

the Howard League for Penal Reform

Early Career Academics Network Bulletin

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Introduction



The Howard League is just about to embark on a new initiative: The Symposium: to stem the flow. For the last few months we have been working with senior academics and thinkers to work out the best way that we can work towards our aim of developing an effective penal system which creates fewer victims of crime, has a diminished role for prison and creates a safer community for all. Through The Symposium we are seeking to develop innovative, credible and challenging ideas that build into models to change penal practice and outcomes. We will do this through generating the climate and intellectual debate that can act as a springboard to contest the conventional role of the penal system and ultimately promote a new, achievable paradigm that will deliver a reduced role for the penal system while maintaining public confidence, fewer victims of crime and safer communities. The challenge will be to develop an agenda for change that counters the current mores of penal populism.

The Symposium's work will be located around three dialogue hubs:

1. Localism and justice reinvestment
2. Social justice incorporating moral and legal frameworks
3. The role of the state

Each hub will be led by a prominent Professor. The Howard League is keen for contributors to be drawn from disparate academic specialisms including philosophy, geography, politics and economics to help develop the new paradigm for penal policy.

The hub leaders will be announced in the autumn and each hub's work programme will start shortly after that. We want The Symposium to be an inclusive and interactive process which draws in ideas and expertise from all academic disciplines as well as practitioners and original thinkers. If you are keen to be a part of The Symposium please [email Anita Dockley](#), the Howard League's Research Director.

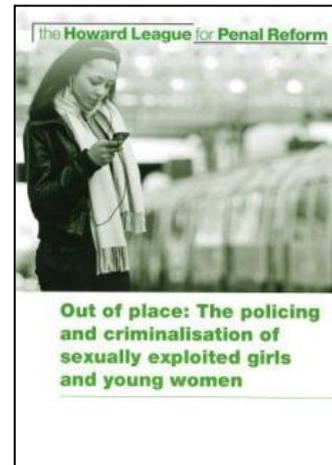
One last thing – a date for your diary. The next ECAN event, Desistance: Understanding *The Road from Crime* will be held on Monday 12 November at the University of Leeds. It is a joint event with the British Society of Criminology (Yorkshire and Humberside). More information about how to book your place will be sent out in September.

Anita Dockley
Research Director

News

New research launched in parliament

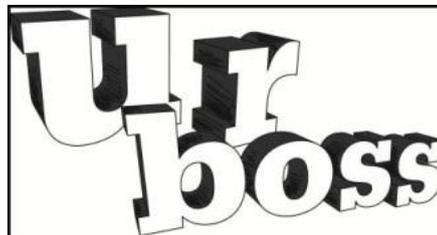
The Howard League has launched its latest research [*Out of place: The policing and criminalisation of sexually exploited girls and young women*](#) by Jo Phoenix, Professor of criminology at Durham University. The research aims to improve understanding of sexual exploitation faced by girls and young women and improve the ways that this is recognised and dealt with by the criminal justice system and by agencies and practitioners. The report was launched in parliament, where Jo presented her findings to the [All Party Parliamentary Group on women in the penal system](#).



Frances Crook, Chief Executive of the Howard League for Penal Reform commented, 'While recent discussions of sexual exploitation understandably focus on the perpetrators, there is an urgent need to recognise the role that poverty itself has to play in how young women become victimised'. Further details on the report are featured in the Research update on page 24.

Police Commissioner campaign

Elections will be held on 15 November 2012 across 42 authorities in England and Wales for Police and Crime Commissioners (PCCs), who will oversee the work of local police services outside London. The Howard League's participation project for young people in the criminal justice system, U R



Boss, is supporting young people in custody and serving sentences in the community to get their experiences and ideas across to PCC candidates. The candidates and successfully elected officials will be asked to pledge that they will consult young people when they develop their plans and decide on how to spend the considerable budgets at their disposal.

The Howard League is asking PCC candidates to sign the following pledge: 'If elected, I pledge to consult young people, including young people in contact with the criminal justice system, when developing my police and crime plan'.

Lucy Russell, Senior Campaigns Co-ordinator for U R Boss, said: 'It is important the voice of young people, especially those who are in contact with the criminal justice system, is not lost in these major changes and that PCCs represent the concerns of whole communities rather than those sections that can shout the loudest'.

Howard League bursary awarded to Janet Bright



Congratulations to Janet Bright, who has been selected to receive a bursary paying the full time fees for the MA in criminology at Birmingham City University in 2012–13. Janet is currently working in the West Midlands as part of the Offending Users Rehabilitation Service managing the delivery drug treatment interventions.

Janet said, 'I would like to further my knowledge and understanding of the criminal justice system, explore why individuals commit crime and most importantly how offending and its associated harms can be reduced. I feel privileged to have been chosen as the recipient of the Howard League bursary and am excited about the prospect of working with them'.

New restraint guidelines permit deliberately inflicting pain on children

On 10 July 2012 the government issued a new set of guidelines on restraint called [Minimising and Managing Physical Restraint \(MMPR\)](#), which will be used in STCs and YOIs. MMPR allows for pain compliant restraints to be used on children and young people, including, mandibular angle technique (MAT), wrist flexion and thumb flexion. The mandibular angle technique, for example, involves a member of staff approaching from behind and applying pressure at a point below the ear.

A particular concern on the part of the Howard League is that any information regarding the practical application on pain compliant techniques have been redacted from the new restraint manual.

