



Better Courts:
A blueprint for innovation

Contents

Executive summary.....	2
1. The challenges facing our criminal courts.....	4
2. Meeting the challenges by building better courts.....	7
3. Unlocking innovation through reform of the magistracy and the courts.....	17
End notes.....	21

Executive Summary

The challenges facing our criminal courts

Our courts are the linchpin of our justice system. Our criminal courts play a particularly crucial role: they determine innocence and guilt; they uphold our common standards of justice; and they execute our common, informed and sober sentiments about punishment and rehabilitation. In short, they are the key institution to building a fair and effective criminal justice system— a system that focuses on preventing crime and giving respite and reparation to victims, a system that offers us all fair access to justice and in which justice is seen and is felt to be done, a system that serves all our people and all our communities equally.

Two years ago in our publication, *Better Courts: Cutting Crime through Court innovation*, we laid out the argument that courts must be central to building a fair and effective justice system. We called for criminal court innovation to be built around the evidence on procedural fairness and problem-solving justice. Evidence on procedural fairness suggests that fair treatment of individuals in criminal court matters: it improves the likelihood that victims will feel the system listens to them and that offenders will obey the law in future. Closely aligned to this evidence, research on problem-solving justice suggests that when criminal courts, working in partnership with other parts of the justice system, understand and respond to the issues that underpin criminal behaviour such as debt, addiction and mental illness, they can make a material difference to re-offending, keeping the public safer.

Two years later, at the start of a new Parliament, we believe the time to build a better courts system has come. The challenges that face the justice system demand it. First, crime is changing. While most crime is down, those crimes that are on the rise, like domestic and sexual abuse, are often complex and require a more sophisticated approach in order to secure prosecutions, protect victims and ensure that justice is done. Second, there is less money to spend on justice, forcing us to think differently about the purpose of courts and how they operate. Third, equal access to and the common experience of justice is currently in sore need of improvement in England and Wales. Successive policy choices have created a system which fails to provide sufficient access to justice for all. Fourth, the world that criminal courts operate is changing fast. The greater availability and use of information technology is transforming our lives and our public services, asking questions of how our courts can and ought to work more flexibly.

Meeting the challenges by building better courts

Faced with these challenges, the need to innovate is clear. Based on the evidence and our analysis of the challenges, our key recommendations to build better courts are:

- **Our criminal courts should respond to the increased number of complex cases by developing specialist courts.** In particular, due to rises in the reporting of domestic abuse and consistently poor handling of these cases, **we propose the testing of new specialist integrated domestic abuse courts which use a ‘one judge, one family’ model**, bringing family, civil and criminal court cases into the same court presided over by the same judge.
- We should also explore the possibility of **piloting specialist courts to deal with groups of offenders who have complex and distinctive needs such as women and young adults.**
- At the same time, we should develop new approaches where sentencing is failing, especially around offenders’ sentenced to less than 12 months in prison. To help courts use prison differently, we should pilot **a new type of custodial sentence where offenders are supervised in the community but brought back for short sanctions of prison swiftly where they fail to comply;**
- In order to free up resources we should reserve criminal courts for the cases that can only be resolved there – either because the facts are in question, or because the seriousness of the crime demands it. For many groups, especially those young people and women who have made only initial steps into criminal behaviour being prosecuted increases the risk of re-offending and makes the public less safe by lengthening criminal careers. For these cases, we should **employ the greater use of evidence-based resolutions in the community and ensure that people are only prosecuted when they need to be;**
- Where cases do have to go to court, we must **make sure that cases are heard in the right place**, through greater use of online court case dispute resolution, better case allocation and in reviewing the respective responsibilities of the Magistrates and Crown Courts;

- Underlying all of these changes, we have an opportunity to **make our courts feel fairer for those who come into contact with it. By adopting the better use of technology, better training for court staff and judges on procedural fairness, and more effective court case management**, we can develop clear online procedures for resolving low-level cases, improve the information given to defendants and victims due to appear in court and ensure that we give more transparent and easier to access information about what happens after a court case. In addition we can make courts places of help as well as punishment by replicating, where appropriate, at court advice and support services, especially in larger urban courthouses.

Unlocking innovation through reform of the magistracy and the court service

In order to deliver our recommendations, we must also look at the institutions of our criminal court system. In particular, we believe there are a number of steps that need to be taken to build institutions that can make these court innovations self-sustaining:

- **Bring magistrates back into their communities** by empowering them to develop new community resolutions, by helping to resolve cases online and in community-based hearings and by being involved in the greater use of ongoing monitoring of young offenders on community orders. This redefined and expanded role provides an opportunity for the recruitment of younger, more diverse magistrates;
- **Reforming the courts to make it more innovative and outward looking** by creating local criminal court innovation funds to test new Better Court approaches. In addition, the Government should review whether the judiciary should have more control over court administration, especially in magistrates' courts, with the national court service responsible to the Lord Chief Justice and many of its powers localised in parallel to broader justice devolution. Lastly, a culture of innovation and problem-solving needs to be inculcated, sponsored and driven forward in our criminal court service.

The challenges that face our criminal justice system require sober and thoughtful reform. We must continue to honour our traditions while facing up to the demands of the future. We believe, and the evidence shows, that a better court system ought to have fairness and problem-solving at its heart. These will be courts that are neither harsh nor weak, but simply better. Better at reducing re-offending. Better at using its resources. Better at giving victims redress. Better at giving everyone a fair chance. Better courts for a fairer and more effective justice system.

1. THE CHALLENGES FACING OUR CRIMINAL COURTS

Our court system faces a series of challenges which threaten its ability to deliver a fair and effective justice system.

These challenges are:

- Changing crime patterns: While the overall volume of reported crime may be falling, we have seen sharp rises in some of the most complex and difficult to manage cases such as domestic abuse, sexual abuse and fraud;
- Less money: Successive reductions in funding system demand a fundamental rethink of the way in which the justice system operates;
- The access to and the experience of justice: Successive changes in the legal aid system, continuing delays and confusing processes make it harder for some people to coming to court to feel they have been treated fairly;
- Changing technology: New communications technology has created new expectations about how courts should operate – and new opportunities to improve the service which courts offer.

In September 2013, the Centre for Justice Innovation published *Better Courts: Cutting Crime through Court Innovation*.¹ Our goal was to set out a new vision for our criminal courts, one rooted in their place at the heart of the justice system. Our paper was intended as a corrective to a wave of court reform that was narrowly focused on making courts cheaper and more efficient – letting them do the same with less. We strongly felt that efforts at reform were failing to recognise that courts can, and must, play a bigger role in reducing crime and guaranteeing a fairer justice system. We called for court innovation that did more than just introduce technology and speed up processes, but one that made the court experience fairer and which aimed at introducing techniques— known as problem-solving in the technical jargon— that understood and responded to the circumstances that underpin criminal behaviour in an effort to reduce re-offending.

