‘BREAKING THE CYCLE: EFFECTIVE PUNISHMENT, REHABILITATION AND SENTENCING OF OFFENDERS’

A response to the Ministry of Justice Green Paper of December 2010 on behalf of the Mission & Public Affairs Council of the Church of England

The Mission & Public Affairs Council of the Church of England is the body responsible for overseeing research and comment on social and political issues on behalf of the Church. The Council comprises a representative group of bishops, clergy and lay people with interest and expertise in the relevant areas, and reports to the General Synod through the Archbishops’ Council.

General Comments

1. Overall we welcome the analysis and policy proposals in the Green Paper. They represent an honest recognition of some of the fundamental weaknesses in our current methods of dealing with offenders, and offer bold and far-reaching suggestions for improvement. The scope of the proposals means that while they offer the prospect of great gains if they succeed, there are considerable risks attached to the process of implementation, not least in gaining the understanding and support of the public for what is proposed. We commend the Government for being prepared to take those risks for the sake of what they believe to be right.

2. We greatly welcome the emphasis on “breaking the cycle” of offending and the presence of the adjective “effective”. Much debate on criminal justice has centred on the test of “toughness” rather than “effectiveness”, and the two are not identical. It is effectiveness that should count, whatever its place on the tough/tender spectrum. The emphasis on payment by results, concentrating on outcomes rather than processes as performance criteria, is right in principle, though operationalising it appropriately so as to avoid perverse incentives or unintended outcomes is obviously a challenge.

3. In terms of the overall strategy, we agree with the proposition that continuing to send people to prison at current rates is neither desirable nor sustainable. The effect of overcrowding has been to undermine prisons in the work of rehabilitation that they are able to achieve, to intensify the problems faced by prisoners with complex needs, and to divert attention from other, potentially more cost-effective, ways of dealing with offenders, while offering only short-term protection to the public on account of failure to rehabilitate offenders. We therefore broadly support the sentencing proposals in Chapter 4 and the approach to rehabilitation in Chapter 2 of the Green Paper.

4. We note that the Green Paper foregrounds the language and rhetoric of punishment in its title (“Sentencing, Punishment and Rehabilitation” would be a more logical order) and the arrangement of chapters, bringing hard work and discipline in prisons to the beginning of the proposals. We have no difficulty in principle with punishment as a primary policy objective, and recognise the importance of retaining

public confidence in the ability of the criminal justice system to deliver appropriate and proportionate punishments. However, there is a danger of punitive concepts and assumptions creeping into places where they do not belong, and sometimes assuming undue weight. In particular, we would hold that there is more to "payback" or reparation in its various forms than punishment, because the offender does not simply accept a sanction passively but takes some responsibility for putting right the wrong they have committed, and this may be a step on the road to rehabilitation.

5. Even more importantly, it is a category error to associate restorative procedures with punishment, for while they may make rigorous demands on the offender, their purpose is forward-looking in giving both offenders and victims the freely-chosen opportunity to communicate and move beyond the constraints of the past to seek to solve the problems of the future. We will comment further on this issue in response to particular questions.

6. We support emphatically the proposals on restorative procedures in paras. 78-81 of the Green Paper. The restorative approach, like the belief in redeemability mentioned in our Conclusion, commands strong support from Christian and other religious traditions but also from secular beliefs. It is valuable first of all for the level of victim satisfaction which it is capable of delivering, but there is also evidence of positive impact on offenders and their future behaviour. We particularly stress the potential for using restorative procedures in the adult system, even in respect of more serious offences where victims request it. We believe that restorative conferencing of any kind can only work if it is freely entered into by both the victim and the offender, and facilitated competently and thoroughly in order to avoid "revictimisation". We agree that the examples given in paras. 79-81, of low-level offending, non-custodial disposals and pre-sentence conferencing are appropriate uses, but we urge the Government to be ambitious in exploring new possibilities.

We will answer the consultation questions selectively, seeking to reflect the major concerns expressed in recent years by the General Synod in its debates and resolutions on criminal justice.

Q1. How should we achieve our aims for making prisons places of hard work and discipline?