Frances Crook, Chief Executive of the Howard League said:



'I welcome the emphasis on conflict resolution, retraining and improved governance in the government's new system for minimising and managing the physical restraint of children. This recognises that restraint is often brought about by staff who are not properly trained or equipped for the challenging role they face rather than the fault of the troubled children in their care. Investing in harm reduction creates less violence and makes for a safer environment for children and staff alike.

The Howard League remains deeply concerned that the government is authorising the use of two potentially lethal holds. It is also concerning that information regarding the practical application of pain compliant techniques on children is being kept secret in the new restraint manual, impeding proper scrutiny'.

Landmark parole ruling

A landmark High Court ruling could see many long-term prisoners granted early release. The ruling centres around the case of Caz Telfer, who challenged that the Parole Board's inconsistent approach to setting release dates for those serving life and long-term sentences amounts to a violation of human rights under Article 14 of the European Convention on Human Rights.

Caz Telfer (now known as Caron Foley) was eligible to apply for release after serving half of her sentence, but the Parole Board refused to recommend her release last year on the grounds that she has failed to come to terms with her behaviour. She will not be eligible for automatic release until she has served two-thirds of her sentence in 2014, and her lawyers argued this put her in a worse position than life prisoners who can be granted parole after serving half of their tariff as long as they no longer pose a serious threat.

Lord Justice Thomas acknowledged that Telfer's case would have 'huge consequences' for long-term prisoners and she was granted permission to take her case to the Court of Appeal.

Frances Crook commented, '[there are] myriad complex regulations when it comes to people's release from prison. Two people could have committed the exact same offence and yet will be released at different times and under different conditions. The constantly changing goal posts does not garner public faith in the criminal justice system...the reality is that most people in prison will at some point be eligible for release. Millions of pounds are spent incarcerating long-sentenced prisoners and it is the responsibility of prisons to ensure that people are able to resettle into the community safely on release'.

Remand prisoners awaiting trial are treated worse than those already serving a sentence

Nick Hardwick, Chief Inspector of Prisons, has published a short thematic review that found that many remand prisoners had a poorer regime and less support than sentenced prisoners, despite a long-established principle that remand prisoners, who have not been convicted or sentenced by a court, have rights and entitlements not available to sentenced prisoners.

The report found that remand prisoners are at an increased risk of suicide and self-harm; a third or more had a drug or mental health problem; and most showed little awareness of support services available in prison.

Nick Hardwick commented, 'The specific circumstances and needs of remanded prisoners need to be much more clearly and consistently recognised so that they are held in custody for the shortest time possible and while there are given at least the same support as convicted and sentenced prisoners. This is not just a question of addressing injustice in the treatment of individuals, but ensuring that costly prison places are not used unnecessarily and that everyone is given the chance to leave prison less likely to commit offences than when they arrived.'

The Howard League welcomes this review.

Members' notice board

Can you help?

One of the Howard League's prisoner members is undertaking a PhD. He is particularly interested in offender behaviour programmes and their impact on prisoner reclassification. At the moment he is struggling to get access to books and journals that will help him with his research. If any ECAN member has any unwanted books (either specific to his research interests or general criminological texts) or journals please can you [contact Eleanor Biggin-Lamming](#) and she will facilitate delivery of the books.



Many thanks.

Feature

Rethinking gendered prison policies: Impacts on transgender prisoners

Sarah Lambie, Birkbeck College, University of London

Law enforcement officials have a long history of targeting, punishing and criminalising people who do not conform to gender norms. As feminist criminologists have shown, for example, women who fail to conform to femininity norms are often policed and punished more harshly in the criminal justice system than those who adhere more closely to societal gender expectations (Carlen, 1983, 1985; Heidensohn, 1996). Likewise, traditional norms around masculinity and femininity still operate as key modes of discipline, power and regulation within carceral settings (Sim, 1994 ; Carrabine and Longhurst, 1998; Crewe, 2006). Although the role of gender norms within the penal system is widely recognised, little attention has been paid to their specific impact on transgender people.



The term 'transgender' is used and defined in many different ways; see for example, Currah and Paisley (2006). It is commonly used as an umbrella term to describe people who identify or express gender differently than what is traditionally associated with the sex they were assigned at birth. This includes people who

undergo a process of gender reassignment to live permanently in their self-expressed gender (which may or may not involve medical interventions such as surgery or hormone treatment), as well as those who express less fixed and more fluid gender identities and those who self-define as gender variant or gender non-conforming. Gender non-conforming, refers to people whose gender presentation or identity does not conform to gender norms or expectations but who do not necessarily identify as transgender (e.g. women who present in a masculine way, but nonetheless identify as women, as well as androgynous, gender-fluid and gender ambiguous people).

Transgender prisoners in Britain

We do not know exactly how many transgender people are currently incarcerated in Britain. This is partly because prison officials do not collect information on the gender identity of prisoners (as opposed to legal sex status) and partly because prisoners are not always safe to disclose non-conforming gender (and sexual) identities. However, a growing body of evidence suggests that transgender and gender non-conforming people are over-policed and over-imprisoned in many jurisdictions, including Britain.

Transgender and gender non-conforming people end up in prison for many reasons, but systemic discrimination is often a key factor. Transgender people face high rates of housing and employment discrimination, bullying in schools, estrangement from family, street harassment and hate-based violence – factors which greatly increase the risks of social exclusion, economic insecurity and criminalisation (Whittle, Turner and Al-Alami, 2007; Mitchell and Howarth, 2009). A transgender young person, for example, might initially drop out of school because of harassment and bullying. Coupled with problems at home, the young person may find themselves homeless and unemployed. Once on the street, accessing services and support becomes difficult, particularly as many homeless shelters and social services are not safe or accessible for gender non-conforming people. In such situations, survival can sometimes mean working in criminalised economies like the drug and sex trade, which can in turn lead to prison.

