

Better Justice Report: How Politicians and their Advisers think about Reforms to the Criminal Justice System

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Contents

Acknowledgements.....	1
1. Summary and Recommendations	3
2. Background and Aims of this Project	5
3. Overview of the Research	6
4. The worldview of politicians and policymakers	7
5. Public opinion, and how to respond to it.....	11
6. Four key barriers to effective reforms.....	17
7. Gender and Race.....	25
8. Our Participants' Suggestions for Change.....	27
Appendix: Details of the Interviews.....	38

1. Summary and Recommendations

The Better Justice Partnership has set out to transform the penal system. But to state the obvious, it is politicians and their advisers who enact reforms. If we want to influence their choices, we must first understand them. This report is an attempt to see the world of criminal justice reform through their eyes. We explain their worldview from first principles. We show when and where they share the common assumptions of the criminal justice reform sector, and how they differ. We also discuss what they think is politically feasible, and why they sometimes resist changes that reformers see as common sense. Armed with this knowledge, we then outline how the Better Justice Partnership should go about achieving its aims of a more effective and humane penal system in England and Wales.

The central message of this report is that if it wants to be more impactful, the criminal justice charity sector needs to become more politically savvy. Policymakers view the sector as politically naïve. They think that campaign groups are too quick to point out problems yet too slow to suggest feasible solutions. Sometimes they feel misunderstood, wishing that reformers would show greater awareness of the constraints under which they operate. In their opinion criminal justice is a uniquely difficult area of government to work in, and the political peril faced by those in the Ministry of Justice is not recognised. This lack of understanding matters. If reformers had a better grasp of the constraints under which politicians act, they could have more influence on them.

Our interviewees clearly believe that the penal system in England and Wales is in a deep crisis, with radical reforms needed. When deciding what changes to make, they share many of the end goals of the sector. They all want a much greater focus on rehabilitation. Where they arguably differ is that their core goal is to balance punishment with rehabilitation. Both must go together in their view, and much else that they do flows from this basic assumption.

What stops politicians and their advisers from attempting bold reforms? They do not view public opinion as an insurmountable barrier. In fact they think that in the right circumstances, the public could be persuaded to take a less punitive path. So they lack neither knowledge about what should change, nor a belief that the public would stand in its way. But they view reforms as exceptionally hazardous, and say that there can be little political incentive to enact them. The risks are high and the rewards potentially very low. The Better Justice Partnership, therefore, could focus its efforts not so much on educating politicians and the public on what needs to change, but rather on persuading politicians that it is worth their while – and not too risky – to make those changes in the first place. That they feel afraid of trying to make changes is crucial in understanding why some changes that seem obvious to penal reformers are viewed as anathema by politicians. Disagreements are as much about what *can* be done as what *should* be done.

We identified several key barriers to reform. Fear of the media response is uppermost in politicians' minds. They also perceive a lack of interest in justice from colleagues, and the unique career risks run by anyone entering the Ministry of Justice, as crucial. In their view the Treasury stands in the way of change too, perhaps more so than in any area of government. Above all, any strategy that Better Justice creates will need to give politicians a clear incentive to tread what they perceive as being an exceptionally hazardous path. Our participants made many suggestions for change, which we outline in detail at the end of this report. These included ways to frame reforms (for instance, as saving

money) that would make them more politically palatable. They argued for gradual policy changes that slowly build confidence with the media and the public; slower change in the near term may achieve much faster changes in the long run. More progressive reforms could also be wrapped up in other changes, such as better police funding or support for victims, that make the public feel safer and show that politicians have their interests at heart. And their dual focus on punishment and rehabilitation means that they view smart tagging and visible community payback schemes as obvious, and politically viable, reform strategies.

In the rest of this report we go through these findings in detail. Along the way, we make the following recommendations for the Better Justice Partnership, listed in the order that they appear in the report. We think that the Better Justice Partnership should:

1. Remind politicians of the nuance that exists in public opinion beyond opinion polls.
2. Develop and promote framing strategies that can help politicians persuade the public to favour penal reforms.
3. Create a media strategy to help politicians cope with potentially hostile media coverage.
4. Invest resources in understanding how some politicians, such as Sadiq Khan and Michael Gove, have largely managed to de-escalate relations with the media and avoid entering into a 'tough on crime' arms race.
5. Reach out to a wider political audience beyond those who work in, or shadow, the MoJ and Home Office. There is a need to create a wider reform movement across parliament and government departments, convincing a wider set of politicians that penal reform matters and can help achieve their goals.
6. Shift its emphasis from changing politicians' minds about the issues towards a more strategic approach which gives politicians incentives to adopt policies that they feel are very politically risky.
7. Recognise the importance of the Treasury in penal policymaking. The strategy should in the long-term aim to influence the Treasury by emphasising exactly how reforms reduce reoffending, and how much money this saves the Treasury in wider social spending.
8. Make issues of race and gender more central to future campaigns on the justice system, and consider in greater depth why these issues have not yet piqued sufficient political interest to achieve meaningful change.
9. Ensure that it offers politically viable solutions to policymakers alongside pointing out the harms of the current system.
10. Consider framing arguments to politicians about criminal justice reform in terms of the cost savings they would achieve and their wider benefits to society.
11. Adopt a gradualist approach to reforms, thinking strategically about short-term steps that can gradually build confidence in criminal justice reforms.
12. Consider presenting liberalising reforms as part of a wider package that can be framed primarily as public safety measures, or steps to improve victims' rights.
13. The Better Justice Partnership should consider shifting towards greater support for non-custodial sentences that can be framed by politicians as punitive, such as smart tagging and visible community payback schemes. Or if this is not possible, it should prioritise improving the evidence base against them and more clearly communicating to policymakers and the public about why they are not felt to be viable

2. Background and Aims of this Project

The criminal justice system in England and Wales is widely considered to be in a state of crisis. Prisons are overcrowded. The outlook on prisoner numbers is bleak. More than 100,000 people may be behind bars in the UK by 2027, up from just over 40,000 in the mid-1990s. Rehabilitation initiatives have fallen by the wayside, with prisoners living in increasingly difficult conditions which undermine their chances of change. The probation service is under-funded, under-staffed and over-worked too. Court cases are subject to unprecedented delays, with negative consequences for the welfare of both the victims of crime and those accused of committing it. Crimes like fraud and theft seem to be routinely ignored by an over-stretched police force. Unsurprisingly, neither victims nor the wider public appear to have much faith in the justice system. These problems are not new, although all have become more acute in recent years.

Yet despite the best efforts of charities and campaign groups in the criminal justice sector, wider reforms appear to be off the political agenda from both main political parties. Crisis management is the order of the day. There is little sign of any resolution in the near term.

Against this background, we were commissioned by **the Better Justice Partnership** to undertake a piece of exploratory research to examine the politics of criminal justice from first principles. Our brief was to interview current and former politicians, as well as political advisers, who have worked on criminal justice issues in the past twenty years. The overarching aim was to consider how their experiences might inform new approaches to achieving policy change within our political system. There is a received wisdom that change is prevented because politicians appear unwilling to take less punitive approaches, often because they fear the response from the media and the public. We investigated the conditions under which they might be willing to risk policy change, how they could approach a public that seem to demand hardline approaches to justice, and whether there are novel strategies they could adopt to achieve policy change.

Specifically, we were asked (amongst other aims) to:

1. Examine the dominant and other key narratives which are used by political stakeholders to describe crime and responses to it.
2. Understand the primary influences on these narratives including for example personal attitudes, beliefs about public opinion...[and] the variation and nuance that might exist in the perspectives of the public, media and civil society and how this understanding influences the extent to which they apply a 'single public view' model.¹
3. Understand to what extent political stakeholders believe they can influence public and media narratives.
4. Examine what, if any, opportunities might exist to influence political stakeholders' narratives and policy approaches...as well as any potential catalysts and levers for change or any credible key messages and messengers.

¹ This means a model where the public is seen as uniformly punitive, demanding tough action to suppress crime through punishment.

3. Overview of the Research

We carried out 22 interviews in all, mostly of former special advisers and ministers who had responsibility for justice policy. We emphasised *former* policymakers on the basis that we expected them to be more candid than those currently on the frontbenches. However we did interview some current MPs with interests in criminal justice. Roughly equal numbers of the participants were attached to one of the two main parties. We also interviewed a couple of former senior civil servants who worked in the Ministry of Justice. Our interviews covered a range of topics, focusing on political opportunities and obstacles to policy change on crime and punishment. A more detailed description of our research process is included in the Appendix. Crucially, we offered confidentiality to our subjects and allowed them to talk largely without interruption or judgement from us. As a result we found them to be unusually candid, and often frank and forthright in their evaluation of policies that in some cases, they themselves had overseen. All quotes have been anonymised, removing any details from quotes that could lead to individuals being identifiable. The interviewees are listed in the Appendix, with the exception of one who asked to remain anonymous.