While holding to the time-honoured axiom that people are sent to prison *as* punishment and not *for* punishment, i.e. the penal element is the deprivation of liberty rather than imposition of unpleasant conditions, we support the objective of promoting active regimes. Constructive activity is good in itself, not least in initiating prisoners into the discipline of a structured day, and if it includes education and training it contributes to rehabilitation. However, given the health and personal qualities of many prisoners and the financial constraints on prison regimes, delivering it will be a challenge. The 40-hour working week will often not be an appropriate target if treatment needs are to be met. It is clearly important that wage arrangements should act effectively to incentivise, and there is a role for voluntary organisations in providing work, as Q.2 implies.

Q3. How can we make it possible for more prisoners to make reparation, including to victims and communities?

The opportunities for prisoners, as distinct from other offenders to make reparation are limited. While supporting deductions from wages under the Prisoners' Earnings Act, we would urge caution in setting the levels to take account of prisoners' means. We support the wider use of compensation orders and would wish them to become a more central element in sentencing decisions.

Q5. What are the best ways of making Community Payback rigorous and demanding?

We reiterate our earlier point that rigour should be for the sake of effectiveness. The aim should not be a return to Victorian notions of "hard labour": the rigour should attach to the design, enforcement and evaluation of Community Payback schemes so that they are both useful to the community and appropriate to the needs of those taking part in them. It is important that such schemes should win the confidence of both sentencers and the public, which requires better communication with both. There is rightly dissatisfaction with the current completion rate of community sentences. We agree with the Criminal Justice Alliance that there should be variety in the work undertaken, to allow for factors such as the health or disabilities of those taking part and the position of female offenders with caring responsibilities.

Q8. How can we incentivise and support the growth of integrated Offender Management approaches?

Much thought and planning has gone into integrated approaches since the formation of NOMS in 2004. The main lesson would appear to be that local services need to be locally commissioned. The development of inter-agency working and the formation of consortia for service provision should be facilitated and overseen by local Criminal Justice Boards.

Q10. How can we ensure that providers from the voluntary and community sector can be equal partners in the delivery of this integrated approach?

The churches and other faith organisations have a large investment in the voluntary sector. The majority of such organisations working with offenders are small and locally-based, which is an advantage in many ways in making community links, but it raises questions of capacity in fund-raising and administration. For this reason it is essential that small organisations should be taken into larger partnerships in which expertise and costs can be shared. Funding arrangements will be crucial to their participation, as in recent years voluntary organisations have struggled with the issues of full-cost recovery and short-term funding. It will be vital for payment by results to reflect these needs.

One model to which church-based organisations have made a substantial contribution is that of community chaplaincy, using a local prison as a centre for "through-the-gate"

services to offenders connecting with advice, support and mentoring by volunteers in the community. There are now about twenty such organisations in existence, many of them multi-faith, and they have generated extensive partnerships between statutory and voluntary agencies. The North Staffordshire chaplaincy, which provides supported housing, has an outstanding re-offending rate of 12%, but it faces funding problems.

In our desire to encourage providers from the voluntary and community sector, we would not wish to minimise or disparage the role of the Probation Service, which has a good record in meeting re-offending targets since it became a national service in 2000. It seems clear to us that the Service will continue to be a major provider of interventions in view of its expertise and national reach.

Q11. to 13. – tackling drug dependency

We agree that tackling drug dependency, not least in prison, is an urgent priority given its massive contribution to acquisitive and violent crime. We welcome the introduction of pilot drug recovery wings, but believe that the main priority should be the expansion of treatment in the community, particularly through residential facilities, with as much diversion from custody into community sentences with a treatment requirement as may be practicable. We also note that there are widespread concerns about the availability and quality of alcohol treatment services, which must not become the "poor relation" in countering substance abuse.

Q14. In what ways do female offenders differ from male offenders and how can we ensure that our services reflect these gender differences?

As the Green Paper itself notes, female offenders have a distinctive profile of risks and needs, tending to be convicted for less serious offences and suffering disproportionately from histories of sexual abuse and violence, mental health problems, self-harm and drug and alcohol dependency. These factors were well charted in the Corston Review of 2007, and we would support the implementation of its recommendations in respect of increased use of community sentences and custodial facilities designed to treat complex needs. We note that the Independent Commission on Youth Crime and Antisocial Behaviour highlighted the potential for more extensive use of restorative procedures with young female offenders.