Gender segregation in prisons

Once in prison, transgender people face numerous challenges. First, as sex-segregated and highly gendered institutions, prisons restrict the right of transgender people to self-determine and express their gender identity. Transgender people are usually placed in prison according to their perceived genitals rather than their self-expressed gender identity. This means that trans-women are often held in men's prisons and trans-men are held in women's prisons. Until recently, even when transgender individuals obtained a Gender Recognition Certificate (a document which legally recognises a person's acquired gender under the Gender Recognition Act 2004) they were still classified according to their birth-assigned gender. However, in 2009, a transgender woman won her case against the Ministry of Justice, which had refused to transfer her to a women's prison despite a Gender Recognition Certificate that recognised her status as female (*AB, R (on the application of) v Secretary of State for Justice and Anor* [2009] EWHC 2220 (Admin) (04 September 2009)). The High Court judge ruled that the Ministry's actions breached Article 8 of the European Convention on Human Rights. While this case set an important precedent, which, when coupled with the new Equality Act 2010, offers greater protection for transgender people in prison, there are still reports of inconsistent placement decisions, raising questions about whether such rights are being upheld in practice.



Transgender prisoners may be held in solitary confinement on 'security' or 'protective custody' grounds as a response to the dilemmas posed by sex-segregation. In such cases solitary confinement becomes a de facto form of punishment as such status usually means reduced access to recreational and educational programmes, and increased psychological

stress as a result of isolation. Such practices effectively treat transgender people as 'the problem', rather than addressing the underlying issues of transphobia in prison or rethinking existing policies around sex-segregation.

Indeed, official concerns about a transgender person's safety and risk can sometimes mask an unwillingness to adequately address systemic issues of transphobia in prison.

Other problems faced by transgender prisoners

Transgender people are frequently denied access to trans-specific healthcare and other necessary supports (including gender appropriate clothing and make-up, hormone treatment, surgery, etc.). This can cause problems for people who have already begun gender transition and are forced to stop or delay the process, but also for those who wish to begin the process once they've entered prison. Many trans-people also fear negative reprisals from disclosing their status, and choose to conceal their trans-identity entirely or wait to begin formal transition until they are released from prison – often at considerable emotional stress and anguish. Such emotional trauma is cause for concern, particularly as rates of self-harm and suicide are already high in prison and trans-people have been specifically identified by the prison service as an 'at risk' group in this area.

Perhaps most alarming is the level of harassment, assault and abuse that transgender people can face in prison. While such abuses are more widely documented in other jurisdictions (particularly in the US, see Stop Prisoner Rape and American Civil Liberties Union, 2005 ; Sylvia Rivera Law Project, 2007 ; Arkles, 2009), evidence from individual prisoners, prison inspectorate reports and advocacy groups suggest that the problem is also acute in British prisons.

New guidelines on the care and treatment of transsexual prisoners

In March 2011, the Ministry of Justice issued mandatory guidelines (PSI 07/2011) on *The Care and Management of Transsexual Prisoners*. Written to comply with the Equality Act 2010 (where gender reassignment is specified as a protected characteristic in law), the 20-page guidelines identify a number of duties and responsibilities that prisons must fulfil to respect the rights of trans-identified prisoners. Prison officials must:

Allow transgender people to live permanently in their new gender. This includes enabling prisoners to dress in clothes appropriate to their acquired gender and to adopt gender-appropriate names and modes of address.

Enable transgender prisoners to access clothing, makeup and other gender-specific items that they need to live in their new gender.

Provide transgender prisoners with the same quality of medical care that they would expect to receive from the NHS if they had not been sent to prison.

Put in place measures to manage the risk of transphobic harassment and transphobic hate crime.

Importantly, the guidelines stipulate that access to necessary items such as gender-appropriate clothing and makeup is *not* a privilege and cannot be

taken away as a form of punishment or treated as part of the Incentives and Earned Punishment Scheme.

The guidelines also stipulate that a trans-person whose gender is legally recognised through a Gender Recognition Certificate must be placed in prison according to the gender on the certificate, unless there are security reasons for not doing so. Trans-prisoners who do not have a Gender Recognition Certificate may also be placed in a gender appropriate prison on a case-by-case basis. The guidelines specify that ‘this is a legal issue rather than an anatomical one, and under no circumstances should a physical search or examination be conducted for this purpose.’ This protection is vital, as trans-people in various jurisdictions have reported being regularly subjected to cruel, demeaning and abusive strip-searches (Sylvia Rivera Law Project, 2007; Arkles, 2009).

While the 2011 guidelines are much needed and long overdue, they are nonetheless limited by some problems. First, the guidelines define transgender identity on narrow terms, using the medical definition of someone who has been diagnosed with gender dysphoria and using the more narrow terminology of ‘transsexual’ rather than ‘transgender’ throughout the document (‘transgender’ is conventionally understood as encompassing a broader range of identities and experiences, including those who may not want (or are unable to access) medical intervention). By defining a transsexual person as ‘someone who lives or proposed to live in the gender opposite to the one assigned at birth’, the document also relies on a binary definition of gender (i.e. there are only two) rather than a more fluid understanding (i.e. there are many gender expressions).