Our set of interviewees cover a wide set of backgrounds and viewpoints. Nonetheless this is not a random sample. We disclosed that we were interviewing on behalf of the Better Justice Partnership and gave them information about its membership and rationale. Some potential participants may have been unwilling to talk to us as a result of this. We think that our sample includes rather few people on the far right or very populist ends of the spectrum on penal policy, as well as almost nobody from the far left of politics either. Our interviewees mostly span the middle ground of penal policy. They come from the 'persuadable middle': those who may, at least in principle, be amenable to finding new approaches. These are precisely the people that the sector should be trying to reach. Their views and ideas should be at the forefront of any new political strategy.

4. The worldview of politicians and policymakers

Our first questions probed our interviewees' own ideological views, and how they characterise the current situation in the justice system in England and Wales. Do they think we are in a crisis? Do they themselves favour stronger punishment as a solution to crime?

For the most part – with one or two exceptions – our participants clearly articulated the scale of the problems facing the criminal justice system. Largely speaking they were not themselves 'penal populists.' The median position was one of strong support for the rehabilitation of people convicted of crimes alongside punishment for serious offences, and a recognition that the system, as it currently stands, performs poorly in terms of rehabilitation. Their dual focus on punishment and rehabilitation is an important theme with implications for the recommendations coming out of this report.

i. They understand how bad things are

Our interviewees were under few illusions about the state of prisons and wider criminal justice policy. Amongst many (but not all) participants there was a pervasive sense of gloom, that little had been achieved in the last thirteen years, if not the past three decades. When asked to name successful policy changes, a typical response came from one of our Conservative-aligned participants: "it's difficult, looking back, not to feel wholly pessimistic about the state of the system" and "The MoJ... it's such a basket case". Another summarised the consensus quite well by saying "I think it's been a pretty barren time for criminal justice policy since 2010 really... I'm afraid to say I'm probably struggling a bit [to think of anything] on the positive front." Few saw much prospect of change coming soon; as one put it, "it seems to be possible to just about keep a lid on everything at the moment but it's difficult to imagine much improvement... that feels like the game we're in really, there's no one really trying to make a huge, big breakthrough here. There's just not the capacity to do it."

It was widely recognised that prison conditions are a problem. One Conservative-aligned respondent stated that "they're short staffed...also desperately short of money"; another talked of "really, really terrible conditions" at present. Yet another, who was involved in policymaking over the past decade, said that "I think one of the most appalling things we're facing in this country is the jailing of 100,000. That to me is a failure of public service...it is a failing on a grand scale. We're going to go above 100,000 prisoners. What are we doing wrong?"

As a result, many interviewees felt that efforts at rehabilitating people involved in the criminal justice system were not succeeding. One argued that "prisons are overcrowded. The prison estate is creaking at the seams. That is terrible for the rehabilitation of offenders, which is bad for victims of crime, because if you can't effectively rehabilitate, people will go out and do harmful things. So I mean, I think it's bad." Beyond prisons, they also pointed to the probation system as struggling, and at policing as a major issue. Police inattention to theft, fraud and sexual crimes were cited as particular issues, for example.

This adds up to a widespread recognition, behind closed doors, that the system is failing on multiple fronts. Based on these interviews, those who have been intimately involved with criminal justice policy do not lack an understanding of the challenges that it currently faces.

ii. They want to balance punitiveness with rehabilitation

They certainly grasp the scale of the problem in our penal system, but what do they think we should do about it? When asked about the aims of the system, many reached for a metaphor of balance.

That is, the system should balance dual aims of punishment and rehabilitation. They feel that both aims are important, and are not necessarily in tension with each other. Sometimes this felt grudging – “it's not just that we just need to house all these people who've committed these crimes. Prison is meant to be there to reform them”, as one put it – but more often it was explicit, as suggested by a Labour interviewee:

“Policy should aim to be balanced. It should aim to be balanced between what's necessary on the one hand for punishment and crime reduction, and...reform and rehabilitation for as many people as possible who are capable of being rehabilitated and helped to a life where they are not committing crime. And I've never seen a contradiction between existing between those two things.”

A former politician echoed this: “we would try to focus on two things, which is, how do you base the system on punishment, but also on reform? How do you base the system on prevention and making people who come into the system better people in terms of their criminal behaviour when they leave the system?” This worldview of dual, non-contradictory aims does not seem to be expressed for show, or because they think it would lead to more votes. These views were not prefaced with lamentations that public opinion had led them reluctantly to such a position, out of political necessity. Rather, it felt to us that the vision of balancing punishment and rehabilitation is a sincerely and in some cases, passionately, held view.

As we will explore later in the report, policymakers' dual mindset has important implications for the types of reforms that they view as politically acceptable. For now, one is that they are much more concerned about short prison sentences than long sentences. In some cases they did not see major problems with tougher sentences at the top end, even as they passionately argued that short sentences are counterproductive. Indeed when asked what they thought lies behind rising prison numbers, only a minority correctly suggested sentence inflation at the top end. Some appeared to mentally link curtailing short sentences with reducing the prison population, as in this quote: “what we should be trying to do is to reduce, in my view, the under 12-month sentences, try to find community-based alternatives...I would want to see a reduction in the prison numbers and alternatives to prison which are serious and which are effective, put in place.”

A typical view came from this Labour policymaker, who saw little point in short sentences:

“What you've got is a large number of potentially persistent offenders who get imprisoned for short periods of time, which doesn't really, in my view, help reform and rehabilitate those offenders, which also in many ways exacerbates the criminal behaviour. Because if you go into prison for 12 to 15 weeks, very often you'll lose any housing you've got. You might lose any employment you might have. You will lose community contact. Then you will end up coming back into a reoffending cycle.”

Longer sentences, though were sometimes defended. A Conservative interviewee, when asked what he was most proud of over the past thirteen years, praised his party's policies of “tightening up the system a bit, increasing the range of sentences for which you can apply to the court of appeal for

unduly lenient referrals, changing the release date on serious sexual and violent offences of over four years to two-thirds of your sentence rather than half.” As we will emphasise later in this report, reformers may be pushing at an open door when it comes to the need for reform of shorter sentences. Given that policymakers aim to balance punishment and reform, longer sentences are more challenging terrain.

iii. They generally subscribe to a ‘social’ view of the causes of crime

Scholarship on criminal justice sometimes distinguishes between a ‘rational actor’ model of crime on the one hand – people who might commit crimes respond to incentives, prison acts as a deterrent, so longer sentences will cut crime – and a ‘social’ model on the other, emphasising deeper societal causes of crime and hence, the need for interventions well beyond prison sentences. Contemporary political discourse on crime might give the impression that, even in private conversations, politicians and their aides will subscribe more to the rational actor model. One Conservative respondent did so, stating baldly that “the main causes of crime are criminals. So I don't buy into those who try to claim that it's linked to economic circumstances. When the economy's doing really well, we don't have a huge fall in crime levels.” But his was a lone voice. Every other respondent, including those from the right, focused strongly on social explanations for crime.

Prisoners are, according to one typical response from a Conservative, “almost an underclass. I mean, it's a group of people who are just kind of stuck right in the bottom, who are often historically workless... they've often ended up there because they've just been born into a terrible, terrible situation and they've never had a break...they are the most abused and marginalised segment of society.” For another, crime is caused by “broken family links. Obviously, these things are all related of course: drugs, obviously, environment, upbringing, and education...all of those problems, I suspect, have gotten a lot worse over the last 20 years.” One went even further: “however much of a victim they [victims of crime] were, the offender was probably a greater victim from the hand they were dealt by society from the beginning.” This emphasis on societal causes of crime and incarceration was virtually universal in our interviews.

This led naturally to a sense that prison is often counter-productive. An interviewee said that:

“if you start from the position that basically what we do is jail the most abused, marginalised segments of society...often it's the same cohort that just cycle through your prisons and disproportionately consume public resources... you don't need to be some bleeding heart liberal to think that we shouldn't be continually spending money on re-jailing people...our very strong view [in government] was that the current system of just jailing people was not working across the board actually, and our view didn't stop at short sentences.”

