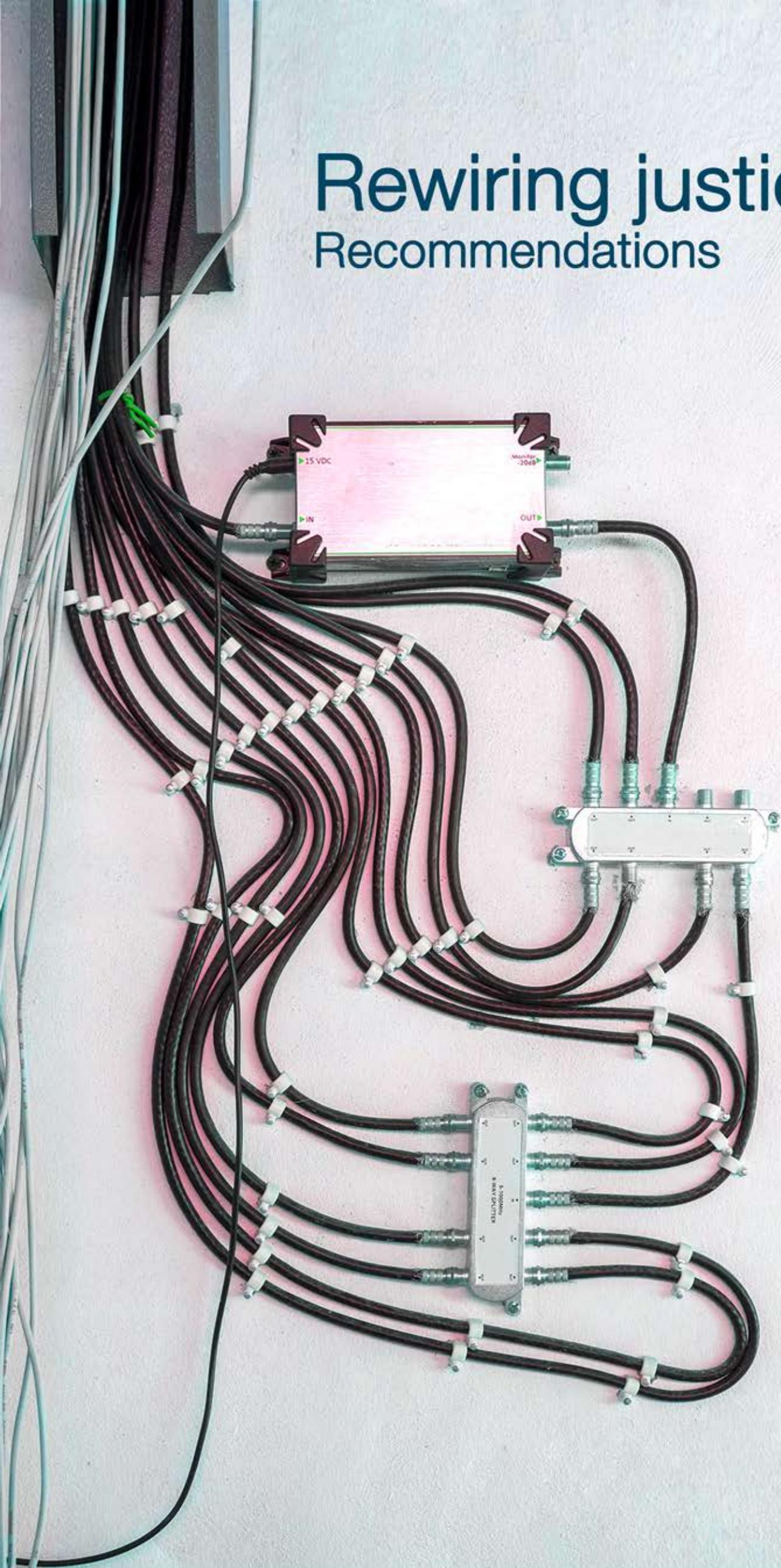


Rewiring justice

Recommendations



About Crest

Crest Advisory is an independent consultancy, focused on criminal justice and policing. We help clients to develop and to communicate the strategies and insights they need to help build safer communities. We provide analytical, policy and public affairs support to criminal justice agencies and to their partners in the private and voluntary sectors. With expertise and experience of Government, the media and service delivery, we help clients to navigate change and achieve exceptional outcomes.

