

**Justice reinvestment:
empty slogan or sustainable
future for penal policy?**

By Rob Allen
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About Transform Justice

Transform Justice is a national charity campaigning for a fairer, more humane, more open and effective justice system.

Transform Justice was set up in 2012 by Penelope Gibbs, a former magistrate who had worked for five years to reduce child and youth imprisonment in the UK. The charity will help create a better justice system in the UK, a system which is fairer, more open, more humane and more effective. Transform Justice will enhance the system through promoting change – by generating research and evidence to show how the system works and how it could be improved, and by persuading practitioners and politicians to make those changes.

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Penelope Gibbs worked in radio production and at the BBC before being inspired to move into the voluntary sector. She set up the Voluntary Action Media Unit at TimeBank before joined the Prison Reform Trust to run the Out of Trouble campaign, to reduce child and youth imprisonment in the UK. Under her watch, the number of children in prison in the UK fell by a third. Penelope has also sat as a magistrate. Penelope set up Transform Justice in 2012 and it became a registered charity in 2013.

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Foreword

The most effective means of reducing offending lie outside the remit of the justice system. Entrenched offenders need stable housing, good family relationships, employment and good healthcare to turn their lives around. Yet offenders struggle to gain access to services and to the job market. There are few incentives for those providing services outside the criminal justice system to prioritise the needs of offenders and ex offenders. In fact, in many cases they go to the back of the queue. A young offender needing housing is often seen as trouble, and excluded by providers. Meanwhile millions are spent on court costs, police enforcement and prisons.

How can we incentivise public services to help rehabilitate offenders, when money is already so tight? New Labour encouraged local authorities through local area agreements. Each council chose a measure (such as increasing diversion of children from the criminal justice system) and their performance was tracked and, if positive, rewarded. The coalition government has instead backed “payment by results” (PBR) mechanisms, whereby providers will only be fully recompensed for their rehabilitation programmes if they reduce reoffending. But all the contractors who undertake PBR will do so with at least one hand tied behind their back. They have no control over the health service, social housing providers and other statutory services which provide the framework for effective rehabilitation. The risk with PBR is that those given responsibility for offenders will have even less power to access local services than probation trusts and courts have now.

This government has flirted with a mechanism for incentivising all local services to help offenders turn their back on crime – justice reinvestment. This involves reform of the way criminal justice is paid for, to reward those involved in reducing imprisonment and offending. In the case of remand for under 18 year olds, the government has delegated the custody budget to local authorities. The decision of judges is still independent but if, through better bail practice, local authorities succeed in reducing child remand below their benchmark, they can keep the money which would otherwise be spent on prison places. Child remand has gone down 16% since the budget was delegated.

The coalition government appears however to have turned its back on justice reinvestment as an idea – as have many of the states in the USA which pioneered this approach. This paper by Rob Allen looks into the reasons why, and suggests that justice reinvestment is still one of the most promising ideas for reducing crime and imprisonment.

Penelope Gibbs
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Executive summary

Justice Reinvestment (JR) is a term that covers a range of ways of reforming the organisation and funding of systems for dealing with adult and juvenile offenders. While there are a variety of definitions of JR, the concept includes three core components. The first is an overarching and explicit policy goal of reducing the numbers of people being prosecuted, convicted and imprisoned. The second is the introduction of methods of financing criminal justice institutions and processes which incentivise the transfer of resources away from prison places, and into community based measures for rehabilitating offenders and preventing crime. The third element involves devolution of responsibility for criminal justice to a more local level where a range of relevant organisations can devise the most appropriate approaches to reducing crime, incorporating the views of people most affected by it.

Originating in the USA where the prison population quadrupled in the twenty five years after 1980, JR's promise of redirecting public spending from imprisonment to the community has attracted interest in a variety of jurisdictions including England and Wales. It reached its peak here in 2010, when the House of Commons Justice Select Committee recommended a blueprint for a more rational use of criminal justice resources based on careful mapping of where criminal justice problems occur, the generation of reform options for policymakers, and the development of mechanisms to shift funds.

Experience in the USA has found that since the mid-2000s, more than half of States have embarked on some form of JR, but a recent review concluded that the initiatives have not reduced prison populations and budgets below the historically high levels which persist today, nor steered reinvestment toward the communities most affected by high levels of imprisonment.

In England and Wales, since 2010, progress on the implementation of JR has also faltered, although a number of piecemeal pilot schemes have tested aspects of the approach. The Youth Justice Reinvestment Pathfinder has shown that financial incentives can stimulate local measures to reduce the numbers of under 18s imprisoned, and responsibility for meeting the costs of under 18's remanded to custody was transferred to local authorities in April 2013. On the adult side, Local Justice Reinvestment Pilots have rewarded agencies which work together locally to reduce demand on the criminal justice system, although the payments have only represented a small proportion of the costs which have been saved.

England and Wales has also seen, or is planning, substantial changes in the infrastructure of criminal justice and local government agencies. The introduction of community budgets, the election of Police and Crime Commissioners, and proposed changes to the probation system provide opportunities to extend JR approaches.

The most obvious step would be to make local government responsible for meeting the costs of all Detention and Training Orders (prison sentences) for young offenders under 18, as well as remands. This could stimulate the kind of creative alternative provision, community based, semi- secure and secure, that would take the place of prison. It would link the three key elements of reduction in imprisonment, financial incentivisation and local responsibility. In the longer term, there is a strong case for taking JR forward as an integrated policy approach, rather than as piecemeal initiatives. Machinery in central government is needed to drive it, such as an interdepartmental Justice Reinvestment Board chaired by a senior minister.

The aim should be to devolve much greater elements of the budgets, which fund prisons and probation,

to local level. Regional boards comprising local authorities, PCCs and health should eventually be responsible for commissioning prison places and other community based supervision programmes. Testing different approaches to achieving this will be needed, including pilot schemes at the level of the new Probation Contract Package Areas. As a first step, the custodial budget covering adult remands, young adults aged 18-21 and women offenders should be considered for devolution to the Boards.

Boards should be encouraged to use the devolved custodial budget to commission a wider range of custodial, semi custodial and community based services and facilities to meet the needs of suspects and offenders in their localities, as well as a range of preventive measures.

Introduction and purpose of the report

Background

Five years ago, Justice Reinvestment (JR) looked like the big new idea in prison reform. In 2009, The Howard League's Commission on English Prisons called not only for a significant reduction in the prison population and the closure of establishments, but also the devolution of prison and probation budgets to local partnerships who would "invest in the localities that currently produce prisoners to reduce crime". A year later the Justice Select Committee made their "Case for Justice Reinvestment", which argued for a radical shift in funds away from incarceration towards rehabilitation and what they called "pre-rehabilitation"-targeted measures in the most deprived neighbourhoods which would stem the flow of residents into the criminal justice system.⁰¹

Justice Reinvestment was taking off on a large scale in the USA with more than half of States looking to apply some JR approaches, and 18 subsequently enacting JR related legislation for the purpose of halting the seemingly inexorable rise in prison populations and budgets.⁰² Other jurisdictions like Australia and Scotland also showed interest in JR, since they were asking questions about the affordability and effectiveness of much increased prison populations.

Since then, despite its promise, JR has only produced limited changes in penal policy and practice around the world, and the results of a number of initiatives have so far failed wholly to live up to expectations in terms of cutting the numbers of people in prison and redirecting funds from imprisonment to prevention or other community based measures. In the USA, a recent review conducted by some of the founding fathers of JR concluded that it "has been unable to reduce correctional populations and budgets below the historically high levels which persist today. Nor has it steered reinvestment toward the communities most weakened by aggressive criminal justice policies."⁰³ Although we have much lower rates of imprisonment

on this side of the Atlantic, a similar assessment could be made in the UK. The Coalition Government has not taken the opportunity to reconfigure the system along JR lines, despite using the language of rehabilitation revolutions and justice transformation, and is unlikely to do so now given the impending election. In other countries, interest in JR has failed yet to translate into concrete policy or practice.

In England and Wales, there have been claims that many current policies do in fact represent a type of JR. The Coalition Government for example has described its rehabilitation revolution as making "the concept of justice reinvestment real by allowing providers to invest money in the activity that will prevent offending rather than spending money on dealing with the consequences." But the concept of JR has more elements to it than a financing mechanism.

