that investment are a contribution to the reduction in crime, public protection and enforcement, and compliance.”

“The primary objective has been to profoundly change the Service’s practice with offenders. Professional and rigorous assessment skills are a vital part so that different types of crime, the likelihood of re-offending and the levels of danger to the public are recognised. Only with the highest level of assessment could the correct provisions be made. This assessment tool, which also has the ability to profile across the whole offender population, has been developed jointly by

the Probation Service and the Prison Service and is called OASyS, the Offender Assessment System. By April, the whole Probation Service across England and Wales will be implementing this tool."

"Community penalties are being redesigned and built around punitive weight, restriction, intrusiveness as well as treatment and rehabilitation. The "What Works" programme is built on research evidence from all over the world. All interventions and treatments are then being tested and subject to an accreditation process so, once proven, they can be used nationwide. The main evaluative criterion has been the reduction in re-offending rates."

"Many programmes are now in place e.g. general offending behaviour programmes, sex offender treatment programmes, drink driving programmes, basic skills programmes, the drug treatment and testing order which came into place two years ago. This last group of offenders are most difficult both for sentencers and for those who supervise them and currently about 11,000 of these orders are being run with a significant increase expected in the coming year. A drug abuser, in order to stop offending, needs treatment and a displacement life style. There is now a powerful partnership with sentencers. Specialist sentencers will conduct regular face-to-face reviews with the offender and the supervising officer. This continuous assessment is an important feature of this work."

"In the field of enforcement, the Service's practice has changed beyond recognition. Offender compliance is now running at about 70 per cent. Of the 30 per cent of breaches occurring, around 72 per cent of enforcement of these is being achieved but the target is 90 per cent. This is increasing the Service's credibility with politicians and with sentencers and eventually, hopefully, with the public."

"A new programme called the Intensive Control and Change Programme is being piloted in ten areas on 18–20 year olds. These young people are amongst the most highly recidivist offenders,

are dramatically over represented in the prison population, tend to have short prison sentences and have the highest, almost immediate, re-conviction rate i.e. 72 per cent. This programme has been set up in partnership with the police and others."

"For young adult offenders who are feared by the community there is a curfew, electronically monitored which, if a pattern is evident, could be targeted to at least 12 hours in any part of the day to reflect the pattern in offending."

"The same Act of Parliament that created the National Probation Service gave the police and the Probation Service a joint statutory duty to identify the dangerous offenders in communities and those who are likely to be coming back out of prison in the near future. Jointly, the risks will be assessed and a management and supervision plan constructed. Multi-agency Public Protection Arrangements (MAPPAS) are now in place across the whole of England and Wales."

"The Probation Service has a statutory duty to offer contact and specific information to the victims of the most serious sexual and other violent crimes, where the offender has been sentenced to more than 12 months imprisonment. In the National Probation Service's first year 16,000 victims have asked for this help and the number is growing all the time."

However, community acceptance of these facilities was a big problem. Eithne Wallis acknowledged the need for more approved hostels, on top of the hundred which already exist, but not one has opened this year because of public hostility.

There were not enough drug detoxification centres and she hoped that the National Health Service would allocate more money to these. The Probation Service, in partnership with prisons, has launched a new programme called Prospects which aims to establish five drugs hostels. Prisoners with sentences of less than twelve months do not access

the CARATS facilities in prisons. It was hoped that, with the new hostels, offenders serving less than twelve months could start to be assessed and treated in prison, with work continuing in the hostels thereafter. Hopefully these hostels would then become a platform to procure more funding and increase in number.

*“To achieve the level of contact and oversight, to achieve this high-quality treatment work and to enforce to the highest standards, the Service needs additional resources to do that for 206,000 offenders to that level. However, not all those offenders need work to that level. **A large number of low-risk offenders are now being given community supervision sentences. Last year,***

***for example, 25% of new community punishment orders were for first offenders. We want to work with sentencers to take a large slice of this group away from us by reducing the number of community sentences being given to first-time and very low-risk offenders.** This would help create the ‘head room’ we need to invest more in the target groups cited above – and in our victim work.”*

“The Service is not yet ready to take on the large amounts of extra work envisaged in the Criminal Justice Bill. It is, of course, still going through the Parliamentary process. If enacted, decisions will be made on resourcing it and the timing of phased implementation of the new provisions.”