Whether stated in terms of rational policymaking (“most of the evidence shows that length of sentence has absolutely no deterrent effect”) or sensible use of public money (“our view was that the current system wasn't working, you know, from a public finance point of view or anything else. The taxpayer was not getting a good return. And you were jailing people at cost and then they were going out and reoffending. And then you were spending the same money again, and again, and again”), these arguments cropped up repeatedly and forcefully. Another respondent told us that “there are too many people in prison. For too many of the people that are in prison, it is entirely the

wrong way to handle the problem, in my view” and “we’re inflicting damage on our own society by taking an incredibly expensive way of punishing people, warehousing them all together so that if they didn’t have a drug habit before they went in, they almost certainly acquire one whilst they’re there...it’s breathtaking, the stupidity of the current system.”

Thus there is not much evidence that those policymakers we spoke to in the mainstream of criminal justice need much ideological convincing of the need for policy changes. In many cases though, their dual mental model of punishment *and* reform may constrain what they view as acceptable in terms of reforms, as we discuss later.

A further caveat matters too: many respondents said that their views had changed after going into the Home Office or the Ministry of Justice, and that prior to this they had much less understanding of crime and the penal system. They described becoming more sympathetic to the idea of social causes of crime, and less enamoured of the rational choice perspective, the more that they worked on justice issues. This means that politicians and advisers working in, or shadowing, other areas may hold different attitudes. The importance of persuading a wider set of policymakers outside the sphere of justice is another important theme that we return to later.

5. Public opinion, and how to respond to it

Before starting this project, we felt it was plausible that our interviewees would say something like the following: the primary constraint on good criminal justice policymaking is the public. Voters in England and Wales overwhelmingly support harsher justice and will not support politicians that try to take a softer line. As a result, politicians have no choice but to respond with ever more punitive measures.

Our findings surprised us. They typically did not view public opinion as an insurmountable obstacle to reform. What emerged was a picture of public opinion that largely corresponds to academic understandings of the concept²: that the public may give punitive answers to closed-ended survey questions, but they hold a range of views, sometimes mutually contradictory, and are prepared to listen to good arguments against ever-greater punishment. All of our respondents also thought that politicians can and should try to lead the public, rather than simply follow their whims. They felt, in other words, that it is not just feasible but also desirable that politicians should push back against penal populism.

i. Looking beyond ‘three second conversations’

Scholarship on public opinion emphasises not only that two models exist – of rational action or societal causes – but also that these and other views are often held simultaneously by members of the public. When asked to give closed-ended responses to opinion surveys, they will certainly favour tough prison sentences. Other methods, though, reveal a public that holds a variety of opinions simultaneously and may be conflicted, uncertain and swayed by the arguments that are put to them; a public that is potentially persuadable of alternatives to ever-greater incarceration, even if their initial instincts are punitive. But how do politicians and policymakers see it?

We asked them to tell us how they thought about public opinion on crime and the justice system, without giving further prompts. Most would begin by saying that at first glance the public are quite punitive: “I think if you ask them really base questions about, you know, ‘should we send more bad people to prison?’, a lot of people are just going to give a really quick answer and say, ‘well, yeah, of course’”, was how one expressed this. More starkly, for a different respondent, “it's definitely the case that if you sort of came down from Mars...you'd think that this country was a pretty unpleasant place...it would look like we were pretty horrible”, and for another “I think probably the common assumption that the public takes a ‘hang em, flog em’ approach towards justice is probably broadly true.” But these views were almost always followed with caveats, sometimes straight away, as with this Conservative interviewee: “if you ask the man on the Clapham omnibus, a lot of people will

² The modern view of public opinion is that citizens do not typically hold carefully considered preferences over specific policies; they do not hold political ‘opinions’ with the coherence, strength and specificity that closed-ended survey questions imply. Nonetheless, they will answer survey questions *as if* they do. What these questions are actually measuring is a sample from a range of ideas and considerations people might have that are relevant to a policy, and happen to be brought to mind at the time of the interview. The whole range of considerations that people hold may be mutually contradictory rather than coherent. See Adam Berinsky (2017) ‘Measuring Public Opinion with Surveys’, *Annual Review of Political Science* vol. 20 309-329 and John Zaller (1992) *The Nature and Origins of Mass Opinion*, Cambridge University Press.

simply say you should jail people. But I also think it depends on what you mean by what the public thinks...". Likewise, another said:

"It's that old thing in politics...the difference between a three-second conversation, a thirty-second conversation and a three-minute conversation [with a voter], and the problem is the three-second conversation is: 'hang em, flog em, cane em'. And so in an election environment, you know, that's what comes up and the nature of our politics kind of encourages that. I think when you then have a serious conversation with people...you know, it isn't quite as sort of reflexive."

One respondent suggested, for instance, that the public were able to understand experts' scepticism that more police patrols automatically reduce crime if they are engaged in a longer discussion. Hence our interviewees were appropriately sceptical of an over-reliance on opinion polls. As much academic research emphasises, opinion polls provide snapshot, 'top-of-the-mind' responses but not a guide to the nuance that might exist in public opinion when it comes to penal reform.

ii. The public hold multiple opinions

In fact, two main qualifications to the 'instinctively punitive' model emerged. The first was that despite initial top-of-the-mind responses, "there isn't 'a' public...people hold conflicting opinions" as one subject argued. The public do not think just one thing about justice, but rather "holds a lot of views simultaneously, I think that's how I would characterise it", in the words of another participant. One put it even more starkly, calling public opinion "schizophrenic, completely contradictory." The following quote summarises this perspective nicely:

"We all hold different views. Mutually exclusive, conflicting views...people believe in evil, that people are evil, and there's not much you can do except catch them before they do more harm...but also anyone looking at their lives would say, if all those things had happened to me [that have happened to prisoners], there but for the grace of god, that's where I would be... as soon as you engage people...there's a curiosity bordering on prurience, sometimes, on understanding what happened to these people."

Some of our participants characterised survey-response-based measures of opinion as somehow less real than those that would emerge through discussion. One described it in the following way: "I think that there is genuine public opinion, and then there is public opinion as mediated by the tribunes of the people who are the press, the media. And you know, if we're to talk about what I think genuine public opinion to be, it would be slightly mixed and erratic and contradictory."

Differences emerged on whether this way of thinking should be viewed as rational or irrational. "Mixed, erratic and contradictory" suggests the latter, as do other responses such as "we are quite confused about it. We don't really know what we think." An alternative perspective was offered by a substantial number of interviewees, who said things like "public opinion is quite nuanced and complex on these questions, I think. I'm normally of the opinion that on most of most things, the general public as a whole normally...have quite a sophisticated view of things". Examples of this include a view that punishment and rehabilitation can go hand in hand, as suggested by a Conservative:

“I think the public believe in punishment, that punishment fits the crime...however, I also think that there’s a strain of thinking in that if people committing relatively less serious offences can make a contribution back to their community then that that’s a good thing, as well. As long as there’s some sort of punitive element to it, I think the public accept different types of sentences. I don’t think they do necessarily think that all sentences must be inevitably custody, or long periods of custody.”

Perhaps the clearest expression of this came from a Labour respondent, who told us:

“I’m probably someone who thinks they’re a bit more balanced. I think mostly the public are in favour of doing more prevention, and they’re in favour of investing more in early intervention in parenting interventions, in drug treatment, and they’re in favour of diverting young offenders away from the justice system. They do tend to be pro tough prison sentences, that’s true, but largely I think that’s because they don’t have any faith in the alternatives, and there’s a lack of understanding of what community sentences have to offer...and so I don’t necessarily buy the idea that the public are, you know, hugely punitive about this. I think they’re probably where you would expect them to be, which is: they want more investment in the causes of crime, but they want people to be punished when they commit crime.”

Our interviewees, therefore, do not view the public as having a ‘single view’ on crime and punishment and in some cases view the public’s set of opinions as a consistent, rational worldview.

iii. The public can be won over with good arguments

The second theme that emerged was that, because the public believe multiple things at once, they could in principle be won over by arguments for less use of imprisonment. Indeed, one interviewee’s very initial response to our question was simply: “public opinion...it depends on what arguments are put to them.” The most common argument was that the public is willing to listen, that they could be persuaded by perspectives that might clash with their initial top-of-the-mind survey responses: “most people are quite sensible most of the time...they don’t have an extreme view...they are willing to listen to arguments”, was how one expressed this. This means that different contexts will elicit different views: “I do think they hold those [conflicting] views simultaneously but different situations allow them to manifest their different opinions depending on how things are framed...the nature of the conversation is very important...people hold many complex views and it depends on the asking and what context you are in.” For that reason, reasoned arguments need not alienate the public, in the words of one interviewee:

“You can’t sort of wish away public opinion and ignore it, but neither should you just take public opinion as a fixed thing that never moves. So you know, we should accept that people probably do want rapists to receive quite tough sentences, but that doesn’t mean that they are going to be completely against the idea that rehabilitation is possible for some of those offenders, or that you could introduce certain progressive reforms around restorative justice or other types of rehabilitative reforms, so...you have to be realistic and pragmatic about where the public are, but you can shift them and you can have a dialogue with them that moves.”