Q17. What changes to the Rehabilitation of Offenders Act 1974 would best deliver the balance of rehabilitation and public protection?

We agree with the major criticisms which have been made of the ROA – that the rehabilitation periods are too long, that the threshold of 30 months for a conviction never to become spent is too low given the subsequent expansion in sentence lengths, and that too many occupations are exempt from the Act. We broadly support the proposals for reform in the 2002 review *Breaking the Circle*, which proposed a rehabilitation period of the sentence plus a maximum of two years, and we note that Lord Dholakia's Amendment Bill, currently before Parliament, provides a possible set of proposals. We

also agree with the Criminal Justice Alliance that consideration should be given to reducing the rehabilitation periods for 18-20 year-olds (except in serious cases) as they face particular problems in finding employment after committing minor offences.

Q20. How can we best meet our ambition for a national roll-out of the mental health liaison and diversion service?

We regard this initiative as one of the top priorities in criminal justice, because it offers not only the prospect of better treatment for highly vulnerable people but the relief of avoidable pressures on the prison system as a result of inappropriate allocation. We would hope that the broad implementation plan published in the wake of Lord Bradley's 2009 review will be followed. Key to this is the establishment of national standards of service and training to improve awareness of mental health problems at police stations, courts and in prisons so as to facilitate early diversion and treatment. While recent years have seen an improvement in prison health services, there is clearly a need for properly funded and co-ordinated community mental health services. There must be some anxiety about how the impending NHS commissioning reforms will affect this, as a great deal of expertise in mental health commissioning gained by Primary Care Trusts is in danger of being dissipated. It will also be important to monitor and encourage collaboration between mental health and substance misuse services in dealing with offenders with complex needs who sometimes find themselves excluded from one or other service. It may be that provision of a community order with a generic health requirement, as suggested in Q38, would help here, as a counter to "working in silos".

Q27. What is the best option for measuring reoffending and success to support a payment by results approach?

We do not have the expertise to comment in detail on schemes for payment by results, but key issues are the selection of performance indicators and the attribution of outcomes to different providers working in integrated schemes. We are encouraged by the care with which the Green Paper seeks to avoid common problems with targeted schemes, and are inclined to think that there is much to be said for experimenting with local pilots and seeking to learn from a variety of good practice, rather than prematurely imposing rigid criteria. We also think there is a case for performance indicators to include not only the prevention of re-offending but outcomes which are recognised to contribute to that end, such as provision of housing, employment and successful drug treatment.

Q28. Is there a case for taking a tailored approach with any specific type of offender?

Yes – we would highlight women, members of minority ethnic groups, offenders with mental health problems and learning disabilities, and young adults. We have already mentioned the specific needs of female offenders (Q14). There is evidence to suggest that offending behaviour programmes which rely heavily on cognitive-behavioural therapy may not be as effective for women as for men. The same appears to be true of members of some minority ethnic groups, who in any case face multiple disadvantages in

the criminal justice system. We believe that much closer attention needs to be paid to the needs of people with mental health problems and learning disabilities, whose difficulties often lead to failure to complete programmes on which progress or release depends. Finally, recent years have seen increased awareness of the developmental problems of young adults, for whom the discontinuity between the youth and adult systems is often profoundly unhelpful.

Q.32 What are the best ways to simplify the sentencing framework?

We welcome the Green Paper's aim to replace current complex and piecemeal arrangements with a single sentencing framework, while retaining a separate approach for youth justice. Determinate sentences with release on licence at the halfway point should be the norm, and we support the proposals to limit Indeterminate Sentences for Public Protection, which have had many undesirable, if unintended, consequences. We agree that much greater use should be made of financial penalties and that these must be enforced more rigorously – though this must be tailored to offenders' means in order to avoid indebtedness and the temptation to return to crime. This could help to prevent minor offenders being given community sentences and ascending the custody ladder prematurely. We support increased use of community sentences in place of short terms of custody, though we agree that the latter may sometimes be necessary. There is broad agreement that prison is appropriate for serious and violent offenders. More difficult is the disposal of relatively minor but persistent offenders. We believe there is value in the use of intensive community sentences for prolific offenders. We also support the proposal to withdraw the option of remand in custody for those defendants who would be unlikely to receive a custodial sentence if convicted.

Q.37 How can we make community sentencing most effective in preventing persistent offending?