Secondly, the guidelines are highly discretionary, leaving most decision-making power in the hands of prison officials and members of the medical establishment. This leaves considerable room for discrimination to persist, particularly when prison officials or medical staff may not have the specific knowledge or training to deal appropriately and sensitively with gender identity issues. Moreover, the broader problem of ‘gatekeeping’ (where medical and legal officials have the power to determine whether a person’s transition decisions are legitimate) is likely to be exacerbated in the prison context where social stigma and discrimination against prisoners may shape perceptions of who is deserving and undeserving of support. At the same time, however, the level of discretion leaves room for flexibility, which can be positive. For example, the guidelines state that a prisoner’s wishes should be taken into consideration when placement decisions are made. This means that if a transgender man feels vulnerable being housed in a male unit and therefore prefers to remain in a women’s prison, his wishes need to be considered. The guidelines also stipulate that careful consideration should be made if placement decisions are likely to result in the prisoner being held in long-term segregation.

Finally, while the guidelines set vital standards that offer much promise for improving conditions for transgender people in prison, the gap between official policy and actual practice is likely to remain wide. Transgender prisoners report considerable administrative hoops, attitudinal barriers and lack of

support to access basic needs, which will require more than policy to overcome.

Transgender prisoners do report some positive experiences inside, particularly when peer support is available inside prison and support from family, friends and advocacy groups is available from outside. Transgender prisoners are developing both formal and informal support networks to assist each other in prison which can increase safety and well-being (see www.bentbarsproject.org/resources/newsletter for example). Despite this, the underlying problem is a more deeply entrenched one: namely, that the prison system at large continues to enforce and regulate gender norms in ways that cause considerable harm and damage at both individual and societal levels. Addressing these issues over the long term will require far more fundamental change that strikes at the heart of prison system itself.

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About the author

Sarah Lambie is a lecturer at Birkbeck School of Law, University of London and co-founder of the Bent Bars Project, a letter writing programme for lesbian, gay, bisexual, transgender and gender-nonconforming prisoners in Britain.

Feature

Seeking help and peer support in prison

Michelle Jaffe, University of Keele

Samaritans volunteers have been visiting prisons since 1991 to select, train and support prisoners to provide confidential emotional support to other prisoners. [Samaritans](#) provides confidential emotional support across the UK via phone, email, face-to-face and letter. Whilst Samaritans is advertised as an emotional health charity, it is historically linked to supporting the suicidal, and it was this cause that prompted the organisation's creation in 1953 and its involvement in prisons from approximately the 1980s onwards. The introduction of the ['Listener' scheme](#) has been followed by the introduction of a wide variety of other peer support schemes providing different forms of support to prisoners. These include education, counselling, advocacy, mentoring, befriending, information, practical support and guidance. Volunteering by prisoners has been identified by both Labour and Coalition governments as a mechanism of reducing reoffending through active citizenship.



I first became interested in the issues of suicide and self-harm in prison and the Listener scheme when I became a Samaritans volunteer myself. In particular, I became concerned with the impact of the prison environment on those individuals confined there, and how prisoners reacted to the environment and the varied and complex coping mechanisms they selected. After many discussions with Listeners, I was struck by how peers could support one another in prison and relate to how others were feeling and coping. The Listeners I talked with appeared to be deeply committed to their role and their work.

When researching my undergraduate dissertation on the subject of suicide in prison and the Listener scheme, it became apparent that despite the presence of the Listener scheme in prisons for over two decades, and despite the popularity of the use of peer support and mentoring by government in the field of criminal justice more widely, there was a paucity of empirically robust research dedicated to these topics. My doctoral research therefore aimed to make a significant contribution to current knowledge and thinking about the use of peer support in prison. In particular, I was concerned with how prisoners used (and did not use) Listener support in their patterns of coping and help-seeking in prison, how the Listener scheme was perceived and used by prison staff, prisoners and Listeners, and how Listeners described their experiences of conducting their voluntary work in prison.

Prisoners' help-seeking intentions

The special and unique features of the prison environment have long been recognised by prison sociologists. Prisons are characterised by power imbalances and a lack of control and autonomy over taken-for-granted aspects of life, where all seemingly 'everyday' activities are highly visible to a large number of people. As such, help-seeking in prison is influenced by the nature of the environment. Whilst there is an extensive literature on prisoner coping and adaptation, much less attention has been paid to help-seeking by prisoners by prison scholars. Understanding help-seeking is important because it challenges assumptions that sources of support are unproblematic, and explores the impact of the environment on help-seeking preferences.

Part of my doctoral research involved conducting surveys with prisoners. Survey respondents were asked which sources of support they would seek help from for different problems. It emerged from the analysis that prisoners strategically selected sources of support and that help-seeking was problem driven. Prisoners were more likely to seek help from 'inside' sources of support (i.e. prison officers, prison staff or prisoners) for problems related to prison life. When it came to problems related to their lives outside (for example changing their lives, problems related to their offence etc.) prisoners were more likely to seek help from 'outside' sources of support (i.e. family and friends). It appears that prisoners target those sources of support most likely to be able to assist them with their problem. Overall, survey respondents indicated that they were less likely to seek help from other prisoners and Listeners than prison staff or people on the outside for their problems.

For problems of an emotional or mental health nature the role of 'peers' was more prominent. The fact that prisoners are more likely to turn to their peers for problems of an emotional nature during their time in prison suggests that these sources of support are selected on grounds of the benefits of peer understanding and empathy.