Two years on, we still hold that view. Our work since the publication of better Courts has strengthened our understanding of the evidence base, of practice and our belief that courts can and must make a crucial difference to cutting crime and making the justice system fairer. At the start of a new Parliament, there is a fresh opportunity to build better courts. Moreover, the challenges confronting the court system this Parliament provide an even greater imperative to reform courts and make them better.

The challenges ahead

Of all of these challenges ahead, the changes in the type and volume of cases coming before our courts demand a fundamental rethink in how our courts respond to different types of case. One could well think that, because reported crime is down, much of it driven by huge reductions in volume crimes like burglary,² this should mean less work for the courts. If there is less crime, there should be less work for the police. If the police have less work, less work will come the way of the prosecution service and the courts.

However, this simple assumption may be wrong. Because crime may be going down but it is also changing. The drop in crime is masking a growing trend of rising high-harm and complex crime. For example, domestic abuse incidents reported to the police have increased by 34% since 2007/08. In the past five years, police recorded incidents of rape have risen by 94%, other sexual offences by

55%, fraud offences by 215%. Attempts to explain away, for example, the rise in sexual offences as merely a function of the reporting of historic abuse have been scotched by no less a figure than the Lord Chief Justice.³ What domestic abuse, sexual offences and fraud offences have in common is that these crimes are complex, much harder to investigate, prosecute and adjudicate than shoplifting and burglary cases. The rises in these crime types, even if they are simply rises in the reporting rather than the incidence of them, fundamentally change the shape of demand on our court system.

And there are signs that the justice system is struggling to cope. Despite the 94% increase in rapes being reported to the police over the past five years, we have only seen a 28% increase in prosecutions in the same period – meaning that the proportion of cases successfully prosecuted is actually falling. When we turn to fraud, the picture is worse. Since 2008/09, despite the massive rise in reported incidents, convictions for fraud are actually down by 6%.⁴ This suggests our courts and other criminal justice agencies are not able to keep pace with changing demand and, what's more, that the stretch is being felt most acutely in areas which demand higher-than-average resources because of the complex nature of the crime.

Twinned with changing crime, the justice system has to face ongoing reductions to its budgets. Speaking at a Centre for Justice Innovation event in 2014, the Lord Chief Justice perhaps put this challenge at its most stark:

The conclusion is a simple one: we cannot go on as before. Therefore with such huge budgetary reductions, it is impossible for justice to be delivered in exactly the same way as it always has. We have to be open to new and different ways of doing things. It is therefore in my view essential that new and innovative ideas are considered and the value of innovation is that cheaper doesn't mean it has to be weaker.⁵

With less money in the justice system, we need to think differently about the role and purpose of courts and how they operate.

Yet the impacts of shifting demand and austerity are not the only reason we need to rethink our courts. Successive policy choices, since before the life of the Government and the proceeding Coalition administration, have challenged the ability of our courts to provide people with fair access to and a fair experience of justice. As the Lord Chancellor recently said:

"There are two nations in our justice system at present. On the one hand, the wealthy, international class who can, for example, choose to settle cases in London with the gold standard of British justice. And then everyone else, who has to put up with a creaking, outdated system to see justice done in their own lives."⁶

Just as access to justice is a problem, when people do come into contact with the court system, too many people do not feel fairly treated when they are there. They often don't know what to expect and understand little about what happens when they are there.⁷ The delays between arrest and the completion of a case can leave defendants, witnesses and victims alike frustrated and confused. Many victims and witnesses don't know the result of a case when it is completed.⁸ Meeting the challenge of ensuring our courts are fair and feel fair is central to building better courts, in which everyone has the same right to put their case in court.

Lastly, while it is true that many of the challenges we seek to confront have been caused by public policy changes, just as significantly there are emerging issues that are driven by change in the wider world. As the greater availability and use of information technology is transforming our lives, it is also transforming our public services. Courts cannot be the exception to that. While our traditions need to be honoured and protected, they need to relate to and understand our lives.

The constant pace of technological change asks questions of how our courts can and ought to work more flexibly.

Toward a blueprint for innovation

The need to innovate is clear. The challenges we face demand a re-evaluation what the role of our courts should to be and how they ought to function. Nonetheless, in laying out our thoughts on these issues, we do not offer grand legislative proposals or silver bullet measures— we remain sceptical that the changes we need can be achieved from Whitehall alone nor solved with one quick fix. Rather, we need to free institutions that will be crucial to sustaining the innovation needed to build better courts.

2. MEETING THE CHALLENGES BY BUILDING BETTER COURTS

If we are to meet the challenges laid out, we must build better courts. In particular, this means we should:

- Reserve court for the cases that need to go there. In order to do this, we should develop the use of community resolutions and ensure that people are only prosecuted when they need to be;
- Where cases do have to go to court, we must make sure that cases are heard in the right place;
- Improve compliance with, and the legitimacy of, the law by ensuring everyone feels fairly treated when they come into contact with the court system.
- Establish specialist and problem-solving court responses to complex cases, such as domestic abuse, and complex caseloads, such those involving young people and young adults with complex needs, and help courts use prison more intelligently through “swift and certain” supervision.

The challenges which face our courts —changing crime, less money, unequal access to justice and technological change — need to be faced head on. We believe they can be met if we put the principles of procedural fairness and problem-solving at the heart of our efforts to build better courts. In this chapter, we will lay out a number of key changes which will build the kind of justice system we need.

1. We should reserve court for the cases that need to go there. In order to do this, we should develop the use of community resolutions and ensure that people are only prosecuted when they need to be.

There are currently many cases which are prosecuted unnecessarily. Around 80,000 cases each year go to court only to receive some form of discharge— an order to stay out of trouble with no other requirements. This invites a simple question: is this the best way to deal with these cases? The time has come to recognise what the evidence is increasingly suggesting: that formal prosecution in many cases is itself criminogenic and lengthens rather than shortens criminal careers, and that effective community resolutions⁹ can do more to rehabilitate offenders and satisfy victims.

This evidence applies across a wide range of offenders, but arguably the clearest case for a greater use of community resolutions is with children and young people. Research has consistently shown that formal processing of children and young people within the criminal justice system makes them more likely to commit crime again.^{10,11} There are a number of reasons for this, not least the consequences of criminal records on young people’s future lives and careers. And yet we know that diversion at the point of arrest works for many young people. Recent studies in the United Kingdom shows that the best approach to reducing re-offending by young people is a policy of “maximum diversion” – an approach featuring the minimum possible formal intervention coupled with diversion to programming outside the justice system.¹² And recent research also suggests that while the use of these schemes has been positive to date, there are still more young people who could benefit from this approach.¹³

The evidence also supports a greater use of diversion for adults. For example, Birmingham’s Operation Turning Point diverts adult offenders away from court via a ‘turning point contract’ which combines a deferred prosecution with a set of conditions intended to support desistance. When judged against similar groups

who are formally prosecuted, the results are promising— higher levels of victim satisfaction, significant reductions in violent re-offending and much lower costs to the taxpayer. There is also ample evidence to suggest that for many adult women who enter the criminal justice system, a community resolution coupled with gender-responsive treatment is more effective than prosecution at reducing re-offending.¹⁴

But, if we are to expand our use of diversion, we must keep the needs of victims at the forefront of our minds. Operation Turning Point was able to secure higher victim satisfaction because it made sure that victims received information about what had happened to their case. If we are to apply community resolutions to a greater number of cases, we must involve victims, treat them with respect, give them information about their case and provide an opportunity for having a voice in the process.