Hence arguing that, for instance, mass imprisonment is a poor use of taxpayers' money will probably resonate with voters. As one participant suggested:

“if you tell them that we are throwing good money after bad money in jailing a load of people who it won't help, which is questionable in terms of public protection, then probably you would find that there is an appetite to engage with that... notwithstanding the fact that you will need quite a shift to get people off the idea that prison is the ultimate answer to everything, over time you could shift public perception of it.”

Emphasising the social causes of crime was also seen as likely to cut through to voters. A former adviser claimed that “I'm sure there is more nuance there...if the public were shown the evidence for, off the top of my head, that for sentences under a year the rate of reoffending goes up from 25% across the board to 50%...I imagine that would prompt a bit of a rethink, that their opinion would become more nuanced.”

In one case, viewing the public as malleable even led to regret that the public was rarely challenged whilst the respondent was on the front line of policymaking under Labour:

“I think we were shaped massively by what we saw in the newspapers and on TV in terms of how it [public opinion] felt...I think the question is actually whether we should have done more to try and get beneath the skin of some of those impressions. We felt as though the impressions of where public opinion, as demonstrated by what the media said, were probably accurate and therefore we needed to operate within that, it was sort of the place to operate. But in fact, maybe we should have spent more time trying to get under the skin of it and doing more work on our polling and group message testing, that sort of thing, because I think it's probably more nuanced than we might think it is.”

The suggestion is not that our interviewees thought it would be an easy task to reorient public opinion. Expressions like “you can't just wish away public opinion or ignore it” clearly imply caution, or potential difficulties. Yet they were largely united in feeling that it is at least feasible, in principle. One issue may be a lack of knowledge about the nuances of opinion. As one respondent put it,

“Ministers and secretaries of state are constituency MPs. They get a lot of feedback from their constituents and that also forms some of their understanding [of public opinion]. And obviously a lot of the public don't come to their MPs with good stories about justice...it's only ever horrible stuff...I'm sure there's some polling but I was never aware of us looking at any polling evidence on what the public thinks about justice. But ministers will be informed by their own experiences as constituency MPs, and effectively what the media is telling them the public thinks...because public opinion is kind of filtered through the media. And obviously, the media isn't representative of public opinion, but you can fall into the trap of thinking that it is.”

This means that politicians would benefit from better information on how to influence the public, and on the complexity of public opinion about criminal justice, not least because their current sources of information may be limited to their constituents and the media. We therefore make two recommendations to the Better Justice Partnership here.

Recommendation 1:

The Better Justice Partnership should remind politicians of the nuance that exists in public opinion beyond opinion polls.

Recommendation 2:

The Better Justice Partnership should develop and promote framing strategies that can help politicians persuade the public to favour penal reforms.

iv. Policymakers should lead public opinion

The quote above that expresses regret about a lack of courage reflects a wider underlying assumption amongst our participants. They felt that politicians not only *can* shift public opinion, but that they *should* try to do so.

We asked them directly whether they thought politicians should influence or follow public opinion on crime. They responded with differing degrees of vehemence. Some saw leading public opinion as a moral duty that politicians are failing to perform. One argued that “we have a quiescent political class that isn’t prepared, or too few of whom are prepared, to make a public and strong case for different way of doing things.” Another said that “of course they should try and influence...the worst kind of leader is one who says ‘these are my people, I must follow them.’” In certain cases, morality was invoked explicitly, as with this Labour-affiliated respondent: “I think morally that’s the right thing to do. I think you have a responsibility in a representative democracy to do that...you should try to lead public opinion. If there’s no political space, then sometimes you have to try and create the political space...and that sometimes requires a bit of bravery and a bit of boldness.”

In part this reflected a view that politicians’ proper role is to apply wise, level-headed judgement, weighing public opinion against other imperatives. More than one invoked the death penalty as an example, as in this quote from a Conservative: “on things like the death penalty you’ve got to be honest and say, well, there’s no case for it, you know, even though there might be opinion-poll support for it. That would not be an appropriate return, and therefore there has to be, I think, leadership and explanation as you do these things.” Another put this even more strongly, saying that politicians “have to try and lead public opinion, they have to do what they believe is the right thing... if every member of my constituency said to me, bring back the death penalty, I would still vote against it.” More broadly, this view from another Conservative was fairly typical: “the job of a politician is to acknowledge and reflect the public mood on certain issues. And then to apply your judgement as to what is practical, and what is proportionate. And then defend that position.”

Our interviewees most commonly spoke of a balancing act, with politicians cast as gentle nudgers aiming to take the public with them, as with a former Labour adviser who argued that “it’s a bit of both isn’t it? ...I guess the goal of politicians is both to kind of acknowledge what the public wants, but also, maybe, you know, edge things in a direction that you think is better and take people with you on that journey.” Sometimes the difficulty of doing so was highlighted more forcefully, but the goal of converting the public was still invoked: “they have got a difficult balancing act... out-of-touch politicians get crucified...[but] they have a job to try and explain. They are teachers as well as leaders”, and “you can’t ignore where public opinion is, and a politician who did that would be a real

fool. But you shouldn't be led by it. You should be trying to influence it." For some this meant not just arguing for a position, but being smart about how positions are framed. As one Conservative put it,

"Now, I'm also a realist about this. Politicians, you know, want to win elections...And in order to win elections, you can't just keep saying things which are going to repeatedly lose you votes...so there's a balance here...if you position yourself a million miles away from where most people are on some core issues, you're not going to win an election. So, we've got to be sort of serious about it and say, sometimes that's about the way the arguments are framed."

This means, in the words of a former adviser,

"don't be afraid to frame the argument...why are we here? Why are we trying to do this? Make an argument that reasonable people can buy into. Which to a certain extent, when you're in politics, means talking past the people who are making the most noise. And appealing over their heads to your average voter...who you should always assume is a reasonably middle of the road person who has got a reasonably open mind... if you want to make good policy, you've just got to try and frame an argument that reasonable people are prepared to buy."

Overall, our respondents do not see their role as being weathervanes, pointing in whatever direction public opinion sends them. Sometimes, as with the death penalty, this might mean ignoring it altogether. But more often they said that the proper role for politicians is to nudge, lead, frame and persuade, whilst recognising where the public are at.

6. Four key barriers to effective reforms

Politicians and their aides may be willing, in theory, to lead public opinion in a less punitive direction. But in practice such attempts have been few and far between over the past few decades. What explains this reluctance? We identified four factors from our interviews that appear to be key. First, politicians fear the response of the media, perhaps even more than they fear any backlash from the public. Second, they find it difficult to enthuse colleagues in other departments about criminal justice. Cross-departmental support, or a strong steer from 10 Downing Street, are often lacking, and indeed can actively undermine Justice Ministers' efforts to change policies. Third, they perceive any liberalisation of justice policy as extremely risky. Careers are rarely made by sending fewer people to prison; there is little incentive to be bold. Penal populism is the path of least resistance. Finally, even if they do attempt bold reforms, the Treasury – even by its own standards – is reluctant to invest in criminal justice. The sector was often described as a poor cousin of Whitehall, whose wider importance is too rarely recognised.

i. The media

Virtually all of our interviewees viewed the media as a major constraint on effective criminal justice policymaking. The media's influence was framed first in overt terms, as influencing the public and shaping wider public discourse. Thus “public discussion on crime and punishment is dominated by the Sun, the Mail and the Telegraph”, “broadly, the conversation on criminal justice, I think it's fair to say, is driven by, or can often be driven by, reactions to quite alarmist front pages”, and “so much of how people think about the criminal justice system is through the prism of how it's portrayed to them in the tabloid media.” A former minister said even more starkly that the “malign influence of our popular newspapers on any sensible discussion of criminal justice reform is an abiding drag on getting any sensible solution.” Another drew a direct line from press articles to pressure on ministers, stating that “the tabloid press would focus in on particular events about how prisoners were treated, or what was happening to particular offenders at particular times, and that would create an atmosphere which then reflected into parliamentary post bags, which then reflected into pressure on ministers.”

The media was also framed as influential in a more subtle, less overt, behind-the-scenes fashion. Several said that the media were in constant touch when they worked on the frontline of justice policy, pressuring politicians to take hard lines. A former adviser said that “there was a telephone call at least once a day from the Sun, from the Daily Mail, from the Daily Express asking, begging for a line from [name of minister] to attack the soft justice system or criticise a judge or criticise the government for being soft on justice.” A different former adviser told us that “we would be getting daily calls from the Sun and Mail, saying we're about to show yet again why [name of minister] is the softest justice secretary we've ever had... because they'd found some stupid story about prisoners were allowed to go fishing, or something, or prisoners were allowed to have a choir.”