• **25 March 2003: ‘Electronic monitoring’**

Dick Whitfield, Chair, Howard League

“Tagging has been the only politically acceptable way to overcome the prison overcrowding crisis. In its short life, the Home Detention Curfew Scheme has already been expanded three times and is likely to be expanded again.”

“England and Wales has not yet reproduced the enormous problems with tagging that the United States has had. There, tagging fuelled an enormous rise in the prison population. Quite the opposite effect to what had been intended arose because tagging had been used for long periods on an enormous numbers of low-risk offenders many of whom had eventually been breached. The message is that unless the right people are targeted for tagging, problems will arise.”

“One reason that tagging has bedded down so well (in England and Wales) has been the use of ultra-cautious assessments before anyone has been put on the scheme. There is still work to be done with sentencers as many courts have never made curfew orders.”

“The strength of the system is certainty of detection, the fact that if the curfew is broken the company monitoring the tag and the prison would know.”

“Tagging was introduced with much publicity and some unrealistic hopes that it would reduce reconviction rates. Tagging, on its own, has very little impact on offending behaviour. Britain is one of the few places where tagging is used as a stand-alone option.”

“Tagging is a much cheaper option than keeping someone in prison. It is not possible to give the cost of the schemes because the Home Office will not release figures on the grounds of commercial confidentiality.”

“Many chaotic, disordered youngsters on drugs have done well on tagging. It could be used to buy time whilst another programme was started and thereby disrupt the pattern. This was essential otherwise at the end of the tagging period the youngster would return to drug use.”

“We are now on the cusp of the next generation. The next step would be to incorporate the

satellite GPS (Global Positioning System). The latest British invention, which combined GPS with mobile telephone technology would probably prove to be the best of the alternatives. However there are still substantial difficulties in getting GPS monitoring to an accuracy that will allow tagging to use it."

"Tagging has been introduced in Sweden, the Netherlands and England and Wales at approximately the same time. The British system is remarkably indiscriminate in that it left courts with a very wide range of choices about who they should tag. The Swedes and the Dutch, having looked at the same evidence from the USA, decided that tagging would only work if combined with an intensive supervision order."

"Sweden has adopted it with the sole aim of reducing the prison population. It then took the controversial move of taking the decision away from sentencers i.e. the courts would give the prison sentence and then a decision would be made whether or not to substitute a tagging order. It achieved a 25% drop in the prison population."

The master stroke, in Dick Whitfield's opinion, was to make offenders who could afford it, pay a rental for the tagging equipment. This revenue then went towards victims' compensation. This raised over 8,000,000 kroner in Sweden in the first three years and raised public acceptance of the tagging sentences.

• 17 June 2003: 'The Prison Service'

Phil Wheatley, Director General, HM Prison Service

"The Prison Service is providing public protection at its best. **It aims to reduce re-offending but there has to be a realistic approach to what can be achieved in custody. The Service must not promise more than it can deliver.**"

"Prison is about more than the items already mentioned. It is the most severe punishment available to society. It has to be seen by the public, the press and Parliament as dealing with crimes properly. It is important for the perception to be that things have been set right. **However rigorous other punishments are, none inspire the same awe as a prison sentence.**"

"The Service is working in a well-directed way to making a difference but it cannot be the complete answer to crime. The partnerships with other agencies are really working well, one example

being health, run by the Department of Health and another being education, with delivery by the Department for Education and Science. There is also good co-operative work being done with the National Treatment Agency on drugs issues. There is room for enhancement and improvement."

"But, the prison population is rising and the core funding is falling. This is creating hard work for us so that we need to be constantly looking for ways of doing things differently with less staff. The challenges are enormous. Prisons breed confrontation and distress on a daily basis which, in turn, lead to incidents, suicides and attempted suicides, fights, attacks, etc. It is the Prison Service's job to deal with and contain these incidents - it is not a risk-free enterprise."