In short, community resolutions are not alternatives to 'real' justice— in many cases, community resolutions are our best response to keep our communities safe. All of this suggests we need to radically rethink our out of court summary justice system. It means reforming it based on the evidence and making sure that, just because it occurs out of court, does not mean that it is not based on what works, what is just, and what is fair for victims.

Recommendations

In order to bring about a change in our use of community resolutions, we recommend that:

- The Government establishes a presumption toward placing young people under the age of 18 into community resolutions for all summary cases unless there is a compelling public interest to do so or if it would not be in the interests of justice. This would be accompanied with guidelines for the police and Crown Prosecution Service, emphasising that only those cases that can't be diverted on the criteria above should go forward to formal prosecution;
- Police and Crime Commissioners should take heed of the Operation Turning Point model in developing their own community resolution schemes, and recognise the special emphasis it placed on ensuring that victims are kept fully informed about the programme and also recognise the evidence of using community resolutions for the diversion of women.

2. Where cases do have to go to court, we must make sure that cases are heard in the right place

Court case allocation is a rarely examined aspect of the court system but it is vitally important. If, as we are seeing, the court service is faced with having to do more with less, making sure cases go to the right court in a timely and efficient manner will be crucial to helping the court service live within its means. But beyond issues of efficiency, we must also recognise, as was pointed out by HHJ Edmund QC this year, that at the root of every mis-allocated case, every unnecessary hearing, a defendant (and often a victim) are left outside, wondering what's going on in their quest for justice.¹⁵

There are bright spots emerging in the courts use of technology. Through moves to the common digital platform (a single system so that the Police, the CPS, the Court and the defence can access the same database) our courts are showing a commitment to the use of technology in better management of cases. But, more importantly, we need to think about how we manage demand differently and the role of technology in it. An important first step is the piloting of the single justice process, where summary-only, non-imprisonable offences are tried and sentenced by a single magistrate.¹⁶ We can go further: some of these cases, if contested, could be heard online. For example, those summary motoring offences that are contested could simply be resolved through an online dispute resolution system, rather than bringing them physically to court. The procedure could be based on the model already recommended for low value civil claims in the Susskind

review.¹⁷ Moving more cases online at the administrative end of the case load should be welcomed, and it is ever more important as court close in line with the Government's court estate strategy.

For cases which need to be heard in court, there has been much discussion about which cases go to Crown Court and which stay at the Magistrates. As Lord Leveson's 2015 review of criminal procedure highlights, "a not insignificant number of cases (between 26% to 34%) in which summary jurisdiction has been declined led to sentences that were within the sentencing powers of the Magistrates' Court."¹⁸ At a time when resources are tight, this is simply not good enough. The mis-allocation for cases to Crown Court is a significant drain on resources. As Leveson points out, this may result, in part, from defence teams preferring that cases at the lower end of gravity go to Crown Court, based on a perception that Judges in the Crown Court are more lenient than Magistrates. This needs to be addressed and Magistrates' Courts should strive to keep either-way offences unless it is likely that the court's sentencing powers will be insufficient.

This prompts a further question: are we really reserving Crown Court for only the most serious cases? This is a controversial area and it touches on which cases have a right to trial by jury. But with magistrates courts only able to hear and sentence cases that are likely to receive no more than a 6 month custodial sentence, we have a system that inevitably puts cases into more expensive Crown Courts. Offences like theft and public order offences attract average prison sentences of less than 12 months, but crucially more than 6 months, often pushing them into the upper court. Does this suggest that have we got case allocation right? This in turn raises an even more contentious issue: should magistrates courts have the power to sentence up to 12 months and therefore keep the cases within their courts? Some advocates have called for exactly this move, while others fear it would lead to longer sentences for some of those currently sentenced in magistrates' courts. Some have questioned whether magistrates and district judges are competent to sentence these more serious cases. They are not easy questions but ones that need an answer if the courts are to assure themselves that resources are being used as best they can. Weighing up these arguments requires a sober and reflective review of the evidence.

Recommendations

In order to manage demand better, we recommend that:

- The Government consider extending the use of online dispute resolution for more administrative criminal cases, using the experience of the single justice process as a learning point;
- HMCTS take forward the recommendations in the Leveson review on case allocation swiftly;
- The Government and senior judiciary review the implications of extending magistrates courts sentencing powers to up to 12 months and publish the results of the review.

3. We have the opportunity to improve compliance with, and the legitimacy of, the law by ensuring everyone feels fairly treated when they come into contact with the court system.

Research on procedural fairness¹⁹ demonstrates that treating people fairly when they come to court makes them more inclined to trust and respect the justice system and therefore more likely to obey the law in future. Procedurally fair practice emphasises clear communication, respectful treatment, and giving people agency and voice in the process. All of these contribute not just to increased perceptions of fairness but increase people's willingness to comply with the law.²⁰ But successive policy choices have created a system which fails to provide people both with sufficient access to justice and can often leave them feeling unfairly treated in court. As Natalie Ceeney put it in first speech as the new Chief Executive of the HMCTS:

What worries me... is the human cost. In our criminal courts, witness, victims and defendants can wait years for a case to come to trial, causing chaos to lives as people wait for a decision before they can work out how to move on... Quite simply, despite the valiant efforts of our staff and the judiciary, our courts just aren't good enough for today's society.²¹

Despite recent high-profile debates, these are not new problems. Spending on legal aid has decreased under successive governments since 2007.²² Moreover, there has been consistent evidence that people who come to court—defendants, victims and witnesses—often feel that like they have not been treated fairly, especially those who are the most vulnerable.²³ Ensuring that the justice system is and feels fair must be a core plank of building better courts.

Using technology to make the court process fairer

Walking into a court today, it can still feel like the communications revolution never happened. Having defendants and witness physically travel to court, often to wait for hours only to have a hearing cancelled or, when it does take place, to spend a few minutes in the courtroom, is clearly frustrating for the citizen and inefficient for the system.

The courts service already recognises that this is not good enough, acknowledging that many cases don't really need to be heard in a courtroom at all. As we have already said, with the piloting of the single justice process,²⁴ the proposed changes outlined in Lord Leveson's review and the recognition that online hearings (already recommended for low-value civil claims)²⁵ could be used in the criminal sphere, there are welcome plans afoot to deliver a court system which manages demand better.

As we do that, we must ensure that these online systems are fair and feel fair. We have a once in a generation opportunity to build fairness into the way that services are provided and that opportunity is now, as we design them. In particular, the language used must be easily understandable. Much of the written material that courts use—forms, reminders, and other paperwork—are written with the requirements of the legal system in mind, rather than the people receiving them. Designing new systems gives us a chance to change that. If we direct a citizen's case into an online system, it should be done only with clear explanations of the procedures that will be followed every step of the way, especially as to what the potential consequences of a guilty plea are.