This then carries over into pressure on politicians, as the anticipated response from the press directly drives policy decisions. A participant recalled some attempts at taking a softer line on justice that were quickly quashed: “you would get [as a response from colleagues], well, the Daily Mail will never

wear it” so that he sometimes felt that he was “just sentencing for the Daily Mail and the Daily Telegraph.” This was seen by one of our interviewees as a greater problem than public opinion:

“The media environment...I do think that puts limitations around what's seen as feasible and doable, and, and sort of frames things to some extent. On issues like drugs legalisation, I know people who think that we should look at that, or at least have a debate about it. But they would never say it publicly. And they said they can't say it publicly because they think of the media reaction to it, not so much the public reaction, actually just the negative media reaction, which then shapes things.”

Even when novel policies were introduced, politicians tailored them to combat the likely press reaction. For instance:

“when we introduced that policy [community payback] we did so with a double-page spread in either The Mirror or The Sun with pictures of ministers holding up high vis jackets with ‘community payback’ written on it. And the whole spin around that was, we're being tough on crime. Because that was the only way that we thought we could get away with a policy that in actual fact, is trying to do something a bit more nuanced in respect of how we're dealing with offenders: we're actually pursuing a policy that's going to actively divert people away from prison...we weren't going to convince them to carry a softer message. We had to wrap it what appeared to be a tough message. That's the only way to sell the policy.”

The influence of the media on the public, on politicians behind-the-scenes and ultimately on what is seen as feasible in terms of reforms, were all therefore uppermost in the minds of our participants. The problem appears more serious than public opinion because our participants did not express so much confidence that the media's views could be shaped, or have so many ideas about how to shape it, unlike public opinion. Thus there is a real need for new ideas here. The Better Justice Partnership's long-term strategy for reform must address, head-on, the fear that politicians feel about how the media might respond to anything that appears ‘soft’.

Recommendation 3:

The Better Justice Partnership should create a media strategy to help politicians cope with potentially hostile media coverage.

Besides addressing the media head-on, some of our respondents also felt that politicians can avoid the media spotlight, not being drawn into contests to appear ‘tough on crime’. In particular, Michael Gove and Sadiq Khan were noted as good communicators who had successfully followed a strategy of de-escalation with the media.³ Thus we also recommend learning from these examples.

Recommendation 4:

The Better Justice Partnership should invest resources in understanding how some politicians, such as Sadiq Khan and Michael Gove, have managed to de-escalate relations with the media and avoid entering into a ‘tough on crime’ arms race.

³ One interviewee also suggested looking at media management around the 2012 Olympics as an example of a successful media strategy, which involved frequent meetings with journalists to keep them on side.

ii. Lack of recognition across government of why justice matters

A second problem identified by our interviewees was a lack of interest in justice issues across government. They reported having to fight for recognition from colleagues who did not immediately see the wider relevance of their work. Lack of knowledge from politicians not directly involved in justice work is certainly part of the problem. As one respondent put it, “our political class are not sufficiently informed of some of the issues on this.” Several also admitted to us that they had been quite ignorant about the system and its problems before becoming involved with the Home Office or Ministry of Justice. But there are two bigger issues here that go beyond lack of knowledge alone.

One is that reducing reoffending requires a strategy beyond the justice system alone. Yet it is hard to interest other departments, or to incentivise them to care: “often the department that needs to spend the money [on measures to reduce reoffending] isn't the department that benefits from savings”, was how one described the problem. Another said that “I suspect if you spoke to people in Number 10 at the moment they would say that it's [i.e. criminal justice reform] a bit of a luxury right now.” Several said that an effective settlement for criminal justice policy will require a sense of mission across government departments. For instance,

“Crime is not a Ministry of Justice and Home Office issue. It's an every department issue. And one of the things I found most difficult in government was getting the department of local government, or housing, or education, or even the Foreign Office to look at crime in the same way that the Moj and the Home Office did... look at what are the solutions to reducing crime, improving confidence and helping rehabilitation, and not all of those are in the gift of the MoJ or the Home Office. It needs a kind of a cross-government strategy.”

The problem, though, is that “schools and hospitals will always take priority. And that's quite hard, especially in terms of the long-term effects that I've seen on the courts and tribunal system in particular, since the late 1990s”. The MoJ was portrayed as subordinate to other departments, as in the account of this former policymaker:

“It was vitally important that other departments played their role in terms of minimising the school exclusions, dealing more properly with addiction and mental health problems and identifying lifelong conditions at an early age...as I did tell them all, ‘I can't do it on my own’, and that I need their help in order to reduce the number of people coming through our criminal justice system, that's surely got to be the aim...I thought the department [the MoJ] had a much more important and central role than perhaps it's given credit for...I didn't feel it was punching to its weight.”

We note that even though arguably there was greater recognition of the wider need to be ‘tough on the causes of crime’ in the Labour era, these concerns were raised equally amongst participants from both parties.

The second cross-departmental issue identified in our interviews was that too often, colleagues outside the MoJ perceived crime as merely a convenient source of short-term headlines. The MoJ was mainly there to burnish the government's credentials as tough on crime; policy objectives came second. As one former Labour adviser put it,

“Everybody has been a bit addicted to just longer sentences all the time, like that’s the solution to everything. I remember having to fight that battle all the time, all the bits of the shadow team thinking it was a nice cheap media hit to say ‘we’re gonna send people to prison for longer for hitting shopkeepers over the head’. That was the one that we were always having to battle with because the USDAW trade union were always wanting tougher sentences for shopkeepers that got beaten up. And the business team are like, ‘well, this is great because we could promise to do this, it doesn’t come off our budget, keeps USDAW happy and we get a nice headline in the newspapers.’”

In this regard, “Number 10” featured as a bogeyman in our participants’ accounts too. When one participant recalled proposing softening some sentences to free up prison space, “the message came back from Number 10: not politically deliverable.” He recalled the “power of Number 10 on all reform, the dreaded Number 10 meetings....you find that someone you’ve never heard of in Number 10 is calling the shots.” A Labour adviser recalled that “getting narratives and changes and reforms through: it was difficult, not just because of the media, not just because of the opposition, but also because of Number 10.” These quotes convey a sense that Number 10 frequently overrides local decision-making in the name of wider political objectives, principally drawing political dividing lines with opponents and shoring up public support for the government.

A key barrier to achieving policy change in the criminal justice system is that politicians who do not work directly in the area often fail to see its importance or relevance, beyond the generation of short-term headlines. We suggest, therefore, that efforts to influence politicians must extend beyond just those that work on justice issues.

Recommendation 5:

The Better Justice Partnership should reach out to a wider political audience beyond those who work in, or shadow, the MoJ and Home Office. There is a need to create a wider reform movement across parliament and government departments, convincing a wider set of politicians that penal reform matters and can help achieve their goals.

iii. Lack of incentives to undertake long-term reforms

A pervasive short-termism in justice policymaking emerged much more widely as a theme in the interviews. Respondents painted a picture of an area that is uniquely difficult to work in, where the day-to-day pressures are more acute than in other areas of government, where it is especially hard to focus on longer-term reforms. Many described themselves as needing to adopt an unusually risk-averse approach in order to cope with the pressures of their role.

Working in the MoJ or the Home Office, according to our participants, is perhaps the worst role in politics, one that most would rather avoid. One interviewee said that

“I only know of two people who actively have wanted to be the Minister for prisons...most people are horrified at the thought because don’t forget, most MPs who want to become ministers want to further their career in government, and being Minister for prisons is not the obvious place to do that. Really the only time you’ll get a profile as Minister for prisons is if everything goes horribly wrong, if someone escapes [from prison].”

Metaphors of warfare were common. Descriptions of life in the Home Office and MoJ included that it “felt a bit like being under siege”, and “we were under constant attack.” The problem is “the ease with which the tabloids can fill column inches with stories about soft justice and rubbish judges and prison being a holiday camp and people getting away with stuff in a way that doesn’t happen if transport’s your brief or environment...I think that’s worse with criminal justice.” Several said that they constantly lived in fear of negative coverage because when things go wrong, the story quickly ends up on the front pages: “justice and home affairs is very choppy waters, for politicians. You’re only one day away from disaster.” Or in the words of a different former policymaker:

“Somebody is killed by someone who has been let out of prison every week...And once a year, or once every two years, one of those things that happens every single week turns into a cause celebre, for some particular set of reasons. Every week we were thinking ‘is this the week where one of the newspapers finds something and goes ‘boom’ with it?’ and then everything gets amped right up. Yeah, that’s what you’re living with all the time.”