This paper will argue that there are three key elements which all need to be present in genuine justice reinvestment:

- **The first is an overarching and explicit policy goal of reducing the numbers of people being prosecuted, convicted and imprisoned.**
- **Second, there needs to be a method of financing criminal justice institutions and processes which incentivises the transfer of resources away from prison places, and into community based measures for rehabilitating offenders and preventing crime.**
- **The third element involves devolution of responsibility for criminal justice to a more local level, where a range of relevant organisations can devise the most appropriate approaches to reducing crime, incorporating the views of people most affected by it.**

⁰¹ Cutting Crime The Case for Justice Reinvestment HC-94-1

⁰² http://sentencingproject.org/doc/publications/sen_Charting%20a%20New%20Justice%20Reinvestment.pdf

⁰³ Ibid

Faced with the biggest fiscal crisis since 1945, the Coalition Government has not seized the chance to place the penal system on a more sustainable footing by reducing prison numbers. Although numbers have come down since the Coalition came to power, the 84,000 locked up at the end of October 2013 still represents a doubling of the population in twenty years. The prison system is vulnerable to unexpected shocks – not only the riots in 2011 which saw numbers reach more than 88,000, but an unexpected rise in early October 2013 which led prison governors to warn of:

“a significant threat to the stability of the prison estate at a time of prison closures and reduced staffing numbers brought about by benchmarking and restructure. This is accompanied by a number of prisons reaching capacity.”⁰⁴

After a promising start, during the course of their term in office, the government have if anything moved further away from policies designed to reduce imprisonment and to increase local responsibility for the management of offenders. In spite of a commitment to roll back overzealous criminalisation, in the year to May 2012, 292 new criminal offences were created, an increase of 67.8% on the previous 12 months. Over three-quarters (78.1%, 228 offences) of the total new offences carried a possible custodial sentence.⁰⁵

The Coalition’s policy is increasingly based on a desire to save money by making the prison system not smaller but cheaper, and by introducing novel financing mechanisms, rather than reinvesting it in the “high stakes” communities in the ways proposed by the original proponents of JR.

That is not to say that nothing has been done to take forward JR. Pilots have been established to test ways of incentivising local statutory partners to reduce demand on the criminal justice system in general, and custodial sentences in particular. Community budgets are showing how local agencies can reconfigure

services to reduce re-offending in more effective and cost effective ways.

However, progress on the development of the three key dimensions of JR – radically shrinking the use of imprisonment, creating financial incentives to prevent crime and reduce re-offending, and localising responsibility for criminal justice services – has not been taken forward in a coherent way. In evidence to an Australian Parliamentary inquiry into JR, the country’s Attorney-General’s Department commented that the justice reinvestment approach in the UK has had a much greater focus on reducing offending behaviour and improving community safety, than simply on incarceration. As a result, the prison population in June 2019 is projected to be between 77,300 and 86,600.⁰⁶

Nor has there been a sufficient focus on the elements of localism and participation inherent in the original vision of JR. The most recent and controversial of the criminal justice reforms involves making the probation service significantly less locally responsive, much to the concern of many of the local agencies involved in the reduction of crime.

Aim and structure of the report

The aim of this report is to analyse how and why JR has not flourished so far, and to assess the prospects for future development.

Section One tries to identify the key dimensions of a JR approach and offers a brief history of the ideas up to 2010. Section Two looks at developments since 2010 in respect of the three key dimensions – the use of imprisonment, the creation of reinvestment funding mechanisms and the localisation of services. Section Three looks at developments in the United States. The report concludes with some ideas of how to breathe life into the concept for the next government.

⁰⁴ Jail population spike threatens whole system, governors warn; Guardian 16 October 2013

⁰⁵ New criminal offences England and Wales 1st June 2009 – 31st May 2012 Statistics Bulletin

⁰⁶ Prison Population Projections 2013–19

Section one: key dimensions of JR

What is JR?

Justice Reinvestment (JR) is a phrase which has come to cover a range of approaches to reforming the criminal justice and penal system. While the idea of JR has its origins in the USA, politicians, policymakers and academics in the UK have shown a growing interest in it over the last ten years.

At its core is the notion that much of the money spent on criminal justice is used ineffectively, and produces a poor return for society. Arresting, prosecuting and imprisoning people is concentrated in geographical areas characterised by poverty, deprivation and social problems. If some of the funds spent in these areas on processing individuals through courts and prisons were used instead on providing better services and facilities in these neighbourhoods, the outcomes would be more beneficial for the individuals, the communities where they live and society at large. The idea is that reallocating justice spending to finance education, housing, healthcare and job programmes would prevent offending, and reintegrate ex-offenders more effectively and cheaply than prison.

A number of more specific definitions have been offered. In the US, Justice Reinvestment is seen as “a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and strengthen neighborhoods. The purpose of justice reinvestment is to manage and allocate criminal justice populations more cost-effectively, generating savings that can be reinvested in evidence-based strategies that increase public safety while holding offenders accountable. States and localities engaging in justice populations and costs identify and implement changes to increase efficiencies, and measure both the fiscal and public safety impacts of those changes.”⁰⁷

This definition was largely embraced by the House of Commons Justice Committee in their 2010 report “Cutting Crime: The Case for Justice Reinvestment”.

The Australian Parliament identified eight core elements in JR:

- an analysis of the whole criminal justice system
- justice mapping and integrated data systems which identify disproportionate concentrations of crime problems
- a shift in investment to place-based initiatives
- collaborative partnership between government agencies and local communities
- greater community control of resources through the involvement of local governance structures
- evaluation of initiatives
- long term strategies and
- a commitment by policy makers to implement the policies identified by the systems analysis, the justice mapping and community participation elements

These definitions tend to emphasise justice reinvestment as a set of technical measures. Such measures are necessary, but not sufficient. Many of the elements of the approach are much more political in nature, and any decision to embrace a JR approach is bound to be a political one. As Chris Fox and his colleagues have concluded in a recent monograph on JR, there has been too much focus on criminal justice redesign and not enough on social justice.⁰⁸

⁰⁷ Bureau of Justice Assistance Policy Brief https://www.bja.gov/ProgramDetails.aspx?Program_ID=92

⁰⁸ Justice Reinvestment : Can the Criminal Justice System Deliver More for Less? by, Chris Fox Kevin Albertson and Kevin Wong Routledge 2013

The Case for JR

The level of public spending on prisons in the UK does not yet approach that of the USA whose 2.5 million prisoners represent an imprisonment rate four times higher than in Britain. Yet the UK prison population, particularly in England and Wales, has almost doubled in the last 20 years. There were more than 84,000 people in prison in England and Wales at the end of October 2013, compared to 45,000 in 1992. This represents an increase in the rate of imprisonment from 90 per 100,000 of the general population to 148.⁰⁹ Spending on prisons has risen from approximately £2 billion in 2002 to £3 billion in 2012.

Concerns about the cost and effectiveness of this greatly increased use of imprisonment have led to a widespread desire to find ways of curbing the spending involved, or at least diverting it into more constructive community based measures which can reduce crime. Many offenders who go in and out of prison suffer a range of challenges which are not adequately met – alcohol and drug misuse, lack of settled accommodation and chaotic lifestyles, lack of employment and poor education.

The Chief Constable of Greater Manchester said in October 2013 that:

“if you talk to most operational officers, they would say the number one issue for them is mental health.”¹⁰

There is strong evidence that developing services in the community on the necessary scale to meet the needs of people in conflict with the law is likely to produce a range of social benefits including a reduction in crime. Transferring resources from prison looks a credible method for funding such services.

JR in the UK 2004–10

Attention was first drawn to the possible application of JR in the UK in 2004 when it was argued that:

“the key to justice reinvestment is to make local authorities responsible for the funds that pay for prisons, thereby giving incentive to the creation of a wide range of more socially productive alternatives. While dangerous, serious and persistent offenders still go to prison, keeping others in the community at a fraction of the cost provides savings for local reinvestment”.¹¹

Since then, academics, think tanks and charities have put forward a range of ideas which apply various of the key elements of Justice Reinvestment. Some have involved general arguments to use funds earmarked by the government for prison expansion to strengthen measures in the community, such as restorative justice, which could reduce demand for imprisonment.¹² Others have suggested more specific mechanisms to curb the use of prison including the abolition of the National Offender Management Service and different ways of treating young adult offenders.