"Accommodation varies enormously with probably the worst being those prisons built in the sixties and early seventies. These are now requiring a lot of maintenance and repair."

“The prisons are running at full capacity and holding all the prisoners that they safely can. They take all those sent to them.”

Phil Wheatley’s hope was that courts would only use a prison sentence where it was strictly justified and only for long enough to meet the needs.

“Bullying, often very cruel bullying, is a real issue in most prisons, particularly in young offender institutions. Sex offenders are regarded as ‘fair game’ by those who have committed equally unpleasant offences. Prisoners have much more to fear from other prisoners than from staff in this respect. It is a real problem and the Service cannot be complacent about it.”

“Many of the young people in prison have had no reasonable experience of an adult treating them decently. Work is being done to train individual prison officers to be able to perform the role of an adult who would treat these youngsters in a just and fair way.”

“The biggest obstacle to preventing re-offending lies outside prison. Most prisoners do not want to go back to prison. If there are housing problems, family problems and no occupation on release, a return to crime is very tempting, particularly if there is peer pressure. The support network outside prison needs to be ‘right’ as well as convincing the community that it could help.”

• **8 July 2003: ‘The Decision to Imprison: Sentencing and the Prison Population’**

Professor Mike Hough, Criminal Policy Research Unit, South Bank University

Mike Hough said he would like to present the key facts of a report that he had compiled with Jessica Jacobson and Andrew Millie over the previous eighteen months: ‘The Decision to Imprison: Sentencing and the Prison Population’.

“The starting point was that if the Government wanted to contain prison numbers, what would be the best way of going about it. The study sought to identify factors that tipped sentencers to a prison sentence or a community sentence in cusp cases – cases that were finely balanced. Research was undertaken on community sentences to find out what was and was not attractive about them with the aim of ‘improving the product’ so that sentencers would ‘buy’ more.”

“Forty four judges, recorders and district judges were interviewed face to face. In each interview

four cusp cases had been discussed, two that had resulted in prison sentences and two that had resulted in community sentences. Eighty magistrates were interviewed in focus groups of eight or ten. The research drew on six crown court centres and the magistrates were from feeder courts to these centres, including some that were low and some that were high custody users.”

“To place the study in context, an extensive trawl had been carried out of all the available sentencing statistics. The anchoring statistic was the 71% increase in the adult prison population from 1991 until now. Although natural to assume that this increase had been due to a rise in crime this was, in fact, not true. There were in fact fewer recorded crimes than in 1991 if the method of counting was consistent. This was borne out by the British Crime Survey.”

“Likewise court workloads were down. Remands did not affect the picture either. Whilst they had grown in the mid-nineties, they had fallen back again.”

“The conclusion was that there had been a large increase in sentencing to prison with the same volume of people coming through the courts. Tougher sentencing had been the main driver of the 71 per cent increase. A lower threshold was evident for using prison as a sentence and the crown courts were showing a greater preparedness to give longer prison sentences.”

“A study was then undertaken into the motivation behind this increased severity. There was legislation stipulating maximum sentences and there were guideline judgements which tended to be inflationary. The magistrates interviewed endorsed the view that guideline judgements had an inherently inflationary effect because they lifted the more lenient sentences up to the guideline but did not pull the tougher sentences down to the guideline norm.”

“Why should this be so? It was felt that much of it was due to the climate of opinion around crime and justice – the media/political debate about crime and justice which clearly overheated during the nineties and fed through into sentencing decisions. This created a schizophrenic approach of needing to resist the pressures of public opinion but also needing to respond to it.”

“It would be bad if sentencers were never responsive to public opinion and it would be appalling if they were never responsive to well-informed public opinion but if they were being highly responsive to ill-informed public opinion, it would be very bad indeed. Public opinion was so demonstrably ill-informed and alarm bells should ring if sentencers were obviously responding to an intensifying climate of debate.”

“One of the most impressive findings which shaped the conclusions of this report was that in the 150 cases on the cusp that fell to custody rather than community penalties, only in two had the sentencers said: “we had to send them to prison because we could not find the community penalty we wanted.” It was not for the lack of a

community penalty that the 148 were being sent to prison.”