And what about those cases that do indeed have to go to court? How can we use technology to make that process better, more transparent and understandable? This issue is particularly relevant to victims. Many victims worry about having to come to court—what if they come face-to-face with defendants? Moreover, they are frustrated by lengthy waiting times and can face numerous practical difficulties relating to work and childcare arrangements which they often don't feel they are helped with. Better information to them from a trusted and helpful source is vital in changing the victim experience of court. As important as improving the victim experience is, a renewed emphasis on better use of technology to make information about courts clearer would have a benefit on resources. Last year, over 4,500 trials at Magistrates' Court and almost 2,000 Crown Court trials did not go ahead due to the absence of witnesses and defendants. This amounts to 40% of all 'ineffective trials' in our criminal courts. Maybe this isn't surprising. With an average 81-day waiting time between the offence and the listing of the first information at court, and an average of 57 days between the listing of the first information at court and case completion, there is plenty of time for both defendants and witnesses to forget the details, resulting in missed court dates.

So, what's to be done? The evidence offers us some straightforward solutions to this issue. Simple email or text reminders may make a real difference to the performance of the courts. But if we use procedural fairness in designing these systems, (for example, making clear what people could expect when they came to court) we can achieve even bigger gains. An experiment in Nebraska, USA examined the effects of different types of reminders sent to criminal court defendants. When citizens received a reminder that used language designed to promote procedural fairness they were significantly more likely to appear in court rather than those who received reminders that simply asked for attendance.²⁶ Subtle changes in how we use technology can produce a more effective and fairer justice system.

Fairer treatment in courthouses and courtrooms

We know that personal interactions at court play a significant role in shaping procedural fairness, with, unsurprisingly, the judge or magistrate's role in the courtroom being particularly important in driving perceptions of procedural fairness.²⁷ The atmosphere of the courtroom itself has also been found to be significantly related to perceptions of legitimacy: people who "experienced an atmosphere of confusion and unprofessionalism tended to view the entire justice system as less legitimate."²⁸ Simple, often unnoticed, practices such as making eye contact and addressing defendants by name can work to improving perceptions of respect.

In our work with magistrates' courts²⁹, we have seen that some court officials and magistrates are adopting similar practice based on procedural fairness as a response to the problem of unrepresented litigants. This is a growing issue: a survey of at the start of 2015 found that more than 70% of magistrates questioned have serious concerns about the impact on their courts of defendants representing themselves.³⁰ As a response, we have observed legal advisors explaining at the beginning of a hearing who is present and what procedures will be followed, and court staff and magistrates adjusting the language that they use and taking care to explain legal terminology and prompting defendants to present mitigating factors at the appropriate time.

This good practice, created as a response to the unwelcome rise in unrepresented defendants, fits with the evidence that greater transparency and clarity is a hallmark of a system that feels fair. While no substitute for proper representation, we should ensure that these good practices in working with unrepresented defendants is shared and adopted across the courts service. And if it's good for unrepresented litigants, it should also be good for others, victims and witnesses included. This could be especially important in youth court and for young adults, because young people are especially attuned to perceptions of unfairness³¹ and signs of respect³² and empirical research has identified that a young person's perception of their sentencer has the largest influence on their views of the overall legitimacy of the justice system.

We need to embed procedurally fair practice in our courts. It requires training court staff, magistrates and judges to recognise the importance of clear explanations in court, of what the process will be and who is in the courtroom, of ensuring that people have an opportunity to speak and be heard. More than just court room practice, it asks us to think about the design of our court buildings, the way in which we make people wait and the information we give them when they are there. We may also need to review and question existing traditions, such as the wearing of wigs in court, and determine whether they help or hinder citizens' perceptions of fairness when they come to court.³³

We don't claim that embedding procedural fairness is going to magically transform the experience of coming to court. The system remains essentially adversarial and court cases will inevitably be heard and resolved in ways that parties to the case may consider unjust. And neither do we suggest that our

recommendations are the only ones that are trying to make a difference to the experience of courts. Lord Leveson's endorsement of effective and consistent judicial case management, especially in cases of intimidating and overly aggressive cross-examination, is especially welcome in making the system quicker, more efficient and fairer. We also look forward to the Victim Commissioner's forthcoming work which recommends better use of victim personal statements.

Making courts a place of help as well as punishment

If less people are to come to court, and we have less court buildings for them to come to, it is even more vital that when they are there, we do our best to ensure that we make our best efforts to connect them to services that mean they don't come back. But, currently, only around 25% of people who come to court get structured help, via probation services, to address their offending behaviour. Many people come through our magistrates' courts commit low-level offences, receive fines or conditional discharges and go on to commit them again and again. Latest figures show, for example, that of those receiving a conditional discharge, one of the lowest forms of sentence and one which comes with no support, 33.5% go on to offend again within a year.³⁴ While putting these offenders into probation supervision and support would be disproportionate, there is clearly a gap in support for some low-level offenders, especially those with complex needs.

To address this, we propose a wide-scale adoption of the at-court advice and support service model. At-court advice and support services connect clients to a wide range of services on a voluntary basis: practical help with issues like fines or benefits, information on the working of the criminal justice system or assistance in accessing long term support services for chronic issues like addiction or mental illness. Our research on one such service, the Plymouth Community Advice and Support Service (CASSPlus),³⁵ shows that that it is addressing the significant unmet need of people who are coming to court (and who are likely to return if their needs are not addressed), especially the low level persistent offenders who it specifically focuses on. While further research is needed, at-court advice and support services offer the prospect of developing courts which are more connected to their communities and ones that seek to offer assistance and treat people fairly.

Recommendations

Coming to court is unlikely ever to be an experience that our citizens welcome—but it should be one where they understand what is going on, where they are treated with respect and are assisted to make sure they don't have to come back again. To place fairness at the heart of the court system, we recommend that:

- HMCTS collect and track data on perceptions of fairness of defendants, victims and witness in their annual performance reporting and make it a core objective of the regional crime directors to improve it year on year;
- HMCTS and the Judicial Studies Board review the training of judges, magistrates and court staff to ensure that staff are trained in procedural fairness techniques;
- HMCTS ensure that new online court resolution systems are user tested to identify areas where clearer and more transparent information would be beneficial;
- HMCTS encourage court administrators and magistrates to replicate, where appropriate, at court advice and support services, especially in larger urban courthouses.

4. Our courts should establish more specialist and problem-solving responses to complex crimes and complex caseloads.

While many low level cases can be usefully diverted, courts remain the appropriate forum for cases involving complex legal issues and those that involve individuals whose offending is serious or whose criminal behaviour is deep rooted and complex. And we know that these types of cases are on the rise. This means,

as we reduce the number of cases coming to court, and make sure the right court hears the right cases, we can both specialise and problem-solve more.