Approximately a third of surveyed prisoners indicated that they would not seek help at all for their problems; this highlights the need to understand more about the factors that hinder help-seeking which the qualitative interviews explored in greater depth.

Interviews with prisoners and staff highlighted the dependency of prisoners on prison staff to facilitate their contact with the outside world, which in turn provided help-seeking opportunities. In this sense staff were gatekeepers to 'outside' sources of support. When it came to seeking help from prison staff, prisoners described how they strategically selected particular prison staff who they felt they could trust, who they could rely on to achieve the desired response and action and who came across as friendly and approachable. Prisoners also highlighted that they felt they needed to approach staff at the right time and in the right context to avoid negative responses from prisoners who may presume they were 'grassing' to staff. In this way, the image associated with help-seeking, and the assumptions the people around them made when prisoners had contact with different sources of support shaped help-seeking.

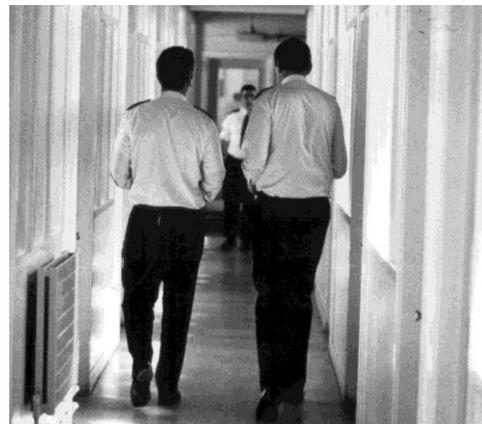
Interviews with prisoners also revealed that seeking help from other prisoners was highly dependent on trusting relationships that had been formed with particular individuals, and that prisoners were acutely sensitive to the lack of trust present in the prison environment. Prisoners were more likely to reach out to other prisoners who they considered in need of help and support in informal and less visible ways, than they were to actively seek help from one another.

Seeking help from Listeners

Examination of the prisoner interview data revealed that social contact with Listeners had a key role in the development of views towards Listeners, and in encouraging help-seeking from them. As with staff and prisoner sources of support more generally, prisoners described forming views about particular Listeners and did not generalise the group as a whole. Further, social contact with Listeners provided opportunities for more informal and less visible help-seeking. The Listeners interviewed frequently described prisoners approaching them informally. On wings where Listeners were not resident, prisoners were more reluctant to call out a Listener who they did not know or had not observed, for fear of breaches of confidentiality.

The survey and interview data revealed that seeking help from Listeners might be 'risky' and portray a weak or vulnerable image to other prisoners. Listeners recognised this, and described how they made efforts to reach out to prisoners themselves, and socialise with prisoners to encourage take-up of Listener support. Almost half of survey respondents who had not talked to a Listener indicated that the reason for this was that they had not needed Listener support. Moreover, both the prisoner survey and interview data revealed that prisoners were more likely to access Listeners during the initial period of custody, and when confined in a cell, which created a sense of urgency to talk and offload, in other words, a 'tipping point' whereby they sought out Listener support. Taken together, these findings highlight that as with outside and other prison sources of support, seeking help from Listeners is also strategic and problem-driven.

The gatekeeping role of prison staff granting access to Listeners was a pertinent theme across prisoner, Listener and staff interviews. Staff had the ability to facilitate or hinder prisoners' access to Listeners, and Listeners' access to prisoners. Additionally staff often attempted to use prisoners' requests to talk to a Listener as an opportunity to glean more information about the well-being of prisoners from both prisoners and Listeners, or to 'screen' prisoners' help-seeking choices thus constraining the degree to which prisoners freely choose a desired source of support for their problems.



Conclusions

Prisoners exhibit a spectrum of help-seeking activity that is both strategic and problem driven. The nature of the prison environment shapes and influences help-seeking in a number of ways and can make help-seeking 'risky', hence help-seeking often occurs in less visible and informal ways. Prisoners' help-seeking choices are constrained by the nature of the prison environment and the gatekeeping role of staff. With specific reference to seeking help from the Listener peer support scheme, clearly the Listeners were one source of support selected amongst others, and prisoners had strategic reasons for doing this. Whilst the government is currently planning to further expand the role of peer support across the criminal justice system and in prisons in a range of different areas, it also needs to take into consideration prisoner choice, their help-seeking preferences, and the constraints of the prison environment under which choices are made, so that a more informed range of provision can be offered.

About the author

Michelle Jaffe is a PhD research student at Keele University She has just passed the viva for her PhD thesis.

Feature

Putting criminal justice in jeopardy? The incompatibility of implementing payment by results in a criminal justice context

Thomas Raymen, Durham University

Introduction

The government's Green Paper, *Breaking the Cycle* (Ministry of Justice, 2010a), identified 'payment by results' (PBR) as a central means of criminal justice reform – aiming to have all criminal justice services operating under payment by results by 2015.

Payment by results is an outcome-based funding initiative which intends to finance criminal justice services based upon measurements of 'effective' performance, and engage criminal justice service providers (i.e. prisons and probation trusts) in 'contracts' with the Ministry of Justice, where funding is predicated upon meeting agreed targets in reducing reconviction rates (Collins, 2011).