From the standpoint of providers, it is vital that community sentences should be subject to careful design and assessment, and that thorough training in delivery should be provided. From the standpoint of sentencers, there is a need to match the sentence to the offender's needs. There has been widespread concern about under-use of the mental health treatment requirement, which may reflect the difficulty of obtaining a full psychiatric report, but may also signal lack of awareness of mental health issues. It also appears that the alcohol treatment requirement is under-used relative to the proportion of offenders with an alcohol problem. We welcome the emphasis in the Green Paper on flexibility and professional judgment on the part of providers in implementing community sentences. The chaotic lifestyle of many offenders gives rise to many dilemmas in seeking compliance, and it is desirable that some discretion should be given to those working closely with them in order to take account of particular circumstances.

Q.39 How important is the ability to breach offenders for not attending treatment in tackling their drug, alcohol or mental health needs?

There is a difficult balance to be struck here between effective enforcement of the decisions of the court and realistic allowance for the circumstances of offenders. Many people with substance abuse or mental health problems need extra help and support in attending treatment. There should be some concessions to human frailty, as a return to court may be counter-productive, but the option of breaching should remain, and should be used where judged appropriate.

Q.48 How can we simplify the out of court disposal framework for young people?

We strongly support the use of out of court disposals as a response to the "net-widening" which has drawn too many young people into the criminal justice system in recent years. We welcome informal interventions which may take account of a young person's particular needs and introduce the opportunity for making reparation. We follow the Prison Reform Trust in commending the use of triage schemes in which trained YOT staff are placed in police custody suites to assess young people, and where possible to divert them from the justice system.

Q.49 How can we best use restorative justice approaches to prevent offending by young people and ensure that they make amends?

There is now a huge amount of experience of operating restorative procedures in youth justice, at its most developed in the Northern Ireland Youth Conference Service. A restorative conference ought to be the standard option to most young people who offend for the first time. The evidence from Northern Ireland suggests that this could have a significant impact not only on reoffending rates but on the ability of young people to make amends and on victim satisfaction with conferencing (which was recorded at 89% in one survey in 2008/9).

Q.51 How can we succeed in reducing the need for custodial remand for young people?

We support the proposal to remove the option of remand for young people unlikely to receive a custodial sentence, and the introduction of a single youth remand order for 12-17 year-olds. As with adults, the practicalities of facilitating bail for young people should include communication with family and friends to ensure suitable accommodation in the community.

Q.52 How do you think we can best incentivise partners to prevent youth offending?

Experience seems to show that prevention is most effective when undertaken through early intervention by mainstream children's, educational and health services. Nevertheless, it is right for YOT teams to work remedially with families through tools such as parenting orders. We would wish young offenders to be dealt with in the community rather than in custody wherever possible. We note that recent work on justice investment has drawn attention to the anomaly that custody, being centrally provided, is

virtually a free good, whereas local authorities who take responsibility for accommodating and working with young offenders face considerable costs which are inadequately recognised in view of the savings they deliver to central government. We support the proposals in the Green Paper to give incentives to local areas to develop alternatives to custody by reimbursing the costs of intervention.

Q.55 How can the functions of the Youth Justice Board best be delivered by the Ministry of Justice?

We are concerned that the principle embodied by the Youth Justice Board – that children should be treated differently from adults by the criminal justice system, as required by the United Nations Convention on the Rights of the Child – should be safeguarded under the new arrangements. We therefore agree with the Prison Reform Trust that provision for under-18s should be ring-fenced by the deployment of dedicated staff, resources and management. We regard the commissioning of custody places as a function which particularly requires attention to the specific needs of vulnerable and disturbed young people.

Conclusion

We believe that the Green Paper offers a balanced set of proposals whose priorities are consonant with the Christian tradition of teaching about crime and punishment. This has consistently affirmed the necessity of both punishment according to desert and the opportunity of rehabilitation, the latter based on our belief in the redeemability of all human beings. This belief can also spring from secular sources, as Shadd Maruna argued in the 2010 Perrie Lectures, but it is a distinctive Christian insight and motivation which underpins the work of many organisations and volunteers working with offenders in prisons and in the community. We are happy to acknowledge that the idealism of the concept must in practice be combined with realistic analysis of outcomes, as the Green Paper outlines.

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