As the court caseload gets more complex, we need courts with more specialised arrangements for complex and sensitive cases. Just as we would expect complex healthcare issues to be triaged into specialist care, the same principle can and should apply in our criminal courts. And for certain cases, courts can go beyond specialisation and play a much more proactive role in the management and supervision of cases, by adopting the evidence-based practice associated with problem-solving courts.³⁶ Problem-solving courts, like drug courts and mental health courts, monitor community sentences and hold offenders accountable, while directing and coordinating community based agencies to provide services and programming to change offender behaviour. Research on problem-solving courts can make a significant difference to re-offending.³⁷ Of particular significance, the growing research consensus on problem-solving clearly shows that the role of the supervising judge in regularly monitoring and supervising the court order is fundamental to the success of these courts.

We suggest three areas, though there are others, where these principles could apply.

Courts should develop a new specialist and integrated response to domestic abuse

When we look at the complexity of crime coming into court, domestic abuse³⁸ should be of special attention, even if the rates of reporting were not increasing (though they are). These cases often involve victims and survivors who are traumatised, have often suffered serial abuse prior to reporting, are reluctant to testify, and find aspects of the adversarial system aggressive. We know that domestic abuse court cases often leave victims in limbo as they take time to resolve and that successive inquiries have highlighted serious deficiencies in how we prosecute and hear domestic abuse cases.³⁹ To make matters worse, victims often find themselves jumping from forum to forum to resolve family matters, civil matters and criminal matters that all facets of the same underlying issue. If that wasn't serious enough, the number of domestic abuse incidents reported to the police has risen by 34% since 2007/08. Yet the number of convictions and prosecutions have only increased by around 25% over the same period.⁴⁰ In short, domestic abuse is a growing element of the courts' caseload, and one which they have never been good at dealing with.

Addressing these concerns will not be easy. But a number of studies, and our increasing understanding of best practice, all point to the need for specialisation and multi-agency approaches to domestic abuse.⁴¹ We suggest establishing integrated domestic abuse courts, which will hear criminal, family and civil matters in a 'one judge, one family' model.⁴² This approach has proven effective in the United States, Australia and New Zealand: evidence from these countries suggests that that integrated courts increase convictions and witness participation, lower re-offending, enforce protection orders more effectively and reduce case processing time.⁴³ Again, the evidence on what makes these courts work comes back to simple things: people feel treated fairly because, in an integrated court, they have a better understanding all of the concurrent proceedings and how they intersect.⁴⁴ In addition, integrated domestic abuse courts, and indeed most purely criminal domestic violence courts in Australia and the USA, use post-sentence judicial monitoring of perpetrators, which gives victims a clear sense that someone is holding the offender to account. This was an approach that the Centre recommended should be adopted in England and Wales in 2013, *Better Courts: A snapshot of domestic violence courts in 2013*.

We propose that we should pilot this approach in a number of large, urban courts. These pilot sites should have access to specialist prosecutors, specialist multi-agency teams to support victims, and be presided over by specialist sentencers.

This pilot should test the impact of the integrated court model on a range of outcomes including victim feelings of safety, timeliness of court cases and evidence-led sentencing. The experiment could begin with a dedicated single pilot set up to test out the viability of integrated courts, and if it is successful, an innovation fund could be created to help other sites develop the approach.

We should develop new, more effective approaches to the complex lives of young people

One point of light in the justice system is youth crime: crime caused by young people is historically low and fewer young people under the age of 18 are coming to court.⁴⁵ But as the recent Carlile review of youth court suggests, because fewer young people are in court, it means that the cases left going to court invariably involve offenders more advanced in their criminal careers,⁴⁶ with a far greater concentration of vulnerabilities and complex needs.⁴⁷ They have some of the highest re-offending rates, in part because they are all still maturing.⁴⁸ This is, in part, caused by the variable developmental maturity found in young people.⁴⁹ Research on brain development in young people and young adults suggest that impulse control, reasoning, and decision-making capacities are in development from adolescence through the mid-20s.⁵⁰ Indeed, the brain's centres of reasoning and problem-solving are among the last to fully develop.⁵¹ This leads us to a paradox: as the problem of youth crime declines, the complexity of the lives and the offending left in the system poses a new challenge to the court system, not least because young people are different on account of their maturity and that this maturation process goes on well beyond their eighteenth birthday.

There is a growing recognition of this paradox across Europe and in the United states. This has led a number of American states and European countries⁵² to reconsider the age of maturity, with Germany using discretion over whether young adults' cases go into the adult or the youth system. But even if we were not to change the thresholds by which young people are allocated to the adult or the youth system, there are things we can do. First, there will be some cases that need to reach the youth courts where a young person has committed an offence serious enough to land them in court. However, their surrounding circumstances may suggest that over-penalising them would be detrimental to public safety. For example, young people who are under 16 and/or is in education or full time employment, and where there is an admission of guilt, we should actively consider problem-solving as the main means of redress. We, therefore, propose there should be a presumption toward deferring sentence and referring the young offender to a 'problem-solving conference' (as described in the Carlile review). This conference would involve family members, wider support services⁵³ and, where applicable, the victim, to address the harm of the offence and its underlying causes. Following successful progress according to the contract set and reviewed by the conference, a sentence of a conditional discharge or absolute discharge could be imposed.

Second, there is evidence that, for young people, the use of "criminal responses as situational management" (e.g. responding quickly to breaches) reduces reoffending.⁵⁴ The use of judicial monitoring for the more serious offenders, where judges would regularly review progress of a young person on a youth rehabilitation order, setting expectations and holding them accountable to what they said they would do, could be especially helpful. Legislation is necessary to give youth courts the power to do this and we recommend the Government take the necessary steps to introduce it.

Courts should use prison more intelligently

England and Wales has long had the highest prison population per capita in Western Europe. There has been much energy spent debating whether this is appropriate and, more recently, about whether we can continue to afford it. But beyond the well-worn arguments, we would seek to ask a simple question— are we using prison intelligently?

Our answer is no. There are things that could manage prison demand better, like using mandated drug treatment as a genuine alternative to custody and we have written elsewhere about how drug treatment, mandated by courts, could be improved.⁵⁵ But, at the cutting edge of court innovation, there is emerging evidence that a radically different approach to using prison could actually do more to prevent reoffending whilst imprisoning people for far shorter amounts of time. This “swift and certain” approach puts clear restrictions on offenders’ behavior and rapidly responds to breaches with small doses of prison rapidly administered, after which they return to community supervision. This approach was first tested in Hawaii, in the HOPE (Hawaii’s Opportunity with Probation Enforcement) programme. HOPE clients receive swift, predictable, and immediate sanctions for each detected violation such as detected drug use or missed appointments with a probation officer. Sanctions are typically jail time, with durations starting at just three days for a first violation. The outcomes of a 2009 evaluation HOPE shows that, when compared to the control group after one-year, HOPE offenders were 55% less likely to be arrested for a new crime, 61% less likely to skip appointments with their supervisory officer, 53 % less likely to have their probation revoked, and spent 48% less time in jail. As Professor Mark Kleiman says:

“make the rules less numerous, the monitoring tighter, and the sanctions swift, certain, and reasonably mild, and to clearly tell each probationer and parolee exactly what the rules are and what exactly will happen, every time and right away, when a rule is broken. Mildness—or proportionality, if you like—is essential to making the threat credible, and severity turns out to be unnecessary.”⁵⁶

This approach is spreading across the USA⁵⁷ and is being implemented in Australia. And there is some limited evidence that these principles of swiftness and certainty can work here. The London Alcohol Abstinence and Monitoring Requirement orders alcohol misusing offenders to abstain from drinking and fits them with a monitoring bracelet which detects alcohol in their sweat. Offenders are monitored by a court and, as in HOPE, the circumstances on which an offender is breached is clear. You either drank or you didn’t. The initial results, while based on small numbers, are encouraging. There has been a compliance rate of 94% over the first six months, a figure considerably higher than other orders.⁵⁸

We believe that our courts, with the support of the Government, could make better, smarter use of custody in this way. We propose piloting the swift and certain approach in England and Wales, with adult offenders who currently receive short prison sentences of 12 months or less, as re-offending rates for this group are particularly high. We would propose that, following primary legislation to give it effect, a newly modelled suspended sentence should be tested with a small cohort that would otherwise be receiving immediate custody of between 6 to 12 months. Offenders would be monitored in the community under swift and certain monitoring overseen by a specially convened court with the power to impose gradually escalating doses of short doses of incapacitation for part or all of the suspended custodial sentence, following breaches for non-compliance. The principle should be that the total time in prison would be no more than the normal custodial sentence as laid out in the sentencing guidelines and, where offenders comply, should be significantly less.

We recognise that this would be a significant and new departure in British criminal sentencing. It would require a facility able to safely manage offenders coming into custody for short spells and would require courts to convene breach appearances within hours or days, rather than weeks. It would need to guard against up-tariffing offenders from the community sentence cohort. But the old approach isn't working. It's expensive, it is counter-productive and isn't keeping us any safer.

Recommendations

Our courts must respond to the changing nature of crime and the complexities of those who come into court. We recognise that time and money are limited and specialist approaches can only be developed where the need is clear and the evidence is robust. Based on our understanding of the evidence and of the current need in the system, we have suggested four ways in which the courts could specialise and respond to specific issues. We recommend:

- Extending the power for youth court to use judicial monitoring on youth rehabilitation orders (as recommended in the Carlile review) and to do the same for adult criminal court under s178 of the Criminal Justice Act 2003 (by passing enabling secondary legislation);
- Piloting integrated domestic abuse and violence courts in large urban courthouses, hearing criminal, family and civil matters in a 'one judge, one family' model;
- Piloting 'problem-solving conferences' as recommended in the Carlile review, with a presumption for its use for all young people under 16 in youth court and/or young people in full time education or full time employment, where there is a guilty plea, if the pilot proves successful;
- The passage of legislation to allow for piloting of "swift and certain" sentences for offenders currently receiving short prison sentences.

3. UNLOCKING INNOVATION THROUGH REFORM OF THE MAGISTRACY AND THE COURTS

In order to make the changes that are required, we must develop the capacity of the justice system to innovate. In particular, we must:

- Develop a broader conception of the role of magistrates, which re-enforces magistrates' role in the community, which helps them to resolve cases online and which involves them in supervision of offenders on probation;
- Reforming the courts to make it more innovative and outward looking

In the previous chapter, we set out key innovations that can contribute to building the justice system that we need. But we recognise that for these ideas to be widely adopted, it requires us to develop the institutions of the court system so that they embrace fairness, problem-solving and the need for continuous innovation. We cannot, therefore, ignore the fact that there are structural barriers to court innovation in England and Wales. As we stated two years ago, "court innovators... often lack the autonomy or opportunity to pursue local innovation or influence the decisions occurring around them in the justice system." Two years on from that analysis, we see, perhaps, more opportunities: by reforming the magistracy and embracing the potential devolution in the justice system, we believe that we can overcome some of the barriers to innovation in our courts.

Reforming the magistracy

If there are less cases being brought to court, an increasing proportion heard online, and a growing need specialist responses, this means less business of our lower courts and less business for the magistracy, who preside over them. So, what is the future of the magistracy? Discussions have been had over the past five years and have often been narrow and dispiriting. They have left magistrates unsure of the value that the system puts on their service. For their part, central policymakers look at the institution with a strange admixture of reverence for its enduring permanence and scepticism about its ability to fit into the modern world.

We argue that the magistracy is one of the quiet strengths of our justice system — around 20,000 volunteers who offer their time and wisdom to ensure that communities are represented on our justice system. The time has come to set out a positive vision of a revitalised magistracy, one which challenges the way that the justice system uses magistrates and also lays down a challenge to magistrates themselves. Moreover, we see the revitalisation of the magistracy as a key bridge between the justice system and the community as a vital way to involve the justice system in their communities, strengthening the justice system's legitimacy, especially in communities where relations between the justice system and the community is poor.

With this in mind, there are many new roles which magistrates can take up, in addition to continuing to exercise their role in courts. These span the whole of the criminal justice system from the point of arrest to the end of sentence. These roles could include:

- **A magistracy that delivers resolutions in the community:** Using the learning gained from the work magistrates have done in scrutinising out of court disposals, magistrates can be at the forefront of developing new approaches to resolve low-level disputes through community resolutions. This could lead to having magistrates trained in restorative justice and volunteering to sit on neighbourhood justice panels;

- **A magistracy that hears low level cases in the community:** Based on our recommendations above, youth court cases which could be bound for a ‘problem-solving conference’ could be heard in the community in civic buildings, rather than asking young people to travel to courthouses. In adult court, cases bound for the single justice process are already not heard in court. A review of the cases bound for this process could assist in identifying others that could be heard in the open in the community;
- **An online magistracy:** Just as we will need magistrates to continue to sit in court, magistrates should be trained to hear simple cases in an online tribunal format, allowing magistrates and parties to the case to resolve the case in a more flexible manner;
- **A magistracy that holds offenders to account in the community:** Based on our recommendations above on youth rehabilitation orders and ‘problem-solving’ conferences, magistrates could hold the regular accountability reviews required in out of court, in civic buildings. These hearings would be designed to motivate and monitor offenders and would also help the magistracy gather useful feedback about the operation of community sentences in their area.

We suggest that Justice Clerks and Bench Chairs could work locally with Police and Crime Commissioners to develop these roles. By doing so, they can create a magistracy whose functions are more varied and more focused on working in the communities that they represent. Of course, some of these changes will be disruptive. Sitting on neighbourhood justice panels, for example, may not be why many existing magistrates took up the role. And we will still need magistrates to sit in court. But our more expansive vision for a magistracy back in the community demands a new magistracy itself: one that recruits new volunteers that better reflect our communities in terms of age, class and ethnicity.⁵⁹ A reformed magistracy could reaffirm its place at the heart of the justice system and take up its rightful place as the connection between courts and communities.