Summary of recommendations

Recommendation 1: Give Police and Crime Commissioners and directly elected mayors the opportunity to bid for managing the cost of offenders sentenced to short custodial sentences.

Recommendation 2: Give PCCs and directly elected Mayors a role in co-designing the shape of locally commissioned probation services, including payment mechanisms, following the termination of TR contracts in 2020.

Recommendation 3: Incentivise PCCs to work with probation providers to co-design new innovative community sentences and greater flexibility in commissioning electronic monitoring.

Recommendation 4: Pilot the creation of locally embedded, multi-agency 'prolific offending teams' in four force areas (similar to the 'YOT' model), overseen by Local Criminal Justice Boards.

Recommendation 5: Pilot a network of 'rehabilitation hubs' for male prolific offenders within police force areas, based on the 'women's centre' model.

Recommendation 6: Reform post-sentence supervision arrangements so that probation providers are given greater discretion in prioritising resources - and enabling them to ensure more young adult offenders are assigned a dedicated lead professional to manage their resettlement for up to six months following sentence.

Recommendation 7: Publish a new prison and probation workforce strategy, including minimum standards on caseloads and staffing levels.

Recommendation 8: Create a new £100 million criminal justice transformation fund, against which PCCs and Directly Elected Mayors could seek capital and revenue funding to support innovation and join up local services locally.

Recommendation 9: Expand revenue raising powers to enable PCCs and directly elected mayors to raise a new 'Crime and Justice' Precept.

Recommendation 10: Introduce a new national presumption against the use of custodial sentences less than six months, for non-serious offences.

Recommendation 11: Overhaul of community sentences to ensure new national minimum standards on swiftness, intensity, enforcement and transparency.

Recommendation 12: Pilot a new 'swift and certain' programme for punishing prolific offenders in the community.

Recommendation 13: Extend the power to undertake regular court reviews for prolific offenders serving short custodial sentences and/or community sentences to all magistrates' courts - by extending section 178 of the Criminal Justice Act 2003.

Recommendation 14: Amend the Homelessness Code of Guidance for Local Authorities to explicitly designate as 'vulnerable' any individual who is homeless upon completion of a custodial sentence.

Policy recommendations

A new model for criminal justice

Criminal justice is teetering on the verge of meltdown. Successive UK governments, faced with the failure of reforms, have attempted to paper the crisis over: allocating additional funds to probation companies, for example, or for the recruitment of new prison officers. These gestures are not enough to make our system fit for purpose in the modern era.

Today's Britain is neither vindictive nor soft on crime. Society broadly wants to see offenders punished for wrongdoing *and* rehabilitated, so they can rejoin society as productive members. The key challenge, thus, is rewiring justice to handle offenders whose behaviour are driven by complex issues. Continual micro-management from the centre is not the solution. Rather, effective rewiring for the 21st century means deepening integration across agencies within and outside the system, so they can collaborate, communicate, and learn which interventions are appropriate in different contexts. Yet this interconnectedness has little value if not paired with the flexibility to respond, innovate, and adapt lessons at a local level. It also needs to be properly funded.

This report makes the case for a new model for reform based on three key principles:

- Devolving power to shift money upstream
- Integrating services to tackle the root cause of offending
- Deepening relationships at the front line

Devolving power

Over centralisation is the main obstacle to greater connectivity and innovation in the criminal justice system. When it comes to punishment and rehabilitation, key decisions about funding and priorities are still largely taken in Whitehall.

This has two major consequences. One is that services are delivered in silos, making it impossible to adopt a holistic, 'whole person' or 'whole place' approach. This is especially problematic when addressing complex problems (like prolific offending) that have multiple, interconnected drivers. The second consequence of centralisation is that providers of justice services are accountable in the first instance to Whitehall rather than to their communities, which undermines flexibility, responsiveness and innovation.

Justice devolution will enable PCCs and directly elected mayors to pool devolved budgets across silos, reducing duplication and boosting integration across services. These holistic interventions will be tailored to account for local drivers of demand and prolific offending. Budgetary discretion will give local authorities a tangible economic incentive to invest in upstream prevention and innovative alternatives to custody, such as electronic monitoring.

Recommendation 1: Give Police and Crime Commissioners and directly elected mayors the opportunity to bid for managing the cost of offenders sentenced to short custodial sentences.