“Both the judges and the magistrates interviewed had persistently talked of prison as a sentence of last resort. We have been impressed by the intensity of this view and the genuine reluctance to send people to prison. The consensus was that a prison sentence was a step change from community penalties with only a small overlap between the demanding end of community sentences and short prison sentences.”

“The task is to persuade the sentencers to make less use of prison. The strategy of the last fifteen years of ‘luring’ sentencers, by offering them a more and more tempting menu of tough and demanding sentences probably would not work. The result would probably be net widening to include those who would have got community penalties anyway rather than those going to prison.”

“The recommendation of the report was that sentencers should be told to use community penalties more and imprisonment less and when the latter had to be used that it should be compressed. However, this would only work if there was consistent political leadership to the effect that that was what was wanted.”

Mike Hough finished with a quotation from one of the senior judges interviewed: *“the question to the Government is pretty clear, do you really want to bring down the prison population, I mean, do you actually want to do it, as opposed to say that you want to do it?”*

(b) Ken Macdonald QC, (then) incoming Chair, Criminal Bar Association

“The statistic of a rise in the prison population of 71 per cent in 12 years is very disturbing and it looks as if the UK is going down an American route so far as penal policy is concerned. It seems that the British politicians have learnt the rhetoric of American crime and punishment. Successive

Home Secretaries have been paying lip service to shorter sentences and less custody whilst all their public rhetoric has been in the opposite direction. The reason is, presumably, that the political benefits of that rhetoric are seen to outweigh principle."

"The media climate is pretty punitive and it did translate itself to the courts. Judges did try not to be populist but, on the other hand, they must be seen to be responsive in some way to public concerns. Public concerns, though, could often be ill-founded."

"...guideline judgements are having a very bad effect on sentencing in terms of the sorts of sentences imposed. I am not against guideline judgements but there needs to be consistency. The trouble is that the Court of Appeal has played the same game as politicians in some cases where senior judges talk about the need not to send people to prison whilst their fellow judges are issuing guidelines in cases which are far more punitive than necessary. Drugs cases are cases in point, where the length of some prison sentences is inappropriate and certainly not a deterrent."

"In one case African women from rural villages were persuaded to travel to the UK to deliver

heroin and disappeared into the British penal system for many years, sometimes as many as fifteen. These women had thought they would only be leaving their village for a few days and had no idea what might happen to them if they were caught. This punishment was not achieving anything and it could not deter."

"The proposals for murder sentencing, (in the Criminal Justice Bill), would make the situation much worse. The effects they would have on the prison population are grotesque with, for example, a minimum sentence for murder of fifteen years (including a doctor succumbing to the pleas of a terminally-ill patient begging for an overdose)."

"The Home Secretary has conceded that the proposals will result in most sentences for murder being ten years longer than previously. This will have an extraordinary effect on the prison population but particularly on the long-term prison population which may be the most difficult to manage."

He felt that politicians were not acting to dispel misconceptions but rather to nurture them.

The report 'Decision to Imprison', in his opinion, was fighting irrationality with rationality and he hoped it got the widest possible circulation.

• **9 September 2003: The Criminal Justice Bill – Part 12: Sentencing**

(a) Paul Cavadino, Chief Executive, Nacro

"The high starting points for murder and the minimum sentences for gun crime will have another effect too – they are almost certain to have a knock-on effect, leading to a ratcheting up of sentences for other crimes so that the differential between them would not appear excessively wide. This country already has a

higher proportion of its population in prison than any other nation in Western Europe and our Prison Service is struggling to cope with a record, rapidly-rising, excessive and overcrowded prison population. Overcrowding and overstretching our prisons is not a sensible way of combating crime. It makes it much harder to provide rehabilitative prison regimes which could reduce prisoners' chances of re-offending on release. It means that many thousands of

prisoners are continually shifted around the country to any prison which has a space available, interrupting their progress on educational and offending behaviour courses and seriously damaging family relationships – yet these are things which we should be protecting because of their crucial role in reducing re-offending.”

In contrast he said there was much to welcome in Part 12 of the Bill, most of which restructured the sentencing framework in line with the provisions of John Halliday’s thoughtful report ‘Making Punishments Work’.