There are several models of PBR, where payment plans and the degree of financial investment by the Ministry of Justice vary. These include some which involve private investors, such as the Social Impact Bond (SIB) pilot currently underway at Peterborough prison (see Disley et al., 2011 for further details). In some funding models, the Ministry of Justice gives a payment to service providers to cover the most basic activities and essential costs, followed by an additional payment to reward successful practice if reconvictions are significantly reduced (Dicker, 2011). A higher risk form of PBR leaves prisons, probation trusts, and community sentence providers responsible for providing all of the 'front money' to initially fund their services; only seeing a return on their investment if they are successful in reducing reconvictions by the agreed 'target'.

The rationale for introducing PBR to the criminal justice system has been centred upon a drive to refocus offender management back to the outcome of reducing reoffending, and financially incentivise service providers to perform, spurring more effort and effective practice by practitioners (Ministry of Justice, 2010a). The initiative is expected to inject innovation into criminal justice practice by freeing service providers from process-based targets and banal 'box-ticking' of bureaucratic criminal justice (Collins, 2011). As an added bonus for the Ministry of Justice, PBR funding models significantly transfer financial risk away from the government public spending and onto service providers. Service providers have to participate in the initial funding of criminal justice service delivery, while the Ministry of Justice is absolved from the burden of funding 'failing' services (Fox and Albertson, 2011). A further attraction of payment by results for the government is its potential to generate savings in public spending through reductions in reoffending. It is assumed that enhancing the freedom of service providers, as well as financially

incentivising effective criminal justice practice, will lead to overall improvement in engagement with people who have offended and, therefore, reductions in reoffending. Theoretically, these reductions in reoffending are expected to yield savings through reduced police, court, and prison costs. This is particularly pertinent considering that in 2008, 49.4 per cent of all ex-prisoners were reconvicted of a further offence within one year of release (Ministry of Justice, 2010b).

NOMS' reducing reoffending resettlement strategy in late modernity: Some problems for PBR

Basing the funding of criminal justice services upon the ability to significantly reduce reconvictions brings discussion back to familiar and unanswered questions in the field of criminology and penology: how do we effectively and consistently prevent reoffending? The question which has yet to be adequately addressed by PBR literature is to what extent will an overhaul in financial structure and funding affect criminal justice practice? Within existing literature there is a concerning dearth of information as to how the introduction of this outcome-based funding initiative actually improves 'on the ground' management and reduces reoffending (Fox and Albertson, 2011).

Commentary from political advocates has been limited to liberating service providers to be more creative in their offending behaviour work (Dicker, 2011). Simply put: without changing existing paradigms of thought and our approach to reducing reoffending, how does changing the way the Ministry of Justice funds criminal justice services improve their effectiveness?

In order to assess this, a critical analysis of offending motivations and the process of desistance in relation to the current offender management policies must be examined. Criminal justice policy must be attuned to the lived experience of those who have offended and the realities of offending motivations and the process of desistance. It must be critically assessed whether current strategies to promote desistance realistically address offending behaviour and motivations (Bowling and Farrall, 1999; Maguire and Raynor, 2006). Questions surround the criminal justice system's underpinning assumptions about crime and desistance that currently explain and conceptualise criminality within the narrow confines of socio-economic deficit and offending 'pathways' (Ilan, 2010; Maguire and Raynor, 2006). This is manifested in criminal justice's primary modes of intervention: reducing reoffending resettlement pathways (e.g. areas of a person's life that are correlated to offending (such as living arrangements, family and personal relationships, drug and alcohol misuse, and employment situation) and the Offender Assessment System (OASys). However, the extent to which these risk factors cause offending remains unclear and, therefore, what remains equally ambiguous is whether solely addressing social welfare issues such as employment, accommodation, and substance misuse, will cause those who have offended to permanently desist from crime.

Explorations of deviant and offending behaviour have focused upon the social and cultural characteristics of late modernity in relation to issues of identity and status for the individual. Specifically, how emerging cultural forces such as consumerism, and the prime importance of individualism and navigation of personal identity have significant roles in how those who have offended forge identities and class-cultural values that drift toward deviancy and

transgression. It has been argued that late modern processes of deindustrialisation, globalisation, and the rise of 'consumer capitalism', have morphed Western society into a consumer society (Young, 1999; 2007). Individualism and personal identity are of a premium, and culturally positive identities are navigated through wealth, material luxuries, status, and a 'career culture'; as opposed to post-war 'Golden Age' values and identity grounded in family, community, and employment (Young, 1999). The processes listed above induced a rapid deconstruction of the twin values of family and work, leaving swathes of the population 'disembedded', without foundation for culturally popular identity formation (Ibid.). With the inescapable emphasis upon consumerism and individualism, the relative deprivation of the urban poor and underclass are accentuated, as they lack the 'social capital' to conjure any culturally positive mainstream identity within late modern consumer society. As Young (2007) describes, the underclass have the double humiliation not just of having nothing, but more importantly of being nothing in a late modern world of consumerism and identity status.

Cultural criminology has suggested that criminality and partaking in 'street cultural' deviant values is a form of positive identity construction that acts as a solution, whether real or imagined, to social position and negative identity within wider 'mainstream' society (Hayward, 2004; Ilan, 2010; Martin, 2009). As John McVicar, a notorious criminal of the 1960's confirms:

Inside [prison] or outside, I was always liked by my own kind. My life was always exciting and dramatic; wherever I was, I was part of the action. Psychologically, I had the satisfaction of personifying the counter-culture with which I identified myself, and I found this was confirmed in my notoriety and prestige. I embodied the supreme virtue of the criminal underworld, and I revelled in the greatest compliment it can bestow—gameness (McVicar, 1979: 197–8)

It could be argued that the resettlement pathways are a reconstruction of post-war 'Golden Age' values. Fuelled with the rhetoric of establishing family and employment, it is little surprise that those who have offended often resist or struggle with attempts of 'mainstream' assimilation when they do not have the 'psychological satisfaction of personifying a counter-culture' with which they identify, nor are they really included or positively embraced within 'mainstream' late modern culture (Young, 2007).