When devolving responsibility for the cost of managing prolific offenders, central government must recognise that any financial benefits will take time to accrue; upfront investment will be required to ensure community alternatives are available. We therefore propose that where PCCs and/ or Mayors show an appetite (and readiness) for devolution, the Ministry of Justice provide a block grant to cover the costs of managing short custodial sentences over five years. Any grant funds remaining at the end of the period would be kept locally and could be re-invested in the community. Since local areas would have to pay out of that grant to cover the costs of each short custodial sentence issued, they would have a meaningful incentive to find cheaper, more effective alternatives to imprisonment.

Recommendation 2: Give PCCs and directly elected Mayors a role in co-designing the shape of locally commissioned probation services, including payment mechanisms, following the termination of TR contracts in 2020.

One of the lessons of the TR experiment is that when central government procures large national contracts in the criminal justice arena (including those with multiple providers) they are likely to be relatively inflexible and prescriptive – amounting to an imposition of a solution which cannot account for the distinctive local needs of offenders and victims.

The Ministry of Justice has now confirmed that existing TR contracts will be terminated early and re-tendered in 2020. Rather than having a single model - 'TR2' - imposed upon them, PCCs and directly elected mayors should be afforded the chance to shape what replaces current contracts within their areas, including, regionally. The PCCs are the ones with the mandate to cut crime. Granting them autonomy to pursue this goal in line with local conditions will inevitably lead to some variation in commissioning arrangements across different areas. The government needs to get comfortable with this idea – current realities demonstrate that uniformity of approach is not working, and it must not be a bar to reform. This must necessarily involve the MoJ relaxing the terms/conditions of CRC contracts, enabling PCCs/mayors to remove some of the perverse financial incentives that currently exist around breach and focus more on outcomes, rather than processes.

Recommendation 3: Incentivise PCCs to work with probation providers to co-design new innovative community sentences and greater flexibility in commissioning electronic monitoring.

The Ministry of Justice should make clear that PCCs and directly elected Mayors will be put in the driving seat to reform alternatives to custody. This would enable the PCC or Mayor to work closely with probation in designing and investing in sentences which genuinely involve intensive, visible work valued by the local community and supported to succeed by local partners. It would also involve an explicit acknowledgement from central government that PCCs/ Mayors are better placed to co-commission new technological solutions to managing and supervising offenders, than officials based in Whitehall. This could be facilitated by seed funding from government, paid for out of a new Transformation Fund (see below).

Integrating services

As well as devolution and pooling funds, tackling prolific offending requires service integration. Many of the issues that drive offending behaviour exist outside of the criminal justice system, in areas such as substance misuse, housing, mental health, and employment; the levers for change lie outside the system, too. None of these issues can be treated in isolation from the others. This means that, to change offending behaviour, professionals from different sectors must work together to take a 'whole person' or 'whole place' approach to reduce offending.

Recommendation 4: Pilot the creation of locally embedded, multi-agency 'prolific offending teams' in four force areas (similar to the 'YOT' model), overseen by Local Criminal Justice Boards.

This would involve the creation of new multi-agency teams, including at least one representative each from probation, local authority, health services and the local police. The key tasks of the teams would include:

- Assessing prolific offenders' risk factors, protective factors, and needs
- Designing effective community based sentences for prolific low-level offenders, including mechanisms to ensure compliance
- Making sentencing recommendations to magistrates
- Reducing the number of offenders coming into contact with the criminal justice system in the first place

These tasks would be resourced by top-slicing revenue grant funding for probation, NHS, local authorities and the police. Partner agencies would be required to second their staff into the team, meaning that a healthcare worker would sit alongside staff specialising in offending behaviour, similar to the Youth Offending Team model. Each offender would be assigned a lead caseworker, with other specialist staff brought in as necessary, based on an individual needs assessment. The teams would be free to trial different approaches *within* national minimum standards set by HMI and HMIC.

Recommendation 5: Pilot a network of 'rehabilitation hubs' for male prolific offenders within police force areas, based on the 'women's centre' model.

Rehabilitation hubs could provide an alternative to formal prosecution for first time/ minor offenders. They could also be attached as a requirement to Community and Suspended Sentence Orders, running in parallel to a more punitive element, such as unpaid work or restorative justice. The hubs would be specialist community 'one-stop shops', providing services for prolific offenders as well as those at risk of involvement with the criminal justice system. Much like a women's centre, they would provide a focal point for individuals to spend time and receive support, including:

- Counselling and mental health services
- Drug treatment

- Employment skills, literacy and CV support
- Housing assistance

The pilots could be funded through a new 'Justice Transformation Fund' (see below) against which PCCs and Mayors would be able to bid.