The All Party Parliamentary Local Government Group undertook an inquiry into justice in communities which proposed a much more locally driven system of “primary justice”, which would involve shifting control of prisons and key supporting services away from Whitehall to a local level, and the creation of a local ‘safety and justice’ budget to fund local prisons and neighbourhood policing. This pot of money would be used to commission local services, either from existing providers or by setting up new local services. A local budget could include approximately 35% of the prison budget, the administration budget for magistrates’ courts, local policing and probation.¹³

⁰⁹ ICPS World Prison Brief http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=169

¹⁰ <http://www.express.co.uk/news/health/434649/Police-chief-We-are-not-trained-for-mentally-ill-criminals>

¹¹ Allen R Correctional Creativity The Guardian 7th July 2004 ¹¹ Allen R Correctional Creativity The Guardian 7th July 2004

¹² Rethinking Crime and Punishment 2008 The Manifesto

¹³ LGIU 2009 <http://www.lgiu.org.uk/primary-justice-an-inquiry-into-justice-in-communities/>

The Justice Committee Report

The most thoroughgoing proposals came in the House of Commons Justice Committee's substantial 2010 report "Cutting Crime – The Case for Justice Reinvestment". The report focused attention not only on how much is being spent on imprisonment, but to what alternative uses the public money consumed by prison could be put.

It also drew attention to how people going to, and returning from, prison are disproportionately drawn from the poorest neighbourhoods, and how targeted investment in these areas could help develop initiatives both to prevent crime and improve reintegration of ex-prisoners. The report argued that the prison population in England and Wales should be capped, with an objective of reducing it to two thirds of its then level. It coined the term "prehabilitation" to argue that resources should be invested in the most deprived communities, which produced the greatest numbers of candidates for custody, and suggested that mainstream local agencies responsible for providing health, education, social care and employment should be incentivised to do more to assist offenders subject to community sentences and returning from prison.

The report proposed a blueprint for a more rational use of resources based on careful mapping of where criminal justice problems occur, the generation of options for policymakers, the development of mechanisms to shift resources, and measurement of the impact of any initiatives undertaken.

The Labour government responded to the Justice Committee report at the very end of their term of office. They took issue with some of the key arguments, asserting that "the Government cannot set a clear direction to reduce the use of custody as an end in itself", which would be "simplistic and does not take account of the complexity of the issues at stake."¹⁴

More specifically the Labour Government argued that there is a need to differentiate between those serious or persistent offenders whose actions require a robust response from the criminal justice system – presumably code for punishment and imprisonment – and other, less serious, offenders for whom a more rehabilitative and community-based approach might be more appropriate. The Government accused the Justice Committee of overestimating the numbers of prisoners who fall into the latter category, and suggested that on some occasions "the Committee over-estimates the benefits which might accrue from moving towards a justice reinvestment-style approach."¹⁵

The Labour Government did however support the longer term vision which the Committee had for JR. This was based on diverting from custody those who can be dealt with more effectively elsewhere; on partnership working, and on targeting resources where they can make most impact.

For the purposes of this report, it is a version of these three strands that appear critical to JR. To count as a success, JR initiatives must reduce imprisonment; focus on effective use of resources and encourage local responsibility for organising and resourcing offender rehabilitation and reintegration. It is these criteria that form the basis of the assessment in this report.

¹⁴ Ministry of Justice 2010 Government response to the Justice Committee's Report: Cutting crime: the case for justice reinvestment <http://www.official-documents.gov.uk/document/cm78/7819/7819.pdf>

¹⁵ Ibid

Section two: developments since 2010

a. Background

The formation of the Coalition government in May 2010 brought an important change of emphasis in criminal justice policy. The Programme for Government, which set out its key policies, included a commitment to more effective sentencing policies, an overhaul of rehabilitation and an exploration of alternative forms of secure treatment based accommodation for mentally ill and drug addicted offenders. The so-called “rehabilitation revolution” promised that programmes by independent providers to reduce re-offending would be “paid for by the savings this new approach will generate”. Shortly after the election, the Ministry of Justice agreed to find savings of 23% in its overall budget by 2014–5. Of the Ministry’s £8 billion budget, almost half is spent on the National Offender Management Service (NOMS), the demand for whose services comes largely from the courts, and the supply of which is dominated by imprisonment. It is not clear which particular aspect of the new approach was expected to generate these savings.

The green paper, *Breaking the Cycle*, and plans for probation and prisons contained a series of measures which aimed for:

“fewer crimes being committed overall, stemming the unsustainable rise in the prison population and ultimately achieving a reduction in the amount of money spent on the criminal justice system”.¹⁶

Costs would be reduced in all three ways – directly (through tightening criteria for remands to custody and sentencing reform); indirectly, through the improved outcomes expected from payment by results, and by reducing unit costs via a competition strategy with radically lower benchmark costs. The

direct reductions in prison places was estimated to be 2,600 by the end of the parliament, and more in the longer term as a result of the abolition of the sentence of Imprisonment for Public Protection (IPP).

Chart 1 shows what has happened to the prison population over recent years. Since the period leading up to the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the Government has watered down its prison reform proposals on both the supply and the demand side. In 2011, the Government promised to “manage a stable, effective system rather than undermining it by endlessly and irresponsibly inflating prison numbers for their own sake.”¹⁷ They made it clear however that it was not aiming to cut the prison population. A year later, the rhetoric had subtly changed with the Prime Minister pledging that “the number of people behind bars will not be about bunks available but about how many people have committed serious crimes”.¹⁸

A few weeks later new Justice Secretary Chris Grayling put it more clearly still:

“We have to focus on making the prison system cheaper not smaller.”¹⁹

The Government also decided that they would not push for community sentences to be used instead of prison. Instead, the government resolved to “transform community orders into more credible punishments that stop offenders getting to the point where custody is the only option. Non-custodial sentences need to be tough and demanding. For too long, they have fallen short of what is required”.²⁰ Both the greater likelihood of breach and the outsourcing of the probation may push the prison population up.

¹⁶ Ministry of Justice 2010 *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*

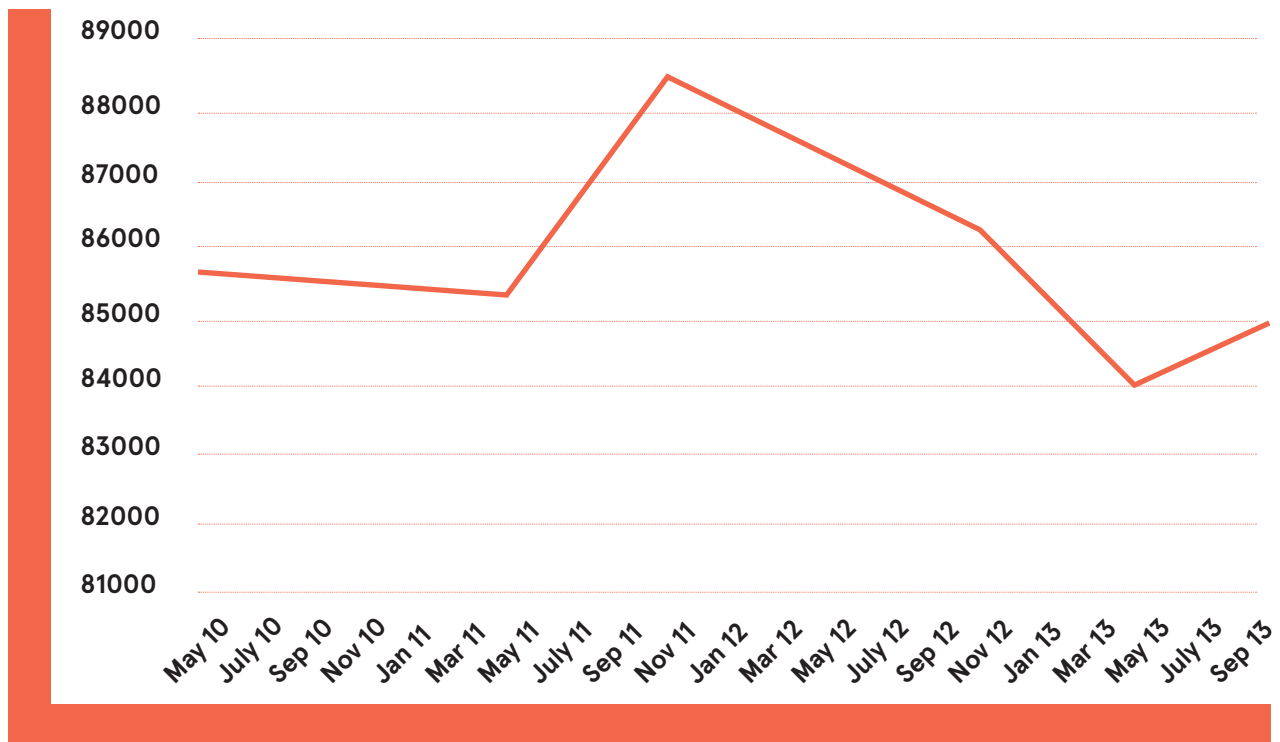
¹⁷ *Breaking the Cycle: Government Response* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/186345/breaking-the-cycle-government-response.pdf