For payment by results, understanding these dynamics is critical. The overwhelming focus on practical social welfare interventions such as referrals to housing authorities and employment agencies characteristic of NOMS intervention do not thoroughly consider or engage with the individual's complex perception of self, or actively pursue shifts in 'personal narrative' (Maruna, 2001). While cultural criminology appreciates the influence of traditional sociological-positivist factors upon criminality, it maintains that these factors can have no causality without reference to how the individual human actors subjectively interpret and respond to their socio-economic situation, and attach differing meanings and identities to their lived experiences (Young, 2004).

Furthermore, fundamental characteristics of the process of desistance underlie a specific incompatibility with payment by results schemes. The difficulties discussed above around abandoning existing identities, lifestyles, and behaviour in favour of successful desistance, confirm the established understanding that desistance from crime is not a clinical 'on-off' process. Rather, desistance is described as a 'zig-zag' process, where advances towards desistance are made, but attempts often involve a relapse into crime (Bowling and Farrall, 1999; Maguire and Raynor, 2006; Webster et al., 2006). Desistance is not just an issue of breaking laws but creating a new 'narrative' and departing from an entire lifestyle. Considered in this context, relapse is understandable – almost expected – for large numbers of people. Those being released from custody face difficulties when returning to the environments and peer groups that were the site of previous offending behaviour. With this in mind, relapse into offending resulting in conviction will count against the service provider as an individual 'failure', impacting reconviction rates and potentially preventing payment. Considering that relapses are common in desistance, this indicates a potential incompatibility for PBR and the required reductions in reconvictions could be a problematic challenge.

Introducing PBR into the criminal justice system is a speculative and high risk means of funding, primarily because PBR attempts to base the financial security of criminal justice services upon the predictability of the behaviour of some of the most vulnerable people in society. The ability of PBR to sustainably achieve the proposed outcomes of reducing reoffending and incurring financial savings in criminal justice public spending is dubious. Under PBR it is feasible that financial savings in criminal justice public spending could be achieved, not through reductions in reoffending cutting court, police and prison costs, but through service providers failing to reduce reoffending, thereby freeing the Ministry of Justice from their contractual obligation of payment. It remains unclear as to how an overhaul of the financial structure of the criminal justice service will inject a new paradigm of thought regarding how to reduce reoffending, and how to do so at such significant rates that it will result in tangible savings for criminal justice public spending. Quite simply this question remains: what can be achieved under PBR – with all of the financial risks attached to this funding model – that cannot be achieved under the existing risk-free unconditional budgets? The risk-reward ratio of implementing PBR into the criminal justice system seems to be disproportionately hazardous, and an unnecessary means of reform where the consequential dangers of its failure significantly outweigh the foreseeable rewards.

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About the author

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Research update

Out of Place: The Policing and criminalisation of sexually exploited girls and young women



The Howard League's latest piece of research, *Out of Place: The Policing and criminalisation of sexually exploited girls and young women* by Professor Jo Phoenix was published on 10 July 2012. The research aims to improve understanding of the ways in which practitioners make decisions about whether or not to prosecute and use criminal justice sanctions against sexually exploited girls. It explores the extent to which economic necessity drives girls into commercial and other forms of sexual exploitation, and looks at the ways in which many sexually exploited girls commit crime to try and escape the

men who exploit them or as a cry for help. The published report also makes a series of recommendations for local agencies, calling for them to link together and develop new strategies to protect vulnerable girls and young women from sexual exploitation.

The research was launched in parliament, where Professor Jo Phoenix presented her findings to the [All Party Parliamentary Group on women in the penal system](#) as part of their ongoing enquiry into the involvement of girls in the criminal justice system. Frances Crook, Chief Executive of the Howard League also attended the launch of the report, and said, 'We should remember that these girls are children who are victims and not criminals. When they come to the attention of criminal justice agencies it is vital that their sexual exploitation is recognised and properly responded to.'

The research was featured in several high profile publications, including the *Guardian* and Channel 4 news. There have been many high profile child exploitation cases which have come to public attention in recent months, including the conviction of nine men in Rochdale of sexual exploitation and the ongoing inquiry into child sexual exploitation by the Office of the Children's Commissioner. This research aims to contribute to knowledge in this area, looking specifically at the extent to which economic necessity drives girls into commercial and other forms of sexual exploitation.

Out of place contains a number of case studies which explore forms of sexual exploitation through the eyes of the police, practitioners and the girls themselves. These stories highlight the often hidden nature of sexual exploitation and underline concerns that poor links between criminal justice agencies and sexual exploitation services mean that many girls are 'slipping through the cracks' and are being criminalised as a result of behaviour that stems from their sexual exploitation. Kim's story is a key example of this.