This siege mentality leads to a narrowing of Ministerial focus, according to our participants. There is no time for long-term planning; short-term firefighting prevails. A repeated sense of crisis was reported, as prisons repeatedly hit capacity: “a lot of what was driving decisions was partly about the prisons were overflowing. That was one big problem. In fact, at one point, I recall, there were literally no cells left in prisons. There were people in court cells and stuff. So, there was just a political issue that was driving a lot of policy decisions.” Or as another respondent put it, “the focus on the day-to-day means that it’s very difficult to focus on the medium term... a lot of it is that you spend so much time just managing the system that simply it’s very difficult to have any kind of meaningful, impactful change in a way that overhauls the system.” On this, the account of a Conservative policymaker is worth quoting at length:

“As an example of what happens all over the justice system, you imagine what’s happening now off the back of this lad who’s escaped from Wandsworth.⁴ That will now be causing regime change across the prison estate on an epic level because governors live in fear of being on the wrong side of the Daily Mail, to put it simply, and the Justice Secretary lives in fear of just being characterised as being incompetent or soft on crime. And so, we have a system that is dictated to by those individual moments and dealing with tactical problems, rather than being able to stay true to a strategic course. And so, the politicians understand strategy and they understand the value of strategy and they understand I think, largely that the system is the wrong system, and that we need to reform, and we need to find ways to get people, once they leave prison, out of the inevitable journey back to prison. Everyone understands that. But that strategic understanding is constantly interrupted by sharp, tactical problems that undermine and can interfere with people’s careers and reputations.”

As this person notes, and we noted above, the central problem is not one of lack of knowledge, or lack of desire for change. Rather it is the nature of criminal justice policymaking itself, the sense of risk to individual careers, more than government credibility with the public, that incentivises an exceptionally risk-averse approach. Thus, one described how when he “came up with a very plausible alternative [to prison], it did not suddenly get lots of MPs saying ‘yes, this is a great idea. We’d like to do this.’ Because for them it’s a risk of ‘are we going to put people on the streets, who would

⁴ This interview was conducted just after the high-profile escape of Daniel Khalife from HMP Wandsworth

otherwise be dangerous?" Another claimed that "there is a lot of willingness to quietly investigate more tagging, [but] there's very little willingness publicly to say: 'this is of real public benefit, if we can do this right. And by the way, this would mean we need to spend less of your money on jailing people who don't benefit from it'" A former Labour policymaker talked of issues "which people prefer to put in the too-difficult box, basically... there is no political incentive on anyone sort of opening up the box and bringing those things out and having a bit of a play around with that." A Conservative-affiliated participant described it similarly: "I think there are politicians who would say, I'd like to look at prison reform, but I'm just not going to touch it because it's not worth it."

Besides the risk of appearing soft on crime, our interviewees also said that it simply takes too long to see the benefits of non-custodial interventions: "it's difficult to do prevention because often the results are long-term. And if you're a politician, you're thinking about electoral cycles, you may not get the benefit immediately." Thus, the immediate upsides of seeking to implement difficult reforms are unclear, but the risks are tangible. Meanwhile, punitive measures bring evident and highly visible short-term gains. Being punitive is therefore "a very easy thing to do politically. Because it doesn't on the face of it seem to cost any more money. Even though we know it does cost more money...the reality is that it doesn't immediately cost more money to announce longer prison sentences. And it looks like you're being tough. So, I think all the political incentives are there, whichever party is in power. And indeed, there's often a sort of an arms race between the parties."

Our interviewees often lamented, in private, the fact that these pressures are another push factor on the collective tendency to treat criminal justice as little more than a vehicle for headlines. According to a former senior policymaker: "if politicians think that they can get, you know, positive newspaper headlines, and supportive commentary, and a boost in the opinion polls for sounding tough on rapists or murderers, or whatever you want, drug addicts, then they're likely to do it, aren't they?" In the words of another, the "temptation to promise safer streets or a war on vandalism is always to the fore, and not reforms of the Criminal Justice System."

It was sometimes suggested that punitiveness and the popularity of governments are in an inverse relationship: only governments insulated from political pressure can attempt bold reforms. A Conservative described it in the following way: "you need a new government of any party with a comfortable majority, that isn't in crisis mode." For another, eye-catching policies are a sure sign that the government of the day has hit a rough patch:

"I remember when Grayling was justice secretary and, you know, he's basically just been given this remit of keeping the tabloids off the coalition government's back. And he brought forward what is generally considered the worst piece of government legislation in history, of which there's quite a lot of competition, and it was the 'bash a burglar' Bill...you always knew when the government was in trouble when they dusted down the 'you can hit a burger over the head and we're not going to prosecute you'. And he brought this Bill forward, which basically just restated the existing law. I think he moved about three words around and it was ridiculous. But the tabloids loved it because they didn't really understand it. They fell for the spin...I don't think Grayling cared because he got some good headlines, you know 'coalition government lets you hit a burglar over the head with a golf club and you won't get sent to prison' and Parliament wasted about four days of legislative time on it."

A central problem identified by our interviewees, therefore, is that criminal justice policymaking feels exceptionally hazardous, even compared to other parts of government. It is too rarely taken seriously in its own right; too often posturing on crime is used simply as a means to other ends, as a source of headlines or as a tactical move to shore up support for beleaguered governments. Politicians understand the need for policy reforms but often feel it is too risky to attempt them. Any politically viable strategy Better Justice creates to achieve reforms will need to give politicians a clear incentive to tread what they perceive as being an exceptionally hazardous path.

Recommendation 6:

The Better Justice Partnership should consider shifting its emphasis from changing politicians' minds about the issues towards a more strategic approach that gives politicians incentives to adopt policies that they feel are very politically risky.

iv. The treasury

The role of the Treasury in criminal justice policymaking was seen as a further barrier to reforms, as wielding a power of veto over any attempts at bold policies. Interviewees were not specifically asked a question about it, but it was raised without prompting by a large number of them.

The perceived problem goes beyond typical Whitehall griping about Treasury intransigence. For several people, the Treasury was unusually or disproportionately unwilling to invest in criminal justice even compared to other areas of government. As one put it, "so you've heard of the dead hand of the Treasury? For them investing in criminal justice is like setting fire to money...in their terms it's like there's no economically productive return here. This is just money down the drain." Another unfavourably compared his relationship to the Treasury when in the MoJ to past experiences: "the contrast between the [other department] and MoJ was striking from that point of view... the relationship we had with the Treasury in the [other department] was dramatically different from the one I found myself in at the MoJ." The Treasury appears, in the minds of our interviewees to have an unusually low level of confidence in the ability to deliver results. One recalled that "their main argument was that it was just payment for failure, that the system needed to reform and to deliver better rehabilitation, lower reoffending rates and then the Home Office wouldn't need this money."

The upshot, for our interviewees, was that this reluctance to invest leads to a relationship where short-term running costs become the overwhelming focus of discussions with the Treasury, with longer-term reforms often off the agenda. A former adviser said that:

"I spent a lot of time in MoJ with the Treasury trying to persuade them to give us money to keep the lights on, feed the prisoners, whatever. The problem with that dynamic is that that is therefore what defines your relationship. It then becomes very difficult to move on to a more strategic discussion because you're not in control of your own destiny. You're basically having to offer these short-term concessions to the Treasury just to manage the day to day and it also just consumes bandwidth. You don't have the time to talk about something more strategic because you're just doing that."

Long-term reforms, even if they might save money in the long run, were dismissed: "it was very, very difficult to get conversations going about the longer-term savings that you could make from a

community sentencing approach ahead of prison. You know there was a limited amount of appetite for banking cost savings that were some way down the line”, claimed one interviewee. There seemed to be an attitude of resignation, that “it's never any good with the Treasury saying ‘you need to spend X amount of money in the short term and it will save you Y in the medium term.’ What they're looking for is savings for savings. So, whatever I spend in the short term has got to save me money in the short term as well, or be offset by something else that will save me money.”

What, if anything, should be done in response? We heard several suggestions that the Treasury's stance raises the bar for evidence in criminal justice policymaking: “they [the Treasury] do set a very high store by evidence and the threshold for evidence needs to be high”, is how one interviewee described it. A former Labour policymaker remembered that “the Treasury are also constantly saying, ‘well, you're wanting more investment in this, what's it going to deliver?’ And it's always very difficult to prove that things are going to result in better outcomes when they've not necessarily been tried before in your particular area.” Thus, as another put it, “the Treasury were always asking, what is the outcome? What is the deliverability? What is the saving downstream?... if you're bidding for additional new resources, you've got to be very clear on what the outcome is and what the benefits are.” Spelling this out in detail may well be a prerequisite for achieving long-term reforms, particularly in an environment where policymakers in both the Ministry of Justice and the Treasury appear to evaluate reforms mainly on the basis of how they reduce reoffending.