¹⁸ Speech to Centre for Social Justice 22nd October 2012 <http://www.prisonreformtrust.org.uk/PressPolicy/News/vw/1/ItemID/16619> Ministry of Justice 2010 *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*

¹⁹ Speech 20th November 2012 <https://www.gov.uk/government/speeches/rehabilitation-revolution-the-next-steps>

²⁰ *Breaking the Cycle: Government Response* n20

**Chart 1: prison population
England and Wales 2010–2013**



b. Changes to funding

In England and Wales, the costs of custody are met almost entirely by central government through the National Offender Management Service, an agency of the Ministry of Justice. NOMS also pays for the Probation Service and has shown the ability to shift resources away from custody and into the community in various ways. For example, NOMS has decommissioned special units for offenders with severe personality disorder at Broadmoor, the NHS medium secure units and Rampton. The money, which has been released, is being used to increase the number of treatment places and to develop a pathway of services in prisons and the community. There is however very limited local input into the costs of imprisonment.

Costs of juvenile placements

Costs of Remands

There is a modest exception in the case of juveniles (under 18 year olds) remanded to custody. Since April 2013, local authorities have been required to pay for the costs when a court orders a child under the age of 18 to be placed in pre trial detention. Previously local authorities were financially responsible for a third of the costs of remands of young people under the age of 17 in secure care. The Youth Crime Action Plan, published by the Labour Government in 2008, suggested making local authorities responsible for the full cost of court-ordered secure remand, but no action was taken until after the 2010 election.

Responsibility for commissioning custodial places is retained by central government (through the Youth Justice Board), but the aim of the change has been to “simplify current arrangements and provide a powerful incentive for local authorities to invest in alternative strategies for this group of young people.”²¹ The incentive is that local authorities are allowed to keep any surplus from the remand budgets which have been devolved to them by the Ministry of Justice.

It is too early to tell conclusively what the impact of this has been. The numbers of under 18’s remanded in custody has fallen from 308 in April 2013 to 261 in September 2013. In 2012, the same six month period saw a rise from 308 to 397.²² While the impact on custodial numbers looks positive, there may be other consequences. It has been reported that during the first six months of the scheme “many local authorities have already spent more than their year’s allocation for the service and will have to subsidise it by making further cuts elsewhere”.²³ This may reflect a lack of sophistication in decisions about allocations to individual authorities. With fewer than 500 children involved on any one day, basing allocations on historic patterns of use may on their own not be sufficiently sensitive to possible changes, particularly given varying influence which local authorities have over courts’ decision-making. Local authorities also complain that they are charged different amounts according to the type of secure establishment used. So if a 14 year old is remanded, they pay more than for a 17 year old.

It is important however that the wrong lessons are not drawn from what may be teething problems in the scheme. Given the effect of devolving budgets on the numbers of children remanded, there seems a strong case for devolving to local authorities the costs of all custodial placements of juveniles, whether for remanded or sentenced children.

Labour’s 2008 Youth Crime Action Plan proposed to make the costs of custody more visible. This would demonstrate the savings that are made where local areas reduce the use of custody and, conversely, the costs incurred when custody use increases, “to help inform debate on whether, in the long-term, local authorities should be responsible for the placement and funding of custodial placements”.²⁴ This approach was also endorsed by the Centre for Social Justice, which argued that local authorities should play a much stronger role in commissioning the smaller number of secure facilities that are needed, rather than simply buying what is currently provided. This would help to create innovative and appropriate placement options for remanded children in keeping with guidance on the treatment of looked after children, which should “encourage warm and caring relationships between child and carer that nurture attachment and create a sense of belonging so that the child or young person feels safe, valued and protected”. For sentenced young people, a commissioning role might enable local authorities to use or develop a wider range of placements which do not necessarily have the purpose of restricting liberty – a possibility provided for under the Offender Management Act 2007, but never put into practice.

²¹ Ministry of Justice 2011 Breaking the Cycle Government Response n20

²² <https://www.gov.uk/government/publications/youth-custody-data>

²³ Local Government Chronicle 10th October 2013 Remand Overspends trigger social care cuts

²⁴ MoJ, Home Office, Department of Children Schools and Families 2008 Youth Crime Action Plan

Youth justice reinvestment pathfinder

The case for devolving custodial budgets to local authorities has been strengthened by the Youth Justice Reinvestment Custody Pathfinder set up in early 2011. The green paper "Breaking the Cycle" proposed that local authorities should share both the financial risk of young people entering custody and the financial rewards if fewer young people require a custodial sentence. The Pathfinder Pilots aimed to test how this might be achieved. [See Box 1](#)

First year results were mixed. The number of custody bed nights – the simple measure used in the pilot – fell in only one of the areas, West Yorkshire, but by a substantial 26%. Two of the areas exercised their option to withdraw from the pilot at the end of the first year, without having to pay back any of the upfront funding. It has been reported that the fourth area, the West London consortium, achieved a fall of 37% in custody bed nights over the full two year period.²⁵

A variety of innovative practice has been developed. In West Yorkshire, work has included the development of bail support packages, supporting defence appeals against custodial sentences, reducing the rate of breach by establishing compliance panels, and engaging more constructively with young people and their families. In Hackney, funds were used to introduce multi-systemic therapy, an intensive treatment programme for serious young offenders which focuses on their family, school and other aspects of their environment.

While the upfront funding proved attractive, and enabled services to be developed, the liability to repay it has proved fatal to the pilot in two of the areas. Two factors appear to have been important. The first is that the pilots were introduced following a substantial fall in custody for juveniles that started in 2008.²⁶ This fall, welcome and dramatic in equal measure, cannot be attributed to any JR type approach. But it meant that, when the pilot started, some of the areas may have been the victims of their own success in having driven down the custody rate sharply before the pilot period commenced. The numbers of under 18's in custody

Box 1 : The Youth Justice Reinvestment Custody Pathfinder

The Youth Justice Reinvestment Custody Pathfinder was commissioned by the Youth Justice Board (YJB). It aimed to test how local authorities can be incentivised to reduce the use of custody for 10–17 years olds. A total of £3.5 million was provided up front in quarterly instalments from the YJB central custody budget to give the pilot local authorities freedom and flexibility to develop and implement locally tailored interventions, to respond to local needs and demands. Individual targets were used to measure the sites' performance. These were based on reductions in the number of youth custody bed nights, ranging from 12 to 20% against a 2010/11 baseline. At the end of the pilot, sites which failed to achieve their targets would be required to repay some, or all, of the funding through a 'claw back' process.

Pathfinder was implemented in four pilot sites: Birmingham, North East London (seven boroughs led by Hackney), West London (Ealing, Hammersmith and Fulham, Kensington and Chelsea, Westminster) and West Yorkshire. The scheme began in October 2011 and ran until September 2013. A 'break clause' was included in the contracts to allow the sites, or the YJB, to withdraw from the scheme without financial penalty at the end of the first year. This was viewed by the sites as an important condition for their participation in the pilot. At the end of Year One, two sites (Birmingham and East London) withdrew from Pathfinder, leaving the other two to continue into the final year of the pilot.

At the end of Year one, the use of custody fell by 26% in one site but rose by 4%, 14% and 23% in the others. Although year two results have not formally been published, the West London site has reported a reduction of 38% over the entire period.

See Wong K et al 2013 Youth Justice Reinvestment Custody Pathfinder: Findings and delivery lessons from the first year of implementation.