Case study: Kim's story

Kim, who is now 18 years old, is one of the youngest of seven children and still lives in her family home. When Kim was 14 years old, her father and oldest brother were in prison. Kim's mother and older siblings were rarely at home. Kim started 'partying' with older boys and men, often staying out very late and seldom going to school. No one reported her missing from home despite the fact that she would often be gone until the very small hours of the morning. The school referred Kim to a specialist sexual exploitation service who started working with her on 'staying safe' and 'appropriate sexual relationships'. Her sexual exploitation case worker described her as "very difficult to engage" because at that time, she did not think there was anything wrong with what she was doing.

Her boyfriend would buy her alcohol, take her shopping and tell her he loved her. For Kim, this was the first time anyone paid attention to her. Kim's 'boyfriend' was 35 years old. The first time she got into trouble for breaking the law, Kim was 15 years old. Her neighbour accused her, on a popular social networking site, of being a 'slag' and Kim went to her house and got into a fight.

About a year later, when Kim was nearly 16 years old, she told the case worker that some time ago her boyfriend took her to a house in a neighbouring city to meet another man. That man took her shopping and wanted to have sex with her. Kim refused and she was raped. Although she told no one about the rape, Kim decided to stop seeing her boyfriend. She went back to partying, which meant hanging out with older boys, drinking, having a good time and exchanging sex for MDMA, MCAT, cannabis, or £5. She didn't think there was anything wrong with this.

By the time she was 18 years old, Kim was regularly exchanging sex for money, drugs and alcohol, had been raped several times by some of the older boys she partied with and by the 'friends' of her older boyfriends. She also had several prosecutions for being drunk and disorderly, for criminal damage (against the car of one of the men who raped her), was regularly fighting with other girls and continuously breached her youth justice orders. All of this was indirectly related to Kim's sexual exploitation. Throughout Kim's passage through youth justice, no one knew about her sexual exploitation.

It is hoped that sexual exploitation will be better understood as a result of the research. Professor Jo Phoenix commented, 'Although sexual exploitation has recently received a lot of public attention its exact nature is poorly understood. For example, there is a complete absence of recognition in policy, law and practice of the economic drivers and the way that exploitation and prostitution are linked... some of these girls will have extensive contact with the police and youth justice agencies, with the fact that they are victims of commercial sexual exploitation often remaining unknown to the professionals.'

The full report and a short, detailed summary of the research are available to download from the [Howard League's website](#).

Member Profile

Fabio Tartarini

Postgraduate research student at the University of Southampton



I graduated with an MSc in occupational and consumer psychology. After becoming a chartered psychologist in my home country of Italy, I decided to continue my research by joining the Anomalistic Psychology Research Unit at Goldsmiths, University of London. During this time I also developed an interest in criminology and this led me to Southampton University where I am completing a PhD in Sociology and Social Policy.

During my research, I have become particularly interested in research work on desistance from crime. I have also been given the opportunity to work as resettlement administrator for a prison in the midlands. During this time, I started reflecting on how work on desistance could actually apply to someone who is not 'officially desisting' but is involved in a wide range of activities and courses aimed at fostering return into the community as law-abiding citizen.

From what I could see, the prison environment works as a self-sustaining system where different units work together towards the same aim: social rehabilitation of individuals. However, from my experience behind the scenes, and also because of my background in psychology, I started wondering how prison staff's attitudes and practices influence this effort. I could see how prisoners' interest in rehabilitation would, most of the time, be linked to interactions with prison staff and also their own experiences with the criminal justice system. The decision to engage with rehabilitation opportunities seemed to be less about the persons' criminal history or personal reasons, and more to do with the outcome of the interactions within their social environment.

My PhD research is now trying to answer these questions: how can the resettlement strategies available in prison actually help foster individuals' intention to desist from crime? Is it possible to identify how far the prison sentence has helped prisoners into developing their own human and social capital? What role do staff attitudes and practices play? The research design is currently based on three different and interrelated stages: ethnographic observation of everyday life and prisoner-staff interactions; in-depth interviews with prison staff and group discussions with both prisoners and staff.

This experience has made me realise that criminological research should not be a single person's effort but rather, a small piece of a larger joint effort. The Early Career Academic Network and its bulletin represent for me the opportunity to network and learn about other people's experiences and research. Criminology is the joint effort of different disciplines that should work together towards the same aim.

Get involved

Book reviews

We would really like our members to take the time to appraise the latest contributions to the wider body of criminological knowledge. We have two new books waiting to be reviewed:

- *Breaking Rules: The Social and Situational Dynamics of Young People's Urban Crime* by Per-Olof H. Wikström, Dietrich Oberwittler, Kyle Treiber and Beth Hardie
- *Involving Children and Young People in Health and Social Care Research* edited by Jennie Fleming and Thilo Boeck

If you are interested in reviewing these or you would like to review future books please email [Eleanor Biggin-Lamming](mailto:Eleanor.Biggin-Lamming@hlpf.org) and let her know your area of academic interest/expertise.

Guidelines for submissions

Style

Text should be readable and interesting. It should, as far as possible, be jargon-free, with minimal use of references. Of course, non-racist and non-sexist language is expected. References should be put at the end of the article. We reserve the right to edit where necessary.

Illustrations

We always welcome photographs, graphic or illustrations to accompany your article.

Authorship

Please append your name to the end of the article, together with your job description and any other relevant information (e.g. other voluntary roles, or publications etc.).

Publication

Even where articles have been commissioned by the Howard League for Penal Reform, we cannot guarantee publication. An article may be held over until the next issue.

Format

Please send your submission by email to anita.dockley@howardleague.org

Please note

Views expressed are those of the author and do not reflect Howard League for Penal Reform policy unless explicitly stated.