Recommendation 7:

The Better Justice Partnership should recognise the importance of the Treasury in penal policymaking. The strategy should in the long-term aim to influence the Treasury by emphasising exactly how reforms reduce reoffending, and how much money this saves the Treasury in wider social spending.

7. Gender and Race

We were also tasked with discussing race with our participants. There are stark racial disparities in our criminal justice system, but are these widely recognised by policymakers? Is race at the forefront of their minds when they think about penal policy? We found that largely, the answer is no. However, gender was mentioned more often, usually in relation to female prisoners.

Race was mentioned without explicit prompting from us in only 2 of our 22 interviews. One said that “if you go to Feltham young offenders institute today...70% of the inmates will be black and we’ve got to look at and deal with how our system is relating to our black population”, whilst another mentioned the “horrific disproportionality of over-representation of racial groups.” Otherwise, issues of racial injustice did not seem to be uppermost in their minds. Several openly said that race had been relatively unimportant during their tenure. This response from a former policymaker was typical: “I don’t think it would be fair to say that race played as significant a role in the debate as the sorts of issues I’ve been referring to already.” Another, when asked how issues of race featured in discussions at the Ministry of Justice, said “so I can't say they did. To be completely honest...there is an awareness of that but in terms of how much it was actively, regularly, discussed, I can't say it was, to be honest, in my memory.” A Labour participant said that these issues “weren't at the forefront, if I'm honest, I think...there was some analysis of offending patterns as it related to different ethnic groups and, I think, some policy work to try and understand that a bit more, but I don't think it translated into any specific public policy initiatives, certainly that I can remember.”

Once asked by us, most agreed that racial disparities were important, even if they were not strongly on the agenda when they were in office. It is also important to note that most of our participants worked on criminal justice policy more than five years ago. It may be that if we interviewed people working on it today, there would be greater awareness given the prominence of the findings of the Lammy Review, the Black Lives Matter movement and other related campaigns.⁵ It is telling, though, that when prompted by us in most cases their first instinct was to talk about policing. They frequently assumed that we were asking them about the use of stop-and-search. It feels to us that issues of racial justice are much more rarely linked to the prison and probation services in their minds. This may present an opportunity for reformers. In an environment where, today, racism is much more at the forefront of public debate, it may be worthwhile to consider in depth how politicians and their advisers can realistically address the stark racial disparities in criminal justice, beyond the actions of the police. This would include understanding why it does not apparently get sufficient political traction at present.

It was in fact much more common for our interviewees to spontaneously raise gender as an issue. A typical response came from a Labour respondent who said that “during our time, there was a particular challenge then, as there is now, around female prisoners and about the very high levels of vulnerability of female prisoners in the estate and the alarmingly high suicide rates that accompanied that.” Several suggested that the treatment of female prisoners would be likely to evoke particular sympathy from the public and that addressing why they are imprisoned might be a good starting point for any campaign for a wider liberalisation of the justice system. It should be noted however

⁵ There may be some scope to look at recent House of Commons speeches to see if racial injustice has become more frequently linked to the justice system, beyond the police.

that significant efforts have already been put into this by individual organisations and alliances since the Corston report, none of which have had the traction they desired, despite politicians seemingly taking on board the evidence of the need for a change in approach.

Recommendation 8:

The Better Justice Partnership should make issues of race and gender central to future campaigns on the justice system, and consider in greater depth why these issues have not yet piqued sufficient political interest to achieve meaningful change.

8. Our Participants' Suggestions for Change

We ended our interviews by asking our participants how they would begin the task of reforming criminal justice, and what they think campaign groups should do differently. Most acknowledged that campaign groups play a vital role, and want them to continue speaking truth to power. However the sector also came in for quite a lot of criticism, even though respondents agreed with campaigners' aims. Perhaps the strongest statement of this came from a former policymaker, who said that:

"They should come out and say 'we've failed. Because...for 100 years our core mission has been to reduce the prison population. We've manifestly failed. We're literally the only charity that's done so much but hasn't achieved its aim...whatever we're doing, it's not working. So we need to do something a bit different. We need to acknowledge how far away we are.'"

This was far from the only assessment of this type, even if it was stated more boldly than most. Many interviewees depicted campaign groups as politically naïve, overly negative, and insufficiently focused on offering policy solutions. There was a sense that an overly antagonistic relationship has developed, which makes it harder to influence policy. Their ideas – some, but not all, of which we agree with – would involve being more hard-edged and politically savvy, offering politically-palatable policy solutions, as well as demonstrating sympathy for politicians' needs and for the constraints that they think they work under. They commonly described bringing about reforms as a mammoth task, that could take a generation or more. A gradualist approach may be needed, in their view, guided by a long-term sense of mission and a more explicitly political approach to campaigning. Their vision of what constitutes viable reforms is clearly informed by their dual ideological vision of criminal justice: they instinctively want to balance punishment and rehabilitation, which naturally leads them to solutions, such as electronic tagging, which appear to combine both. We begin this section by presenting their critiques, before discussing some of their suggestions for change.

i. The sector is seen as overly focused on pointing out problems, rather than offering solutions

When asked what reform groups could do better, many interviewees criticised them for failing to offer solutions. For instance, "every time there's a really negative prison report from the chief inspector, if you look at the press release, it comes from the Howard League or the Prison Reform Trust. And yes, I agree with all of that but where's your bit at the end that says: 'so this is what we practically need to do instead'? And that is sadly lacking." Another suggested "not always being the voice of doom and shining a light on how bad things are...demonstrate the benefits of doing something differently and why a different approach will pay back both financially and socially and economically." This attitude was echoed again and again. As one put it:

"I personally believe with a degree of respect to the charities who are behind this [research project]. They need to do rather a lot more work because I find it quite frustrating...not a great deal is served every time there's a bad report into a prison when we know that we're virtually at capacity, and them just saying 'everything is awful, something needs to be done.' What I think we need them to start doing a little bit more is suggesting some practical alternatives that will win the confidence of the general public. And that's the crucial bit they're missing out."

These views did not reflect a lack of sympathy with the *aims* of campaigners. Rather it is how they try to achieve them that was criticised. One of the interviewees argued that:

“The think tanks and the pressure groups need to do the job of convincing the public, rather than just constantly putting out press releases saying ‘this is awful, It can't go on like this.’ Because while they’re right that this is all falling apart and can’t go on like this, unless there is a practical, pragmatic alternative that has a chance of winning the confidence of the public, it would never get to Parliament, and I do think they desperately need to join up some of the dots on that.”

One former minister even explicitly said that a failure to offer solutions meant that he did not want to meet with campaign groups:

“The fact that the pressure groups and think tanks in that space are so frankly, militantly vocal doesn't help because a lot of the time, it's difficult to be quite constructive...I think there is a real opportunity for them to be kind of a little bit more constructive and cooperative and trying to encourage thinking, rather than sitting almost as though they're in an armed silo and saying ‘this is what we think and we're not going to think or do anything else.’ That doesn't help politicians either, because it ends up with you just knocking against each other. There's sort of no give and take or cooperation... there were plenty of times that I would just refuse to have a meeting [with campaign groups]...because I saw no point.”

So they want solutions, but what kind of solutions? They suggested that campaign groups’ influence will be maximised when they not only diagnose a problem but also offer a clear, evidence-based and costed solution with a path to implementation. As explained by a former adviser:

“The one bit of advice I would give as a special adviser is: I had so many meetings with pressure groups which were just whingeing or telling me everything that was wrong. And the ones which actually influenced me and I would take anywhere were where it was, ‘I’ve got the solution. Here’s a one-pager on what you could do right now.’ They understood, they’d taken the time to understand my constraints as a special advisor...it was, how do you actually frame this in a way which makes my life easier. Because that's something that I'm then likely to take to the Secretary of State and say ‘this is a goer, let's get officials to look at this’ ... you've got to convince people that you're there to help and that you get it.”

Or in the words of a former minister:

“I had numerous meetings with external bodies as a minister where the external body didn't know what they wanted and didn't have a clear, clear pathway to what they wanted. It's one thing to campaign for something. You’ve got to actually know what it is that you want a minister and a government to do. And what the implementation of that policy is going to be. So my advice would be, don't just think of the top-line direction of travel. Think about how it's going to be implemented, and think about what the policy structures are to implement it and think about who are the influences outside of government that need to be on board to help that be delivered.”