Reforming the court service

With devolution in the air,⁶⁰ there have been suggestions in policy circles that the devolution holds the key to a fairer and more effective justice system. Some have looked at an expanded role of the Police and Crime Commissioner, able to look across the entire criminal justice system.⁶¹ Others are hopeful that devolution will lead to justice reinvestment (moving money away from custody and re-investing the money in alternative, community dispositions).⁶² It is true that the English and Welsh criminal justice system remains heavily centralised,⁶³ with court and prison administration concentrated in national executive agencies while probation is split between 21 Community Rehabilitation Companies, who are accountable central government a national executive agency. This has led to an uneven system, especially at the city level.⁶⁴

There is much to welcome in these ideas of moving control of more locally. But, even if devolution in justice proceeds, important constitutional separation of powers still remain. Our courts should be visibly independent of local politicians, and their decisions not fettered by the desire to ‘manage demand’ through justice reinvestment. However, this does not mean they should remain as they are. In our work, we have consistently found that many court practitioners, whether judges, magistrates, courts staff or solicitors, are keen to test out new approaches. But they are often frustrated in their efforts by the culture and structure of the courts service. Decision making is often remote, locked in centralised structures and innovators are held back by both an understandable drive for consistency but also a lack of permission to test out new ideas.

We believe there are three things that can be done to change this:

- **We propose that the Ministry of Justice sets up an innovation fund to support criminal court innovation:** We need to unlock the energies of frontline court practitioners by offering them permission and resources to experiment. An example of how this can work can be found in the children’s

care system. The Department of Education has set up an innovation fund which, amongst other things, is helping courts to work with local authorities to implement Family Drug and Alcohol Courts. If we can inspire and support local court innovation in family justice, we can do it in criminal justice. The Ministry could entertain bids from local courts and, where appropriate, joint bids from local courts and Police and Crime Commissioners or Mayors to set up local pilots to test promising court innovation approaches. These can then be overseen via local criminal justice boards, so all relevant local agencies can contribute to their implementation;

- **The Government should review whether the judiciary should have more control over court administration:** We suggest that we look again at who holds power in courts. In our experience it is administrators, rather than judges, who have the final say on what happens in courts, especially in magistrates' courts. Many court administrators work hard to improve their courts but the demands of a centralised structure, responsible to Whitehall, have over-emphasised process over outcome, compliance over communities. We suggest an alternative is considered — a courts service where the Lord Chief Justice is the chief executive for the courts, responsible only to the Lord Chancellor and where senior judicial figures are responsible for court administration down at the local level. How local would be determined as other parts of the system are devolved.
- **A culture of innovation and problem-solving needs to be inculcated, sponsored and driven forward in our criminal court service:** Having the right structure is a necessary condition but not a sufficient one to realise our vision of better courts. The management consultant, Peter Drucker, is credited with the expression that 'culture eats strategy for breakfast.' We might observe that it eats structure for lunch. Fixing structures does not necessarily change cultures and, even where it does, it does it only slowly. Through training, recruitment and retention, the judiciary and the court administration need to not only preserve a commitment to long standing principles but also to imbue the court system with a culture of cautious innovation and rigorous testing of new ideas. In addition, the courts need better information on the effectiveness of the sentences they give⁶⁵— and new tools to deal with poor performance.

Recommendations

Creating the court system we need requires re-thinking the purpose, role and functioning of institutions. We know that what we set out — a radical vision of the magistracy and imbuing courts with a spirit of innovation— will not be achieved quickly or easily. We therefore suggest some specific steps:

- To deepen the links between magistrates and communities, we suggest that Justice's Clerks and Bench Chairs create and oversee plans with local Police and Crime Commissioners to:
 - Develop new ways for magistrates to get involved in resolving low-level cases through community resolutions, using restorative justice and other techniques, and by holding court hearings in civic buildings;
 - Involve magistrates in the ongoing judicial monitoring of young people and young adults on community orders.
- To create an innovative, outward looking criminal court service, we propose that:
 - The Ministry of Justice should set up a criminal court innovation fund. They could welcome bids from local courts, working with local justice agencies, and, where viable, with local Police and Crime Commissioners, to set up local criminal court innovation pilots to test out some of the new approaches we highlight;
 - There be a review of whether the judiciary should be in charge of court administration, with the court service responsible to the Lord Chief Justice and the service localised in parallel to a broader justice devolution;
 - The criminal court service seeks to create a culture of innovation and evidence-based learning in its recruitment, retention and training policies;

- Outcome data about sentences is provided to judges and magistrates, and the public, based on comparative information about the effectiveness of the sentences it passes – including individual court performance. Judges, magistrates and court staff should use these data to reflect on performance and to think about new approaches to courtroom processes, the better use of local community assets and services.

Conclusion

Meeting the challenges that face the criminal court system will demand a response which is sober and thoughtful but far-reaching in its ambition. Implementing a blueprint for court reform requires reflection on what the criminal courts do and what they are for. Reform of our courts needs to be taken forward with care and precision. We must continue to honour our traditions while facing up to the challenges of the future. We believe, and the evidence shows, that a better court system needs to have fairness and problem-solving at their heart. Courts that are neither harsh nor weak, but better. Better at reducing re-offending. Better at using their resources. Better at giving victims redress. Better at giving everyone a fair chance. Better courts to make a more effective and fairer justice system.