Deepening relationships

Currently, interactions between offenders and caseworkers are highly time-constrained. For example, in 2017 the HMI Probation inspector of Gwent found that supervision of low-level offenders consisted of one telephone call every six weeks. The high churn of frontline staff within services exacerbates this issue, making it all but impossible for offenders to build a trust-based relationship with their caseworker. Rather, relationships are likely to be transactional in nature, and meetings perfunctory rather than productive.

Much greater consistency is needed in frontline services for these vital relationships to develop. We also need to design institutions that facilitate rather than impede in-person contact between prisoner and staff.

Recommendation 6: Reform post-sentence supervision arrangements so that probation providers are given greater discretion in prioritising resources - and enabling them to ensure more young adult offenders are assigned a dedicated lead professional to manage their resettlement for up to six months following sentence.

The current one-size fits all approach to post-sentence supervision, introduced under TR, lacks the flexibility to meet the varying needs of offenders. A key priority for justice reform should be to build more stable and consistent relationships between front line staff and high-demand offenders.

This is particularly needed for younger offenders, who are over-represented in the criminal justice system and who research has shown are distinct from older adults in terms of both their needs and their outcomes.¹ For example, behavioural neuroscience studies have provided strong evidence that the typical adult male brain is not fully formed until at least the mid-20s, meaning young adult males may be more similar to children than adults in psychosocial terms. In addition, many of the support services that are available to young adults involved in crime become unavailable once they turn 18, even though they continue to be at high risk of reoffending. Yet currently, probation providers have limited discretion in meeting the needs of this distinct group.

Giving probation providers a greater say in determining the shape of post-sentence supervision will enable them to prioritise their resources more efficiently and, for example, ensure that more young adult offenders (18-25 year olds) are offered a dedicated lead professional to manage their reintegration back into the community.

¹ House of Commons Justice Committee: The treatment of young adults in the criminal justice system. Seventh Report of Session 2016-2017

Recommendation 7: Publish a new prison and probation workforce strategy, including minimum standards on caseloads and staffing levels.

Changing the behaviour of offenders with chaotic and complex lives requires staff who are skilled in building and maintaining deep relationships. Too often, offender managers are not equipped with the right skills and capabilities. Moreover, in recent years, probation caseloads and prison staffing levels have reached dangerous levels, putting both offenders and staff at risk of harm. At a minimum, the strategy should set out the MoJ's expectations with regard to professional standards, training and maximum caseloads/staffing levels for probation and prison staff. This strategy should be developed in consultation with trade unions and the relevant inspectorates.

[Facilitating change at the national level](#)

As in any bureaucracy, criminal justice agencies need to be incentivised to adapt to modern challenges. Yet it is crucial the government introduce the *right* incentives to drive behaviour. As we have seen, centrally imposed targets from above, or simplistic 'payment by results' contracts can backfire, leading organisations to neglect their duty of care in service of targets. Not only does this compromise rehabilitation, it leaves the public less safe, by encouraging agencies to dismiss offences or go after the wrong ones. In light of these poor results, we propose that government seeks to stimulate innovation differently.

[Resources](#)

Recommendation 8: Create a new £100 million criminal justice transformation fund, against which PCCs and Directly Elected Mayors could seek capital and revenue funding to support innovation and join up local services locally.

Our proposal would see up to £100 million in funding available for the transformation of criminal justice services, with the priority to reduce reoffending. The fund would be agreed as part of the Ministry of Justice's Spending Review Settlement, with bids to be assessed by the National Criminal Justice Board. This would be new, additional investment and would thus represent an increase in Justice spending. However, we view it as an investment for the future, with the savings generated over the longer term (as a result of system change) having the potential to dwarf this initial outlay.

Recommendation 9: Expand revenue raising powers to enable PCCs and directly elected mayors to raise a new 'Crime and Justice' Precept.