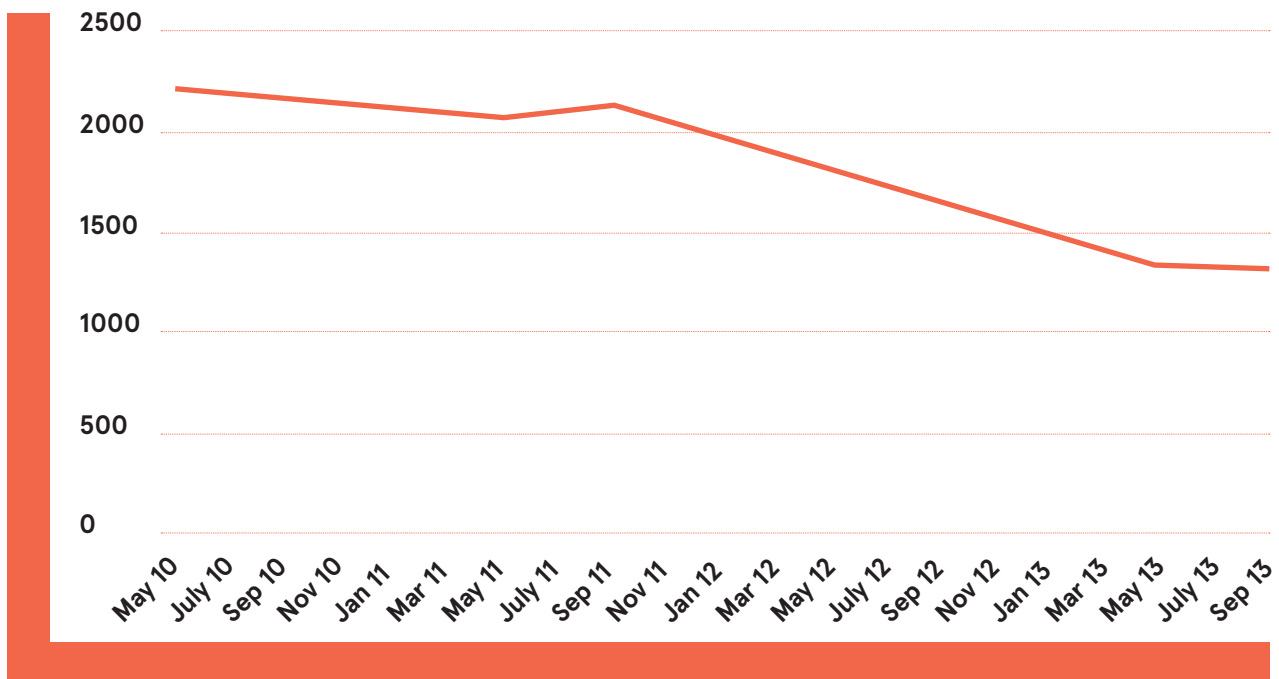
²⁵ http://www.cypnow.co.uk/cyp/news/1140559/youth-justice-pilot-drop-custody?utm_content=&utm_campaign=181113_Daily&utm_source=Children%20%26%20Young%20People%20Now&utm_medium=adestra_email&utm_term=http://www.cypnow.co.uk/cyp/news/1140559/youth-justice-pilot-drop-custody
²⁶ See Allen R 2011 Last Resort Exploring the reduction in child imprisonment 2008-11 Prison Reform Trust

since 2010 is shown in [Chart 2](#).

The second factor that may be significant is the short term but sharp rise in the use of custody that followed the riots in 2011. West Yorkshire did not experience the disorders but, in the other areas, there was concern that the funds from central government might be put at risk by these exceptional events. The terms of the contract included a provision for excluding cases resulting from so called spike events, but this did not prove sufficient to allay the concerns in the two areas.

The final evaluation of the Pathfinders is due to be published in April 2014. The learning from this, and the experience of the first year of devolved remand budgets should enable a strong case to be made for the full devolution of child custody budgets.

Chart 2: children under 18 in custody 2010–2013



Costs of Adult Prison Places

A good deal of analysis has been undertaken into the amount spent on adult prisoners, particularly those serving short terms. But it is only recently that practical mechanisms have been tested to see whether financial incentives can also be used to encourage local areas to work together to reduce demand on the system.

Building on the interest in places as well as cases, in 2011 a detailed strategy plan was proposed by the Institute for Public Policy Research (IPPR) for the funds spent on imprisoning adult offenders for periods of less than 12 months to be devolved from central government to local councils, so that they could put in place measures to deal with the causes of offending. Councils would be charged back by the Prison Service every time someone from their local area was sent to prison for a period of less than 12 months. IPPR also recommended that probation services should be decentralised and fully integrated into crime-reduction work locally, by placing them under local authority control.²⁷

The Local Justice Reinvestment Pilots and Community Budgets

A number of programmes are underway which apply this kind of approach to financing. The most important is the local Justice Reinvestment Pilot, developed by the Ministry of Justice to test the extent to which local partners can work together more effectively to reduce crime and re-offending. See Box 2 Also significant are Community Budgets which have been taken forward by the Department for Communities and Local Government. See Box 3

Results from the pilot show that, in the first year, four areas received a total of £3.6 m in success payments.²⁸ Three quarters went to one area, Greater Manchester. Two areas saw an increase in demand and so did not receive a success payment. In the second year, a total of £8 million was paid to five areas. Only one failed to reach their targets.²⁹

An independent evaluation of the first year of activity in the pilot areas found that, although some new models for commissioning and delivering services were

Box 2: Justice Reinvestment Pilots

This approach is being tested in six local areas: Greater Manchester and five separate London Boroughs (Croydon, Hackney, Lewisham, Lambeth and Southwark). The project covers both the adult and youth justice system. The idea is that the Ministry of Justice will pay local partners if they are successful in reducing court convictions and disposals for adult and youth offenders in their areas. Sharing the savings that accrued to the Ministry of Justice from the reductions, would enable the local partners to reinvest further in crime prevention activity at the local level.

The rationale for the project is based on the hypothesis that giving local partners more financial accountability for the demand placed on criminal justice services, such as courts, prison places and probation services, will provide them with an incentive to work more effectively to reduce crime and reoffending locally, and thereby to reduce that demand. Under the model, the local partners are free to implement their own plans to reduce crime and reoffending, targeting their resources on specific groups of offenders in line with local priorities and crime patterns. Demand on criminal justice services is measured using a series of metrics, focussed on offending, that results in short custodial sentences and less severe sentences. Demand has been measured across two consecutive one-year periods, with the measurement period starting on 1st July 2011 and closing on 30th June 2013. The area is rewarded if demand on the criminal justice system falls by more than 5% for adults and 10% for youths. The estimated savings that this demand reduction creates for the Ministry of Justice are shared between the local partners involved, to reinvest in reducing reoffending and crime locally. In the event that demand did not fall below the specified threshold in any of the measurement years, no payment was made to the local partners.

27 Lanning T, Loader I and Muir R 2011 Redesigning Justice Reducing Crime Through Justice Reinvestment IPPR London

28 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/194291/justice-reinvestment-pilots-y1.pdf

29 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/261843/local-justice-reinvestment-yr2-results.pdf

established, particularly in Greater Manchester, the incentives were generally considered by the local agencies to be insufficient to invest in innovation.³⁰

More fundamentally, the aim of reducing demand was seen by the local agencies as “an abstract national organisational issue”.³¹ This was difficult for local practitioners to connect with local plans for working with offenders.

In this model, unlike the youth justice pathfinder, there is no money up front. Any new initiatives to reduce crime, re-offending and demand on the criminal justice system have to be developed through existing resources, in the expectation of success payments in due course. In Greater Manchester however, the activities developed in the pilot period have been aligned with plans being drawn up as part of the area’s community budget exercise.

The measures have included four main components:

- **youth triage – diverting young people, young adults and women offenders from criminal justice through coordinated support at point of arrest**
- **intensive community orders – intensive support and control package for 18–25 year olds at risk of short-term custodial sentences**
- **resettlement support – supporting offenders in custody to stop reoffending and promote employment**
- **work with women offenders – triage, intensive community orders and through the gate work**

The overall Greater Manchester JR and Community budget scheme estimates that these measures will generate benefits of over £250 million over five years for investment of £30 million. From a JR perspective, the key challenge however is in cashing in the criminal justice elements of these savings. Should the measures put in place continue to drive down demand for expensive prison places, there will be no mechanism, after the pilot, for the savings to be reinvested into community based activity.

Even during the pilot period, only a fraction of the

Box 3: Community Budgets

Community Budgets are a way for local public service providers to work together to meet local needs by sharing budgets, reducing duplication and improving outcomes by developing evidence based practice. Community Budgets developed out of a “Total Place” analysis which calculated the sums spent by different agencies on a variety of cross-cutting social problems. Four pilot areas have developed business cases for addressing these issues, one of which is the reduction of re-offending.