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39. The Government definition of domestic abuse is: 'Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse: psychological, physical, sexual, financial, emotional. Controlling behaviour is: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour. Coercive behaviour is: an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.' Home Office, *Guide on Definition of Domestic Abuse*, 2014. Accessed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/142701/guide-on-definition-of-dv.pdf
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 41. Centre for Justice Innovation's analysis based on reported crime statistics and Crown Prosecution Service Violence Against Women and Girls data set.
 42. *ibid.*
 43. We have looked at this model in operation in the USA and have also reviewed the lessons learnt from its poor implementation in a pilot in Croydon in 2007.
 44. Cissner, A., Labriola, M., Rempel, M., *Testing the Effects of New York's Domestic Violence Courts: A Statewide Impact Evaluation*, Center for Court Innovation, 2013, Vermont Centre for Justice Research, *Bennington County Integrated Domestic Violence Docket Project: Outcome Evaluation 2011*; Rickard, E, "Civil Protective Orders in Integrated Domestic Violence Court: An Empirical Study, 2010; Hill & Kleist, *Evaluation of the Idaho Supreme Court OVW Grant to Encourage Arrest Policies and Enforcement of Protection Orders*, 2008
 45. National Center for State Courts, *Trends in State Courts*, 2013, accessed at: <http://www.ncsc.org/~media/Microsites/Files/Future%20Trends%202013/06202013-Procedural-Fairness-Swift-and-Certain-Sanctions-Integrating-the-Domestic-Violence-Docket.aspx>
 46. In recent years, there has been a large reduction both in the number of children entering the youth justice system for the first time and being sentenced at court. Between 2002/03 and 2012/13, the number of first time entrants into the youth justice system fell by 67 per cent to 27,854 while the population of young people sentenced at courts decreased by 54 per cent to 43,601. This is understood to be a consequence of a reduction in offending by children, coupled with a fall in detected (recorded) youth crime, supported by a renewed government commitment to reducing the number of children entering the system and court, particularly for low level offending.
 47. Age at first offense has also been found to be strongly related to length and severity of criminal careers. (*ibid.*)
 48. Ministry of Justice *Proven re-offending rates*, 2014, accessed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368403/proven-reoffending-jan12-dec12.pdf
 49. A highly consistent finding of longitudinal studies, both in the UK and internationally, is that offending begins in early adolescence, peaks during the late teens and tapers off in young adulthood. This suggests that efforts to reduce re-offending amongst young people are difficult and that one intervention is unlikely to work first time round (though they can). See; Piqueuro A, Hawkins J, Kazemian L, Petechuk D). *Bulletin 2: Criminal Career Patterns (Study Group on the Transitions between Juvenile Delinquency and Adult Crime*, 2013, accessed at <https://ncjrs.gov/pdffiles1/nij/grants/242932.pdf>
 50. See Transition to Adulthood Alliance at <http://www.t2a.org.uk/publications/#all>
 51. See, for example: Casey B.J., Jones, R., Hare, T. *The Adolescent Brain*. Ann NY Acad Sci. 2008 Mar.
 52. Social Exclusion Unit. *Transitions: Young adults with complex needs*. Office of the Deputy Prime Minister, 2005.
 53. Pruin and Dunkel, *Better in Europe?: European responses to young adult offending*, Barrow Cadbury Trust, 2015. Accessed at: http://www.t2a.org.uk/wp-content/uploads/2015/02/T2A_Better-in-Europe_Exec-Summary_online.pdf

54. Ministry of Justice, *Transforming Rehabilitation: a summary of evidence on reducing reoffending*, 2013. Accessed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243718/evidence-reduce-reoffending.pdf
55. Sapouna, Bisset Conlong, *What Works to Reduce Reoffending: A Summary of the Evidence Justice Analytical Services, Scottish Government*, 2011. Accessed at <http://www.gov.scot/resource/0038/00385880.pdf>
56. The most prominent example of problem-solving in practice is through the Drug Rehabilitation Requirement (DRR). The DRR combines mandated drug treatment with judicial monitoring. Set up under the Criminal Justice Act 2003, DRRs were directly modelled on the most prominent form of problem-solving court in the world, the drug court. At the time, a review of the evidence behind drug courts, summarising multiple evaluations of them in the USA, concluded that “adult drug courts, on average, have been shown to reduce recidivism rates by 13.3 percent.” Since the introduction of the DRR, the evidence base on whether drug courts are cost effective and why they work, rather than just whether they work, has grown. A recent study in Australia examined the cost effectiveness of a drug court in Victoria and compared the cost of it to a control group. The study concluded that “the recidivism data shows a marked decrease in the frequency and severity of offending by the DCV Cohort.” It also showed that “The number of days’ imprisonment for the DCV Cohort reoffenders totalled 6,125 over the two year period of the recidivism study, compared to 10,617 days for the Control Cohort. This represents a reduction over a two year period of 4,492 days, which at \$270 per day equates to approximately \$1.2 million in reduced costs of imprisonment.” A multi-site evaluation of US drug courts in 2011 highlighted that “judicial interactions with drug court participants are key factors in promoting desistance” and that “drug court clients who received high levels of judicial praise, judicial supervision and case management reported fewer crimes and fewer days of drug use.” However, in our work on drug courts in England, we highlighted that only a small number of drug courts in the country were applying evidence-based practice about what works. Only a few courts used dedicated drug court sittings presided over by specialist sentencers. Only a few made sure that sentencers kept seeing and reviewing the same individual offenders over the course of their community order. Since the publication of our work in 2013, we have become aware that some sentencers continue to adopt this practice but, that in other areas, pressure on the court service has meant that these evidence-based practices have been halted. We also pointed out that the enforcement, sanction and rewards frameworks often present in drug courts in other countries had not been applied here. Many drug courts in other countries ensure that non-compliance is met with escalating sanctions (not necessarily prison time) and progress rewarded with measurable lifting of restrictions and, ultimately, the early end of an order. If we are to deliver meaningful and cost effective responses to cohorts of offenders with complex lives, and reduce demand on the unnecessary use of prison, we have to implement evidence-based practice. This call has been echoed by others, such as *Policy Exchange*⁵⁵ and the *Centre for Social Justice*.
57. Kleiman, *Smart on Crime*, Democracy Journal, 2013 accessed at <http://www.democracyjournal.org/28/smart-on-crime.php?page=all>
58. Following the successful evaluation of HOPE, other initiatives using a HOPE model have shown promise include Texas SWIFT, the 24/7 Sobriety project in South Dakota, and PACE in Alaska. As a result of this emerging practice base, and continuing expansion of the evidence base, the Federal Bureau of Justice Assistance in Washington DC recently tendered an open call for competitive bids to set up new swift and certain pilots.
59. MOPAC, *Alcohol Abstinence Monitoring Requirement: A mid-point process review of the proof of concept pilot – summary*, 2015, accessed at <https://www.london.gov.uk/sites/default/files/AAMR%20summary%20report.pdf>
60. Gibbs, *Magistrates—representatives of the people?* Transform Justice, 2014. Accessed at http://transformjustice.org.uk/main/wp-content/uploads/2014/03/Transform-Justice_Magistrates-Feb14-report2.pdf
61. HM Treasury (2015), *Chancellor on building a Northern Powerhouse*, <https://www.gov.uk/government/speeches/chancellor-on-building-a-northern-powerhouse>, accessed on 30th May 2015.
62. Chambers, Davis, McLeod, *Power Down*, Policy Exchange, 2013. Accessed at: <http://www.policyexchange.org.uk/images/publications/power%20down.pdf>
63. See: Allen and Stern (eds) *Justice Reinvestment – A New Approach to Crime and Justice* International Centre for Prison Studies, 2007; House of Commons Justice Committee *Cutting crime: the case for justice reinvestment*, 2010; Allen *Justice reinvestment: empty slogan or sustainable future for penal policy?* Transform Justice, 2014.
64. To see a discussion of the history of the centralisation of justice in the UK, see: Donoghue & Bowen. *Digging up the grassroots?: the impact of marketisation and managerialism on local justice*, 1997 to 2013. *British Journal of Community Justice*. 2013 Dec 12;11(2-3):9-20.
65. At present, for example, the Mayor of London is responsible for policing and crime reduction, working with the Metropolitan Police and local authorities to make London a safer city. However, the Mayor does not have a clear role in other crucial aspects of the justice system: notably probation, youth justice and prison.
66. Chambers, McLeod, Davis, *Future Courts*, Policy Exchange, 2014

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Centre for Justice Innovation

Canterbury Court
1-3 Brixton Rd,
London, SW9 6DE
Telephone +44 (0) 203 735 9436

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