PCCs already raise revenue for policing through the Police Precept, but at present lack a separate mechanism to generate funding for new or improved criminal justice services in their area. The Police Precept is levied as a separate charge on top of existing council tax and is collected through the council tax bill. Local authorities are incentivised by central government to limit increases to the council tax, of which the Precept is a part. Increasing or expanding the Precept to fund services additional to policing would therefore lead to an increase in the

Precept. We model that an increase of £50 per Band D Household (less than £1 per week) would raise as much as £4.5m per year for each police force area.²

While we understand that increased taxes is controversial, we believe an expanded Precept offers a way for PCCs to expand criminal justice services at a time when national budgets are likely to be squeezed. It also ensures greater local accountability for how effectively money is spent locally and would give PCCs and Directly Elected Mayors greater leverage over other parts of the criminal justice system.

Sentencing reform

Recommendation 10: Introduce a new national presumption against the use of custodial sentences less than six months, for non-serious offences.

Short custodial sentences are ineffective at reducing offending behaviour. Reforms at the local level to incentivise prevention and diversion are essential to mitigate damage done, but in the medium term they must be matched by sentencing reform at the national level. Judges should be incentivised to reduce the number of people sentenced to custody for less than 6 months for non-serious offences (which make up more than 80% of such sentences). Where intensive community orders exist, magistrates should be encouraged use them as a alternatives. If successful, this could be extended to sentences under 12 months.

Recommendation 11: Overhaul of community sentences to ensure new national minimum standards on swiftness, intensity, enforcement and transparency.

If community sentences are to be used in place of short custodial terms, they cannot constitute a 'soft option.' They must be punitive as well as rehabilitative, and they must be robustly enforced. MoJ should publish new national guidelines specifying minimum standards for community sentences, including:

- Swiftness - with a new target to ensure that the National Probation Service allocates cases to the probation provider on the same day as sentencing, and that requirements are commenced no later than a week afterwards (or a fortnight after sentencing for specialist requirements)
- Intensity - with minimum hours per week of unpaid work and an assumption that those offenders not in work, education or training would undergo at least five full days of activity per week
- Enforcement - with a clear expectation that breach and/ or non-compliance will be met by an escalation of punitive sanctions
- Transparency - - requiring CRCs to publish data on the nature of community sentences and the type of unpaid work that is carried out, to improve confidence amongst sentencers and the public

Recommendation 12: Pilot a new 'swift and certain' programme for punishing prolific offenders in the community.

² Council Tax: stock of properties 2017

All theft and drugs offenders (with more than six previous convictions) currently serving sentences in the community would be entered onto the programme - amounting to a total of 8,800 offenders per year.³

A specific judge would need to be designated for the programme, and be charged with ensuring that hearings were conducted within 24 hours of a breach. Sanctions would include 1-2 days in prison, with punishments escalating in cases where offenders regularly breached. Good behaviour would also be incentivised, with punishment reduced should gaps between breaches increase. Introducing this programme in England and Wales may require enabling changes to be made to primary legislation (the Criminal Justice Act 2003) and to the sentencing guidelines. To begin with, the programme could be piloted by a PCC in a single force area so as to demonstrate workability.

Recommendation 13: Extend the power to undertake regular court reviews for prolific offenders serving short custodial sentences and/or community sentences to all magistrates' courts - by extending section 178 of the Criminal Justice Act 2003.

Some magistrates already technically have the power to review an offender's progress on a community sentence, yet such reviews are rarely implemented or recommended as part of a Pre Sentence Report. Government should publish guidance and if necessary amend secondary legislation 83 (S178 of the Criminal Justice Act 2003) to ensure these powers are available to all magistrates and that those who already have those powers feel equipped to use them.

Recommendation 14: Amend the Homelessness Code of Guidance for Local Authorities to explicitly designate as 'vulnerable' any individual who is homeless upon completion of a custodial sentence.

For offenders who previously stayed in rented accommodation, homelessness is a common side effect of short custodial sentences. Homelessness is also a key driver of offending behaviour. It is disingenuous and counterproductive to allow local authorities to deem someone leaving custody as having made themselves 'deliberately homeless,' and thus excluded from the remit of the Homelessness Act. The government should amend national legislation to end this practice, which serves the interests of neither offender nor community.