In Greater Manchester, the costs of policing, prisons and courts were estimated at £870m per year. The other areas are West Cheshire, Essex and the three London Boroughs of Hammersmith and Fulham, Kensington and Chelsea, and Westminster.

Plans for new configurations of services have been prepared in each of the four areas. In the Triborough scheme, a new resettlement service for short term prisoners aims to reduce reconviction by 10% from year 2 onwards. The £11.7 million cost of the service over four years is estimated to deliver approximately £25 million of fiscal and economic benefits. But unlike the Justice Reinvestment Pilot, there is no reward payment for reducing demand on the criminal justice system. While some of the savings resulting from better outcomes and newly configured services can be reinvested, there are specific problems with redistributing the majority of criminal justice costs, which are met at a national rather than local level.

³⁰ Wong et al 2013 The development and Year One Implementation of the Local Justice Reinvestment Pilot https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198090/year-one-local-justice-reinvestment-pilot.pdf

³¹ Ibid 5.2 p19

savings produced for the prison system find their way back to the agencies whose work brings them about. In the pilot, areas are awarded a payment of £360 for reducing a custodial sentence by one month. The average monthly cost of a custodial sentence is eight times higher, at £2,500 a month. The discrepancy arises from the fact that reductions in prison numbers do not allow the prison service to reduce its costs in like for like fashion. It is only when a point is reached that a prison or part of a prison can be closed that full cost recovery can be a possibility. But, as things stand, prison population management is national with, as the Greater Manchester pilot project put it in evidence to a Parliamentary committee, “pressures to backfill prison places.”³²

The same point has been noted by the stakeholders in the other community budget areas. In the West Cheshire Community Budget Pilot, it is planned that at least 18 offenders will be made subject to electronic monitoring following early release from prison, or as an alternative to prison, resulting in reduced prison costs. But, given the modest cohort size, criminal justice benefits such as prison places would not be cashable. The Westminster, Hammersmith and Fulham and Kensington and Chelsea Triborough Reducing Reoffending project is radically reconfiguring resettlement work with short term prisoners, using funds from the local authorities and Mayor’s Office for Policing and Crime. Only a small amount of the savings produced by the new services will be cashable to these agencies with the majority of economic benefits accruing to the Ministry of Justice (through reduced prison places), Home Office, DWP and Department of Health. The Tri-borough wants to see the investors better aligned with the beneficiaries, although it is recognised that reducing numbers of candidates for imprisonment does not enable the prison system to cut the major drivers of its costs.

This marginal costs problem arises with other aspects of demand reduction. The current Justice Reinvestment Pilot only provides Greater Manchester with a projected reward payment equivalent to less than 1% of total Ministry of Justice spending, for a 10% reduction in demand.

Several recommendations have been made by the Association of Greater Manchester Authorities (AGMA)

which would improve the long term incentives for local action to reduce imprisonment.³³ It has been proposed for example that reward payments should increase in proportion to scale of impact and sustainability over time; that outcome measures should take account of the levels and types of offending and reoffending that matter most to local people. This may require a greater focus on more serious offences than the current mechanism, which covers a wide range of offences including lower-level offences. It has also been suggested that, in order to incentivise local action, reward payments should be made as additional funds rather than offset against future budget reductions by the Ministry of Justice or NOMS.

In Greater Manchester, AGMA has proposed that the financial mechanism should operate over a longer term and become much more comprehensive. However, given the complexities of designing effective flows of funds from central to local, there is a much more straightforward way of meeting the JR objectives. That would be to devolve responsibility for commissioning and paying for criminal justice more thoroughly to local areas. Many of the “asks” made by community budget pilots have been to localise prisons. In Essex, the Ministry of Justice and NOMS were asked by the partners involved in the Community Budget:

“to commit to make significant progress to localise prisons (within the recognised constraints of the prison system) and commissioning of prison services at the local level; and to consider as part of this using the prisons in Essex to pilot the concept of a ‘community prison’”.³⁴

The Community Budget pilot asked NOMS to consider changing the use of HMP Bullwood Hall and linking it, as an Essex prison, to the working of HMP Chelmsford as this would offer the potential for piloting aspects of what could become a ‘community prison’ in Essex – with offender management, health, accommodation, employment and family services able to offer enhanced levels of support to offender sentence

³² <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmcomloc/163/163we08.htm>

³³ http://www.agma.gov.uk/cms_media/files/121031_tj2_narrative.pdf?static=1

³⁴ <http://goo.gl/1b7oUI>

plans. The Ministry of Justice announced in January 2013 that Bullwood Hall would close.

In the Triborough scheme, the project developed as part of the Community Budget requires the national prison system to continue to place short term prisoners from the three boroughs into particular local prisons – a decision over which local agencies currently have no control. The Government's plans for resettlement prisons may be able to respond effectively to these requirements, but there is a case for a more fundamental reform – for abandoning what the Essex "ask" referred to as "the recognised constraints of the prison system" and to make local agencies much more responsible for how it is run and paid for.

London Councils have recently made the case for local government to be given new powers and responsibilities to align and coordinate the resources of local partners in the field of crime reduction. "Therefore in the longer term government should consider devolving the responsibility and the budget for commissioning rehabilitation services to London. This approach would be rooted in existing local delivery and co-ordination skills, as well as democratic accountability structures. This would ensure Pan-London oversight and locally co-ordinated decision-making, commissioning and delivery. This approach could work as collaboration between the Mayor, as Police and Crime Commissioner, and London local authorities and use the established partnership structures to achieve this, including the London Crime Reduction Board."³⁵ It has been reported that the Mayor is lobbying to take over responsibility for the prisons and probation system in the capital.³⁶

Changes like this would need careful planning and preparation but, if combined with a way of releasing savings from reduced imprisonment, such a localising approach is perhaps the best way of ensuring a better balance between custodial and community based measures and a more targeted approach to the most high stakes communities.

In determining which bodies should be involved in a local approach, it is necessary to look at recent developments in partnership working.

c. Local responsibility and partnership in criminal justice

The Coalition government has had a wide ranging commitment to localism. Its Localism Act 2011 aimed to introduce a series of measures "with the potential to achieve a substantial and lasting shift in power away from central government and towards local people".³⁷ While in opposition, the Conservative Party had suggested that "instead of being directed by Whitehall, local probation chiefs and prison governors could answer to locally elected politicians, so that the community has the ability to ensure safety in its own area".³⁸

This radical proposal to scrap the National Offender Management Service and turn public prisons into fee earning trusts was not pursued. Despite decentralisation being one of the four pillars in the Breaking the Cycle Green Paper, progress on the creation of local partnership structures which might give effect to Justice Reinvestment approaches has been mixed.

In April 2010, a new statutory duty was placed on Community Safety Partnerships to formulate and implement a strategy to reduce re-offending. This duty prioritises the need for local areas to fully understand their offender profile, the ways in which mainstream services can be more supportive of the needs of offenders, what gaps there are in local provision which limit effectiveness, and where resources should be targeted to achieve a reduction in re-offending.

Three years later, the deputy leader of Reading Borough Council reportedly complained that he had not "heard a dicky-bird" from the government about the closure of the town's prison.³⁹ Hounslow council made a similar complaint about the longer term plans being considered for Feltham Young Offender Institution.⁴⁰ This suggests that little may have changed since the 2005 Local Government Association (LGA) report "Going Straight" which expressed disappointment "that the crucial leadership role of local authorities in their communities and the potential contribution councils can make to reducing reoffending has so far been largely ignored in the development of the government's proposals for NOMS."

³⁵ London Councils (2013) Reducing Re-Offending in London

³⁶ <http://www.standard.co.uk/news/mayor/mayor-give-me-the-power-to-run-jails-and-probation-like-new-york-8924178.html>

³⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5959/1896534.pdf

³⁸ Prisons with a Purpose p49

³⁹ <http://www.bbc.co.uk/news/uk-england-berkshire-24520590>

⁴⁰ http://www.hounslow.gov.uk/news_mod_home/news_mod_year/news_mod_month/news_mod_show?year1=2013&month1=9&NewsId=58590

In fact, on the ground, there has been a good deal of improvement in partnership working. A protocol has been signed between the LGA and Probation Service about working in partnership and sharing information. A number of practical pilot initiatives have drawn inspiration from aspects of JR. One of the first was the Diamond Districts initiative which operated in six London boroughs 2009-10. Multi agency teams including Police and Probation officers and local authority workers were located in neighbourhoods with high numbers of people returning from short spells in prison. (The term Diamond was coined to communicate the disproportionate value which would attach to reducing reoffending in these areas). The teams offered enhanced resettlement support to prisoners returning to the neighbourhoods. Although there was no obvious mechanism by which any savings to the prison system would be recouped into the communities concerned, the question has not been pursued since the £11million initiative did not find that the experimental group were reconvicted any less than a carefully matched control group – although interestingly the rates of re-offending for both experimental and control groups were well below the national rate. The evaluation of the project argued that:

“whilst the headline finding of the report is that there was no evidence of reduced reoffending as a result of the Diamond Initiative within the original cohort – this does not demonstrate that Diamond has failed as an approach: such a conclusion would be erroneous.”⁴¹

Qualitative findings showed that the initiative was highly regarded by offenders and strongly suggest a positive influence on them.