Whether courts used these provisions in a way which reduced or increased the prison population depended in part on the general climate to which courts felt they were responding – and the Government’s partiality to tough rhetoric was one of the key factors which had undoubtedly fuelled the rise in prison numbers as courts felt they needed to respond to a more punitive climate. It also depended in part on the sentencing guidelines which would emerge from the new Sentencing Guidelines Council created by Clause 160. The Halliday report suggested that the face value of sentences might be scaled down in recognition of the fact that the content of many sentences would be more meaningful and that post-release supervision would last to the very end of the “face value” sentence. It said:

“The proposed new sentencing guidelines should not assume that existing norms for sentence length would be equally punitive in the new framework, or that the existing custody rate would be equally appropriate.”

The Government would increase the chances of such an outcome if it would drop its wrong-headed proposals for minimum sentencing, which are likely to have an opposite ratcheting-up effect on sentencing guidelines.

(b) Una Padel OBE, Director, the Centre for Crime and Justice Studies and Chair, the Penal Affairs Consortium

“England and Wales has a very wide range of community sentences compared with our European neighbours and these have increased over the last ten years in response to both the demand for ever-tougher community penalties and the ever-rising prison population. The enforcement of community penalties has become very much more stringent in the last few years.”

Community sentences currently face two major problems. First, they are being used for ever lower-risk offenders and second, they have very low public confidence. There is very little idea of what a community sentence actually involves and they are perceived as offenders walking out of court without a meaningful punishment. Recent re-branding has had very little effect either on the way they are being used or on public credibility.’

“It may prove to be very helpful to have a unified community sentence (as proposed in the Criminal Justice Bill) especially in the area of improving public credibility.”

“The concerns that the Penal Affairs Consortium have about a unified order are:

- *the courts may be reluctant to give offenders more than one chance at this*
- *the courts may feel that an offender would take more notice if part or all of the sentence involved custody*
- *the courts may be tempted, when presented with a whole range of sentencing options, to be unrealistically rigorous.”*

“Likely compliance was a factor that should have to be taken into consideration when sentencing. The list of requirements of a sentence should be those that were most likely to lead to success for all those concerned.”

“All the proposals had major implications for the Probation Service. This could be a major stumbling block as there were already work-load problems.”

• 21 October 2003: Working in Prison

Mike Newell, President of the Prison Governors' Association

Mike Newell said that the present Government had tried, and tried very hard, to address the issue of re-offending by providing funding for rehabilitation in the areas of education, drug services and offending behaviour programmes. In addition there had been substantial improvements in health care delivery in the prison system. The sad thing was that despite all these efforts and good intentions, the failure to control the prison population meant that the rehabilitation services constantly became secondary.

He used the example that he currently had £800,000 plugged into drug services and his staff worked extremely hard. A detoxification programme typically lasted 2–4 weeks but quite often prisoners had to be moved every 4–5 days simply to make room for those being sent to prison by the courts. For the same reason the education programmes had many more starters than completers. Offending behaviour programmes came under pressure as well because those undertaking the programmes were seldom there for long enough. The Prison Service was unable to control it.

“Fragmentation is leading to many problems. In one open prison, the abscond rate has doubled and there are real control problems. Safety is a real problem as the dormitories have become ‘no go’ areas for the small number of staff on duty at night.”

The question had to be asked why there had been such appalling industrial relations in the Prison Service over such a long period. He did not believe it was down to the men and women who worked in the Service; they did remarkably well with no training. To his knowledge not a bean had been spent on any

industrial relations strategy or taking forward any initiatives. Training and development of staff, like prisoners' rehabilitation, was constantly cut. This had led to inconsistent levels of performance. There was no investment in people and such training as was given was not commensurate with the responsibility that the officers were expected to take.

“The feeling is that no matter how hard you work you are going backwards, that you are treading water and that achievements are very seldom recognised.”

Mike Newell said the debate was about whether we have too many people in prison or too few places. His view was that prison should be used less.

“Of course, if there were 75,000 prisoners and 100,000 places, a much better Service would result. The possibility of doing some really positive work on treatment programmes and reducing re-offending would be there.”