[Modelling the impact of these changes](#)

In order to measure the impact of the reforms proposed above, notably a new presumption against short custodial sentences, we have modelled the impact these could have on both the prison population and the community probation caseload.⁴

³ Calculation: 22,165 offenders were handed community sentences for drug and theft offences in 2017 in England and Wales (Criminal Justice System statistics quarterly: Sentencing Tool), and 39.6% of offenders given a community sentence in 2018 had 7 or more previous convictions (Table 6.1 in Criminal justice system statistics quarterly: March 2018)

⁴ Please see Annex I for an overview of the simulation methodology

Our model has examined the potential impact of a presumption against the use of short custodial sentences, substituting instead a 'tough' community sentence. We have modelled the impact for two scenarios:

1. A presumption against short custodial sentences of less than 6 months; and,
2. A presumption against short custodial sentences of less than 12 months

For both scenarios, we have made the following assumptions:

- A. All prison sentences destined to be given custodial sentences of less than 6 months, and less than 12 months, are converted to a community sentence²
- B. Breaches of the new order are generally handled without recourse to custody. However a further re-offence can lead to custody (see below)

In the simulation we applied two exceptions to the presumption:

- A. Those committing a further offence while under supervision would go to prison (assuming the offence met the custody threshold)
- B. Those whose offending history had flagged them as being high or very high risk of harm would not be diverted

What is the new sentence?

The analysis assumed that the new 'tough' community sentence included in the model would be a minimum of 12 months, with a variable added component of up to a further 12 months depending on the sentence i.e. a range between 12 and 24 months. This is compared to a standard length of community sentence (included in the baseline scenario) of 12-24 months for summary offences, and 28-36 months for indictable offences.

The model did not simulate the activities that would form such sentences, only their length. This allowed for an estimate of the change to the probation service's caseload. The model also looked at the impact on the probation service's caseload for the supervision of offenders on post-release supervision. The reduction in post-release supervision as a result of diversion to community sentences would compensate in part for the increase in caseload as a result of the increase in community sentences handed out.

It should be noted that the length of community sentences does not directly affect reductions in prison places, and indirect effects, such as those relating to further offending under supervision for example, are comparatively small.

Conclusions

The analysis estimated that the impact of implementing new 'tough' community sentences as an alternative to short custodial sentences would reduce the male prison population by:

- Scenario 1 (a presumption against short custodial sentences of less than 6 months):
 - 4,300 ± 800
- Scenario 2 (a presumption against short custodial sentences of less than 12 months):
 - 7,900 ± 1200

and would reduce the female prison population by:

- Scenario 1 (a presumption against short custodial sentences of less than 6 months):

- 530 ± 270
- Scenario 2 (a presumption against short custodial sentences of less than 12 months):
 - 925 ± 340

The results also predicted an increase in caseloads for the probation service as a result of the changes. Specifically, it would likely lead to the following caseload increases of male offenders:

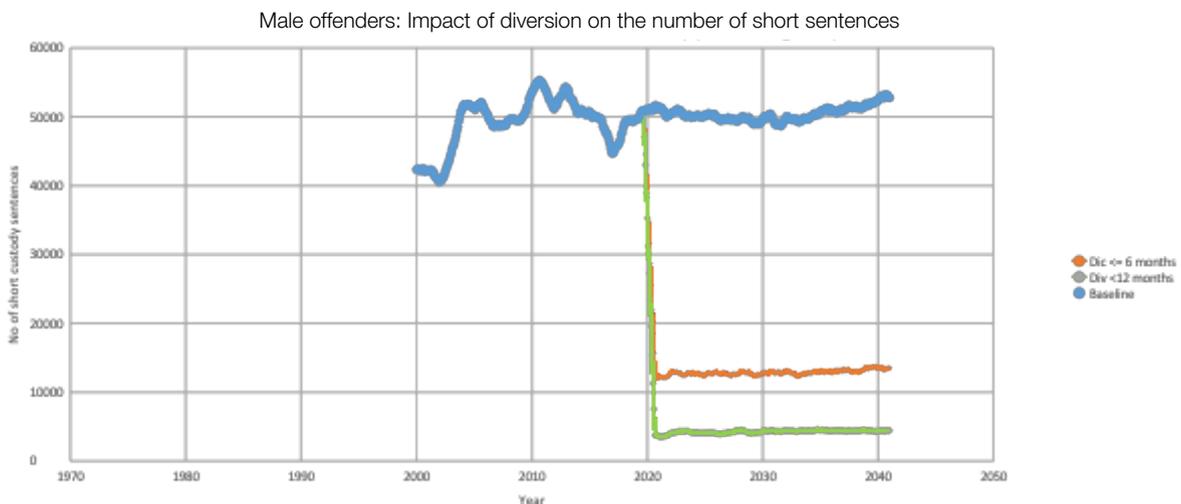
- Scenario 1 (a presumption against short custodial sentences of less than 6 months):
 - + 14,000 cases
- Scenario 2 (a presumption against short custodial sentences of less than 12 months):
 - + 32,000 cases

and the following increases of female offenders:

- Scenario 1 (a presumption against short custodial sentences of less than 6 months):
 - + 1,750 cases
- Scenario 2 (a presumption against short custodial sentences of less than 12 months):
 - + 3,700 cases

The prize

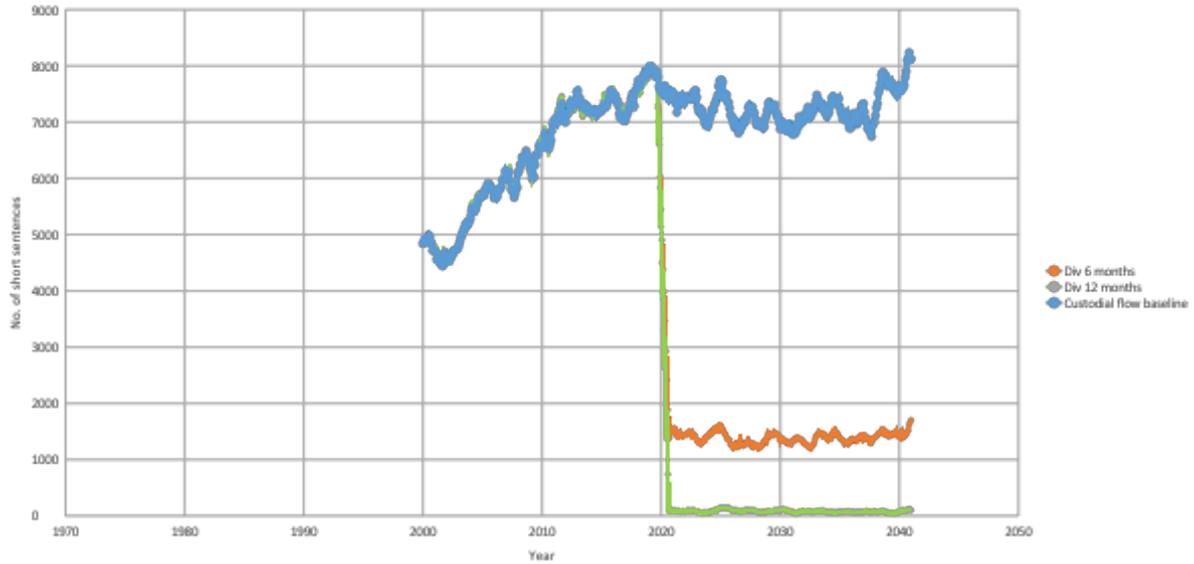
The proposed presumption against short custodial sentences of less than 6 months and less than 12 months, with the provision of alternative, 'tough' community sentences would have a significant impact on the prison population - the model estimated a reduction of 8,825 (over 10%) in the overall prison population for scenario 2. See the figures below for the predicted effects of various scenarios on the number of male and female offenders sentenced to short custody.



Key points from the graph:

- Estimated reduction of ~46,000 short custodial sentences based on <12 months criterion
- Estimated reduction of ~37,000 short custodial sentences based on <6 months criterion
- The custodial sentences given for re-offending whilst on supervision (~4,000) would be targeted towards high or very high risk offenders

Female offenders: Impact of diversion on the number of short sentences



Key points from the graph:

- Estimated reduction of ~7,000 short custodial sentences based on <12 months criterion
- Estimated reduction of ~5,500 short custodial sentences based on <6 months criterion

Though the probation caseload would increase as a result of these proposed measures, there are clear cost and recidivism benefits to rehabilitating offenders in the community as opposed to in custody, particularly in light of the findings cited earlier in the report regarding the lack of efficacy of short custodial sentences on offending outcomes. Furthermore, the added resources needed by the probation service would be more than offset by the reductions in the prison population.

Annex I

Simulations were carried out using the August 2018 version of the simulation engine. These assessments could change as the underlying algorithms and assumptions of the simulation engine are kept under review. An overview of the methodology⁵ is as follows:

- The results are averaged over 24 simulation runs for each case considered
- The size of the virtual population was set to 200,000
- Male offenders and female offenders are simulated separately (given the widely different gender risk profile)

⁵ Further detail about the methodology can be found at www.justice-episteme.com