Indeed, there has been growing interest in analogous developments in local partnership in particular in respect of Integrated Offender Management (IOM). This is “an overarching framework for bringing together agencies in local areas to prioritise interventions with

offenders who cause crime in their locality.”⁴² 98% of Community Safety Partnerships (CSP’s) who responded to a recent survey reported that they had arrangements in place although more than half of areas dealt with fewer than 100 cases in the last year. Only 5 CSPs dealt with more than 500 offenders in this time. 96% reported the involvement of the police and the probation service. Other common partners were Local Authorities (88%), Drug and Alcohol Services (86%), Housing Services (80%) and Youth Offending Services (77%), The Prison Service (66%) and Voluntary, Community and Social Enterprise Sector (VCSE) (51%). A much smaller proportion of arrangements reported involvement of Courts (28%), the Crown Prosecution Service (26%), NHS commissioning boards (23%) or NHS England local area teams (17%).⁴³

In terms of structural reform, the election of Police and Crime Commissioners in November 2012 represents a major change to the landscape of policing, but their role has never been limited to policing. The Police Reform and Social Responsibility Act 2011 Act requires the Commissioner and the criminal justice bodies in their area to make arrangements (so far as it is appropriate to do so) for the exercise of functions so as to provide an efficient and effective criminal justice system for the area.

Some PCCs have shown the intent to use this mandate to reform the wider system. In Bedfordshire, the PCC described the revolving door that sees persistent offenders commit offences, get caught, sentenced, serve their sentence only to re-offend and go through the criminal justice system again and again as “an extremely wasteful way of spending vast amounts of tax-payers’ money.” His ambition is “therefore nothing less than to move to a situation where, working with partners, these resources are used to reduce harm rather than perpetuate it, so that in due course they can be directed to more productive use.”⁴⁴ The PCC has promised to promote “the more sensible use of resources in the provision of preventative and early intervention services, including the development of the already successful integrated approach to offender management.” A committee in Bedfordshire has been established to look at reducing demand for criminal justice services.

⁴¹ LCJP 2011 <http://library.npia.police.uk/docs/diamond-year2-FINAL-2011.pdf>

⁴² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118043/IOM-Key-Principles-Guidance.pdf

⁴³ <https://www.gov.uk/government/publications/integrated-offender-management-findings-from-the-2013-survey>

⁴⁴ Bedfordshire POLICE AND CRIME PLAN APRIL 2013

<http://www.bedfordshire.pcc.police.uk/wp-content/uploads/2013/06/Police-and-Crime-Plan-April-2013.pdf>

A review of the work of Police and Crime Commissioners recommended that all PCCs should consider opportunities to pool funds and contribute to community budgets in their area to support and incentivise improved multi-agency responses.⁴⁵ The review found that only seven PCCs made some reference to people with complex needs specifically in their plans. Many more (21) contained a commitment to tackle the “underlying causes” of crime, while almost all plans included commitments around preventing crime (40) and reducing reoffending (40). Four plans referred to young adults specifically, while most (38) plans mentioned “young people” more broadly.

There have been a number of proposals to give PCCs more powers, greater budgetary control and responsibility and more control of revenues.⁴⁶ It has been suggested that PCCs could provide “the single point of political leadership needed to drive forward JR”⁴⁷ and that pilot schemes which have sought to incentivise local inter agency work to reduce demand on the criminal justice system should be rolled out “to any willing PCC who would find incentives useful in strengthening partnership working”.

The future role (and indeed long term existence) of PCCs is still uncertain. The Independent Commission chaired by Lord Stevens could not find any compelling reason to extend the reach or budgetary responsibility of the PCCs beyond policing, and recommended that the office itself should be abolished in its present form.⁴⁸

If they are to continue, they would seem to have a key role in the future of JR. However there are risks in giving responsibility for wider local infrastructure for organising criminal justice to a body closely aligned with enforcement. Using locally raised funds to “increase capacity for punitive measures such as additional prison places” as proposed in a recent Policy Exchange report would not necessarily serve the interests of JR.⁴⁹

It is likely that some new local machinery would be needed to take forward a more substantial local responsibility for criminal justice. This should include local authorities as key partners. Indeed Lord Stevens’ review rejected the idea of expanding the PCCs role because it would create governance structures

separate from current local government. The partnership picture has been muddied by the changes to the NHS – crucial partners given the level of substance misuse and mental health problems among people in prison – and the proposed changes to the probation service.

The changes also represent an opportunity however. The government’s Transforming Rehabilitation agenda creates 21 Contract Package Areas (CPA’s) in which rehabilitation services will be provided. Particular “resettlement prisons” will be designated for each CPA. Seven of the CPAs are coterminous with police boundaries. These areas could pilot a programme to test the possibility of incentivising the PCCs, probation contractors, local authorities and NHS to reduce the numbers of prison places needed in the area by reinvesting resulting savings into the community based services which they provide.

⁴⁵ Revolving Doors Agency <http://www.revolving-doors.org.uk/documents/first-generation-one-year-on/>

⁴⁶ Policy Exchange Power Down: Reform.

⁴⁷ Fox, Albertson and Wong

⁴⁸ Policing for a Better Britain <http://independentpolicecommission.org.uk/uploads/37d80308-be23-9684-054d-e4958bb9d518.pdf>

⁴⁹ Power Down

Section three: international experience

USA

Given its origins in the USA, it is not surprising that by far the largest number of self styled JR initiatives have been undertaken there. At the state level, costs for running corrections facilities have almost quadrupled in the last three decades, making it the second-fastest rising expense after Medicaid. The prison population rate in the US at 716 per 100,000 is almost five times the rate in the UK.

Alongside the attractions of reinvesting the vastly greater resources spent on imprisonment, the USA has a system of government which makes JR more feasible than the UK. The shared responsibilities exercised by counties, states and the federal government in running and financing imprisonment provide opportunities to introduce financial incentives to control or, as has been the case, to expand prison numbers. A variety of fiscal arrangements have been introduced to reward counties which develop measures to reduce demand for custodial places at state level. A virtuous circle is created in which state savings on incarceration are reinvested in local alternatives, which in turn further reduce demand for expensive state placements. This process has been seen, for example, in New York State where four closed facilities for juveniles have been shut down with resources invested in family therapy and other alternative programmes in New York City.⁵⁰ The approach has a history going back to the California probation subsidy scheme in the 1970's. Federal grants have also been used to encourage reductions in custody, particularly in respect of ethnic minority communities.

Three recent examples illustrate the varying nature and impact of JR in the US. In Texas, the 2007 Justice Reinvestment Act introduced reforms which stabilised a prison population projected to rise by 14,000 over five years. The new policies included an expansion of treatment and diversion programmes, new beds in half-way houses, and a maximum limit on caseloads for parole officers to ensure adequate supervision. Incentives were created for counties that created

progressive sanctioning models for probation officers to respond proportionately to violations in order to reduce the use of imprisonment for technical breaches of supervision. These measures were funded from savings made through cancelling proposed prison building projects. Part of the savings were also spent on the Nurse-Family Partnerships Program, a nationally recognised model that pairs child health nurses with first-time, low-income mothers during the child's first two years.

Kansas also legislated in 2007 when faced with an estimated 22% rise in prison numbers. Funds were made available for community based measures which succeeded in reducing parole revocations by 20%. Sentences were reduced by up to 60 days for prisoners who successfully completed educational, vocational, and treatment programmes prior to release from prisons. Earned early release for good behaviour was also reinstated for non-violent offenders. Unlike Texas, the resulting fall in prison numbers was not sustained beyond 2010, when funding was withdrawn from some of the programmes.