The decision had to be made about what could be afforded. He wanted crime reduction like anyone else and communities needed to feel safer. He thought that more investment should be made in communities and in solving their problems. It was communities that created crime not prisons. Should prisons be responsible for counselling people or for finding housing. In his opinion it was a 'screwed up' approach to hold the prisons responsible for the failure of someone to be housed on discharge or returning to drug use immediately.

“Offenders are citizens of the community that the prisons have responsibility for, on the whole, for a very short while. This problem needs solving before the prisons and the community can work together to improve the situation.”

He finished by saying, “Let's not keep on with the things that we know do not work.”

Appendix

Prison overcrowding - the facts:

Prison Population Key Facts

1. **On 24 October 2003 the prison population in England and Wales stood at 73,987, its highest ever recorded level.** This is an increase of 2,366 in the last 12 months. In the last two years the prison population has increased by nearly 6,000.
2. **The UK now has the highest imprisonment rate in the European Union at 139 per 100,000, taking over from Portugal which has an imprisonment rate of 131 per 100,000.** Compared to our nearest neighbours we keep in prison some 40 to 65 per cent more of our citizens. Our prison population rate is 45 per cent higher than Germany (96 per 100,000), 62 per cent higher than Ireland (86 per 100,000) and 63 per cent higher than France and Belgium (both 85 per 100,000). It has risen dramatically over the last four years from 125 per 100,000 in 1999.
3. **The number of prisoners in England and Wales has increased by over 25,000 in the last ten years.** In 1993, the average prison population was 44,566. When Labour came to Government in May 1997 the prison population was 60,131. This continued to increase, and stood at 66,105 when David Blunkett became Home Secretary on 8 June 2001.
4. **The number of women in prison has increased particularly dramatically.** Ten years ago in 1993 the average female prison population was 1,560. Five years ago in 1998 it stood at 3,105. On 24 October 2003, there were 4,509 women in prison, an increase of 189 per cent in the last ten years.
5. **On 24 October 2003, there were 10,907 under 21 year olds in prisons in England and Wales.** Of these, 2,573 were under 18.
6. **On 31 August there were 12,093 remand prisoners in England and Wales.**

7. **Most of the rise in the prison population over the last decade can be explained by the significant increases in the proportion of offenders sent to prison and the length of sentences, particularly the increased number of long-term prisoners.** In December 2002, 25,557 males were serving sentences of four years and over. This compares with 12,325 in 1992, an increase of 107 per cent. In terms of custody rates, ten years ago one defendant in 26 would have gone into custody, now it is one in thirteen.
8. **The number of life sentence prisoners has increased considerably in recent years.** There were 5,427 prisoners serving life sentences on 31 July 2003. This compares with fewer than 4,000 in 1998 and 3,000 in 1992. England and Wales has a higher number of life sentence prisoners than any other Western European country.
9. **The number of prisoners serving short sentences has also increased.** Between 1991 and 2001 the number of adult prisoners sentenced to 12 months or less more than doubled from over 22,000 to more than 49,000. In 2001 over half of all those sent to prison were sentenced to jail terms of six months or less. At any one time there were on average more than 10,000 prisoners serving sentences of 12 months or less.
10. **Home Office projections over the next three years reveal that there is a huge gap between planned useable operational capacity and the forecast prison population.**

	Currently planned average in-use CNA	Currently planned average useable operational capacity	Forecast average population
2006	69,500	78,700	87,200
2005	69,000	77,000	81,500
2004	67,000	75,000	76,200

11. Home Office projections predict that by the end of the decade the prison population could be anything between 91,400 and 109,600.

12. Since 1995, over 15,200 additional prison places have been provided at a cost of more than £2 billion (Hansard, written parliamentary answers Sept 2003).

13. Building new prisons has not proved to be a solution to prison overcrowding.

In the last ten years thirteen new prisons have been opened. Of these, nine were overcrowded at the end of May.

14. In an attempt to ease overcrowding, in April the Home Office ordered an emergency extension of the early release programme, the Home Detention Curfew (HDC). Prisoners can now leave custody under electronic surveillance up to four months before their release date. On 12 September 2003 there were 3,687 prisoners under HDC compared to 2,381 in September 2002.