A third example is provided by Oklahoma, where a Justice Reinvestment Act was passed in 2011. Very little action has been taken to implement its provisions, with the state governor reportedly seeking to thwart the initiative.⁵¹

Since the mid 2000s, more than half of States in the USA have embarked on some form of JR. In almost all, JR has enjoyed bipartisan support at the political level. The states concerned have almost all used expert technical assistance and advice in the collection and analysis of data about their prison populations, and in developing policy options for consideration by the legislature. The detail of what JR entails has been very far from a one size fits all model, with a wide range of measures addressing the specific needs of each location.⁵²

⁵⁰ E Solomon and R Allen 2009 Reducing Child Imprisonment in England and Wales: Lessons from abroad <http://www.prisonreformtrust.org.uk/uploads/documents/lessonsfromabroad.pdf>

⁵¹ http://www.tulsaworld.com/opinion/editorials/editorial-governor-rebuffs-justice-reinvestment-funds/article_bec55961-9dab-52aa-bc22-666abe528740.html

⁵² <https://www.bja.gov/Publications/UI-JRI-State-Experiences.pdf>

Indeed, the range of activity undertaken under the JR umbrella has been so varied that it has been suggested in evidence to an Australian Parliamentary Inquiry that “many of the strategies in the US that go under the label of justice reinvestment are ‘just basic criminal justice reform’”.⁵³ For example, sentencing reform which tries to move away from or mitigate the effects of mandatory sentence regimes, and changed parole requirements which aim to improve the high rates of revocation of parole through provision of more parole and probation officers.

Concern about the dilution of the original aims of JR has concerned some of the American figures most closely associated with the policy. In a recent paper they argue that JR has played a significant role in:

“softening the ground and moving the dial on mass incarceration reform, it is not an unmitigated success story; the picture is complex and nuanced. The Justice Reinvestment Initiative, as it has come to operate, runs the danger of institutionalizing mass incarceration at current levels.”⁵⁴

This may be too pessimistic a conclusion. The Federal Government announced this summer that:

“it is time to rethink the nation’s system of mass imprisonment”,

which they claimed is disruptive to families, expensive to the taxpayer, and may not serve the goal of reducing recidivism. The Federal Smart on Crime initiative has strong echoes of JR in its aim of exploring cost-effective reforms to the prison system, which will allow “law enforcement to redirect scarce federal resources towards the priority of violence prevention”.⁵⁵

Despite the encouraging espousal of the JR philosophy by the Federal government, the founding fathers of JR argue that, at State level, the policy needs a serious refresh. They call for a return to the two primary goals of the Justice Reinvestment Initiative, that is, significant reductions in all forms of incarceration and correctional supervision, and reinvestment of the resulting resources into high incarceration communities.

They propose two ways of refreshing JR:

- **first to involve key stakeholders and non-government entities at the state and local levels throughout the planning, legislating, implementation and reinvestment process;**
- **and second to create a multi-year plan for implementation and evaluation beyond short-term legislative or policy fixes.**

⁵³ http://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/-/media/wopapub/senate/committee/legcon_ctte/completed_inquiries/2010-13/justice_reinvestment/report/c05.ashx

⁵⁴ http://sentencingproject.org/doc/publications/sen_Charting%20a%20New%20Justice%20Reinvestment.pdf

⁵⁵ US Attorney General announces Smart on crime Initiatives <http://www.justice.gov/usao/tnw/news/2013/AUG12Holder.html>

Section four: conclusions and the way forward

Justice Reinvestment has come to have a range of meanings in England and Wales. There are relatively pure examples of initiatives that are true to what are generally taken to be the key tenets of the concept, aiming to transfer resources away from imprisonment and into local community based crime reduction measures of one sort or another. The Youth Justice Reinvestment Pathfinders and Justice Reinvestment Pilots fall into this category. Each is based at the local government level (albeit through consortia of local authorities) but it is not yet clear how much of a focus they have had in the particular neighbourhoods whose residents are disproportionately imprisoned. These programmes are all publicly funded with local agencies given incentives to reduce the use of custody through the opportunity to spend resulting savings, but facing a concomitant risk of meeting additional custodial costs.

There are various other activities which are sometimes referred to as JR whether they involve greater locally based partnership working or national criminal justice reforms designed to reduce prison numbers.

In between, there are two important approaches which share some of the characteristics of JR. The first is the investment of funds from outside government into activities designed to produce positive social outcomes such as reduced re-offending. The Social Impact Bond is an example of a model which offers incentives and risks for investors; if the programme succeeds, they will receive outcome payments from the Government's savings in prison spending, produced by reduced re-offending. If the programme fails, government pays for the prison places but not the unsuccessful attempt to reduce re-offending. The scale of likely investment in financial instruments such as this is not yet known. Nor is it clear whether Social Impact Bonds could practicably be used to replace existing activities rather than fund new pieces of work.

Some uncertainty also surrounds the second example, which is the approach to contracting based on "payment by results". The hope is that attaching

financial rewards to successful rehabilitation will promote innovation, and that reduced re-offending will bring down demand for prison. There is not necessarily a commitment to re-invest any or all of the resulting savings in communities. Nor is outside funding brought into the system. Given the substantial budget reductions being faced by the Ministry of Justice, it is all too likely that PBR could prove a form of Justice Disinvestment rather than Reinvestment.

There are however still possibilities for a more extensive and deeper application of the purer form of the JR approach. This is certainly the conclusion reached by the Parliamentary Committee which championed JR in 2010. In an inquiry into the role of the probation service the following year, the Justice Committee concluded that "the model of justice reinvestment explored by our predecessor Committee – of greater investment in a package of reforms to reduce the use of custody, including increased spending on probation services, allowing significant resources to be freed by halting the prison-building programme and enabling current inefficient prisons to close – has not been fully exploited; this will undoubtedly impede the pace at which capital can be transferred from prisons to community-based interventions and will therefore continue to leave probation services and local communities deprived of desperately needed resource."⁵⁶

The Committee is looking again at whether any progress has been made, in their inquiry into "Crime reduction policies: a co-ordinated approach?" What recommendations might it make for a new government to take forward after 2015?

One quick win for JR would be to make local government responsible for meeting the costs of Detention and Training Orders (custodial sentences for all except grave crimes) for young offenders under 18, as well as remands. This could stimulate the kind of creative alternative provision, community based, semi-secure and secure that would take the place of

⁵⁶ Parliamentary Select Committee on Justice 2011)

prison. A joint commissioning board involving the YJB and local authorities would need to be established to ensure that sufficient places of an appropriate standard were available. While work would need to be undertaken to devise the best form of local or regional machinery for organising placements, and to allocate budgetary provision on an appropriate basis, there is no reason that progress could not be made within the lifetime of the next parliament. It would link the three key elements of reduction in prison numbers, financial incentivisation and local responsibility.

For the adult criminal justice system, the future of JR rests on political will, which in turn will ultimately depend as much on the vision of the role of imprisonment in a good society as on the technical ability to control its use. There is a strong argument on ethical, social and fiscal grounds that a future government should adopt an overarching policy goal of reducing the unnecessary use of imprisonment, and look to measures beyond the reduction of re-offending to achieve it. Justice Reinvestment offers part of the answer as to how this might be achieved. While the local JR pilots have shown some promise, the adult system has a much longer and more complex route to cover before local agencies can assume responsibility for criminal justice costs.

Recommendations

01.

Justice Reinvestment needs to be taken forward as an integrated policy approach, rather than as piecemeal initiatives. Machinery in central government is needed to drive it, such as an inter-departmental Justice Reinvestment Board chaired by a senior minister.

02.

The aim should be to devolve much greater elements of the budgets which fund prisons and probation. Regional boards comprising local authorities, PCCs and health should eventually be responsible for commissioning prison places and other community based supervision programmes. Testing different approaches to achieving this will be needed, including pilot schemes at the level of the new Probation Contract Package Areas.

03.

As a first step, the custodial budget covering adult remands, young adults and women offenders should be considered for devolution to the Boards.

04.

Boards should be encouraged to use the devolved custodial budget to commission a wider range of custodial, semi custodial and community based services and facilities to meet the needs of suspects and offenders in their localities, as well as a range of preventive measures.

05.

The services and facilities funded through JR should be developed in consultation with the communities most affected by crime with an aim of reducing demand on the criminal justice system, in the long term by reducing offending and re-offending, resolving disputes through restorative measures and diverting suitable candidates into health and social care.

06.

Local Government should be made responsible for the custodial budgets for young offenders under 18, excluding those who have committed grave crimes.

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