15. Home Office research highlighted in the Halliday report (Making Punishments Work, July 2001) indicates that it would take around a 15 per cent increase in the prison population to result in a short term reduction of crime of just one per cent.

16. Prison has a poor record in reducing re-offending – 59 per cent of prisoners are reconvicted within two years of being released. The reconviction rate for male young adults (under 21) over the same period is 74 per cent. For prisoners who are imprisoned for burglary - one of the most common offences - the reconviction rate is 75 per cent.

17. The Social Exclusion Unit has concluded that re-offending by ex-prisoners costs society at least £11 billion per year. Ex-prisoners are responsible for about one in five of all recorded crimes.

Sentenced population by offence type (April 2003)

Offence group	Male	Female	Total
Violence against the person	12,421	556	12,977
Sexual offences	5,484	0	5,484
Burglary	8,559	224	8,783
Robbery	7,723	404	8,127
Theft and Handling	4,193	464	4,657
Fraud and Forgery	907	104	1,011
Drug offences	8,809	1,309	10,118
Motoring offences	2,559	52	2,611
Other	3,909	217	4,126
Not recorded	917	32	949
Total	55,481	3,362	58,843

Prison overcrowding

1. Over the last year prison overcrowding has been at its highest recorded level.

At the end of October 2003, 83 of the 138 prisons in England and Wales were overcrowded. The most overcrowded prison was Preston, which was overcrowded by 89 per cent, holding 673 prisoners in accommodation intended for 356. This was followed by Leicester (overcrowded by 83 per cent, holding 377 prisoners in accommodation intended for 206) and Shrewsbury, (overcrowded by 83 per cent, holding 330 prisoners in accommodation intended for 183).

2. There are some prisons which are not only overcrowded but at some point have also exceeded their maximum capacity.

At the end of October, eleven prisons were operating at or above their maximum capacity, for example, Bedford was holding 487 prisoners in accommodation designed to hold a maximum capacity of 464 prisoners.

3. At the beginning of July 2003 over 16,000 prisoners were doubling up in cells designed for one, the equivalent of 22 per cent of the prison population at that time.

(Home Affairs Select Committee oral hearing, 15 July 2003).

4. A study by the Prison Reform Trust and the National Advisory Council of Independent Monitoring Boards in September 2002 examined the impact of overcrowding.

Of the 103 Independent Monitoring Boards (the watchdogs appointed by the Home Secretary to monitor prison conditions) who responded, 77 expressed concern that overcrowding was threatening prison safety, leading to prisoners being held in inhuman, degrading and unsafe conditions and damaging attempts to reduce re-offending by prisoners.

5. Building new prisons has not proved to be a solution to prison overcrowding.

In the last ten years thirteen new prisons have been opened. Of these, nine were overcrowded at the end of October.

6. The largest prison in England and Wales is HMP Wandsworth in west London, which at the end of October was overcrowded by 30 per cent, with 1,467 prisoners being held in accommodation intended for 1,134.

The next largest prison is Liverpool, followed by Pentonville.

Prison overcrowding in England and Wales in last ten years (mid-year)

Year	Number of places (Certified Normal Accommodation)	Number of prisoners	Percentage occupation
1992	46239	46832	101%
1993	46646	44246	95%
1994	48291	48929	101%
1995	50239	51086	102%
1996	53152	55256	104%
1997	56329	61467	109%
1998	61253	65727	107%
1999	62369	64529	103%
2000	63346	65194	103%
2001	63530	66403	105%
2002	64046	71112	111%



ALL-PARTY PARLIAMENTARY GROUP ON

PENAL AFFAIRS

The All-Party Parliamentary Penal Affairs Group aims to increase members' knowledge of penal affairs and to work through parliamentary channels for reform of the penal system.

Prison overcrowding has been the dominant theme of meetings throughout the past year. As the comments of successive speakers testify, chronic overcrowding is a blight on the whole prison estate, affecting not only the well-being of prisoners and staff, but significantly undermining efforts to improve public safety.

This report make the case for radical action based on realistic plans.



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