This evidence does not mean that pressure groups should cease pointing out problems per se. Nor should their core mission be to cooperate with, or be coopted by, politicians. Explaining what is going wrong is one of their key functions in the policy process, even if politicians find this difficult to hear.

Performing this duty well requires a degree of distance from those on the receiving end. But there is strong evidence that they should *also* seek to understand the limitations *and* offer constructive policy solutions. There is a clear gap in the market for not only evidence-led but also realistic and politically-informed ideas that can help solve problems like overcrowding in prisons. Based on our interviews, this would increase the sector's influence and standing with politicians. It would also help lift some of the pessimism that permeates criminal justice in England and Wales, the pervasive sense of gloom and weariness that emerged from our interviews. The sector could seek to offer a vision that things can, after all, change for the better.

Recommendation 9:

The Better Justice Partnership should ensure that it offers politically viable solutions to policymakers alongside pointing out the harms of the current system.

ii. The sector is perceived as politically naive

Related to this, there was a sense from the interviews that campaign groups do not 'get it' when it comes to politics, that they neither understand the political process nor show enough awareness of *why* politicians do what they do. One suggested that "it seemed like they didn't really get why people weren't listening to them...it seemed like they would be angry, not understanding the pressures on the other side." This does not mean simply becoming politicians:

"Some of the advocacy organisations can be a little bit politically naive. But you know, I accept that it's not their job to be politicians and they're not there to sort of replicate political parties. They're there to be advocates, but it's a choice about whether you shout very loudly or whether you try to also influence and engage and meet halfway. And I feel like the sector is quite shouty."

In their view this requires acknowledging that politicians are trying, sincerely, to improve things. Credit should be given where it is due. Pressure groups should, as one interviewee suggested, "try to understand what they [politicians] are dealing with and don't automatically attack everything as not being good enough...how are you going to move the whole thing forward?" They felt this should be allied with a greater understanding, even sympathy, for politicians. One former Labour adviser said that:

"The thing that used to wind us up a bit is that even when we were doing things that actually were kind of progressive measures, we'd be getting a kicking...and it was like, kind of get real guys a little bit. You've got to understand political reality a little bit and what we're dealing with here and also I think, understand the public a bit as well, because at times it's kind of wishing away what actually the people think."

In the words of a Conservative respondent, campaigners need to

"Try to understand where politicians are coming from and the pressures that they're acting under. Because if someone is Justice Secretary or a Justice Minister they want better outcomes as well...otherwise they probably wouldn't have said yes to the job, even if they didn't really want to do the job...it's quite difficult to keep doing it and not become very concerned about it and not care about it after two weeks. So yeah, just an awareness that they very much care about it too. They want better outcomes as well. So if you disagree with

them, they're coming at it with as good intentions as you are....and then the other point is just to understand the pressures that they're under. Even if you disagree with them, they'll be acting for their own reasons. And you know, they have unique pressures, they're sometimes difficult to understand from the outside, but are still very real."

The notion that campaigners fail to understand the constraints that politicians operate under cropped up repeatedly. Another Labour participant stated that his main advice would be to:

"really recognize the politics...really try to work more constructively with Labour politicians... obviously, in order to change things, you have to have power and in order to get power you need to make compromises, and you need to have positions in public which might not be exactly what you think in private, and you need people to be prepared to say 'we understand the limits that you are working within and we want to help because we all have the same ultimate aim. We want to work with you to help you get to where we think you should get to, and we will help to persuade you why that's the right thing, and we will try and show you why it's in your benefit as well.' Because too often, I think people in the sector have a very clear sense of their own wish list and what they want, but they're not very good at showing politicians why it's in their interests...greater understanding and recognition of the fact that you need to think about, 'how can we help the politician as much as get what we want?' is really important. And the two aren't necessarily incompatible...you might have to be a bit patient and a bit pragmatic about it."

Again, this is not to go so far as to suggest that campaign organisations should only become political advisers or lobbyists. But the fact that this argument was repeated so often suggests, to us, that there is a real lesson here. Like anyone else, politicians are more ready to listen when they feel that they are understood.

iii. The sector should think more about how its arguments are framed

There is a need, in the opinion of our participants, not just to present politicians with more solutions but also to think more carefully about *how* those solutions are packaged and presented. Arguments might need to be framed in ways that campaigners would not choose to use themselves. Why is it in the interests of voters and politicians to change? Answering this question requires more than just stating that a particular position is morally right. As one put it,

"Some of the arguments for reform need to be much harder-edged. They often sound like they are versions of Guardian moralising. Whereas I think what we need is someone who is much more willing to make the hard public interest argument about why the system is not working. And it probably needs to go alongside a reality check: ideally you're thinking about the public communication, or political communication"

Or in the words of another, campaign groups need to

"Go for head over heart. Too many of those groups in the past have presented as sort of bleeding-heart liberals who are slightly holier than thou, and carrying a torch with the oppressed. It's a bit of a stereotype, but I think that's partly the way in which they have landed. And I think that's been particularly a big problem for them with the last couple of very challenging governments for them to deal with."

An argument that we heard repeatedly was to focus more on the economic cost of the current justice system when framing arguments. It was suggested that proposals should be fully costed and any monetary savings compared to the status quo should be loudly trumpeted:

“You’re facing into a public spending environment of excruciatingly difficult proportions over the next five to six years, everything will be governed by affordability. So if you have got changes that you think will save the state money or are more economically efficient, either in the short or the medium term, make the argument that way, make the argument one that a number cruncher will sympathise with.”

A former minister suggested taking:

“what I call a ‘National Audit Office’ approach to it, to say look, not only is this more humane, but this is better value for money for the taxpayer and a more intelligent use of resources would be to do this...it’s no good them saying from the sidelines ‘prison is bad, prison is wrong’...I think it’s really up to them to come up with practical solutions, looking at technology and how we can use it more savvily for the wider interests of society rather than being seen as always identifying with the defendants or with the offender. I think instinctively, you’re going to struggle if that’s the case.”

Siding with taxpayers was cited as an especially good way to win over Conservatives. According to one respondent, campaign groups should say that

“Good money is being thrown after bad, the system is not delivering the outputs that you want. It needs to be more consistently made, and it doesn’t feel like it is. I just think we need a properly kind of conservative with a small c argument for reform that comes back to the interest of the taxpayer. Because I think that actually the argument is far too often framed as one of humanity...it still feels quite leftwing...you need an argument that cuts through to taxpayers that says ‘all these expensive things you’re paying for are not working, not keeping you safer’...and that’s the basis for making an argument to the treasury about how you can do things differently.”

Politicians and their aides are, as we identified earlier in the report, instinctively sympathetic to the idea of penal reform. They also understand the scale of the problems that the sector faces. What they want are concrete, achievable plans with a strong evidence base that can demonstrably save the government money in the long term. They also want arguments that help them demonstrate why policy changes are in the interests of their constituents, and not just those inside the justice system. Rightly or not, there is a perception that campaign groups are not doing enough of this at present. We therefore suggest that any policy plans should clearly and explicitly demonstrate the long-term savings attached to any project, as well as the wider benefits that accrue to taxpayers and society.

Recommendation 10:

The Better Justice Partnership should consider framing arguments to politicians about criminal justice reform in terms of the cost savings they would achieve and their wider benefits to society.

iv. Reforms could be achieved by stealth

So far, we have presented our respondents' ideas about how policies can be presented and sold. But some also argued that change is sometimes better achieved under the radar. When asked what they thought had been the most positive development in criminal justice policy of recent years, by far the most common response was the large reduction in under-18s in custody. According to a Conservative respondent, "I think if I'm very frank, the change in policy for underage teens was achieved without a huge amount of fanfare and publicity so that people who might have objected to it, either didn't know about it, or didn't shout about it very loudly." This sense of reform-by-stealth was echoed by several respondents, one of whom said "interestingly, it's been done entirely under the radar...it probably would have been harder if it had been trumpeted. I think there would have been more of a political fight about it...this would have been one of those things that would have been labelled as you know, just soft on crime, letting people get away with things...it wasn't kind of knocked around by the day-to-day politics, and just sort of quietly over time had quite a significant effect." Or as a Conservative put it, "at busy times in the public agenda, when politicians have just done things like loosen the reins on allowing work outside prison for example, I think where that stuff has happened, it's almost always happened below the radar in the last 5-10 years." The 'Unlocked Graduates' scheme was cited as another reform that had worked well without fanfare.

Some drew from this a wider lesson that reformers should try to enact changes by stealth, avoiding media scrutiny, as in this Labour policymaker: "when you're in government you can do an awful lot and you don't need to necessarily talk about everything that you do. There are certain things that you might want to do to the prison system and the probation service that I think you would probably just do quite quietly, without necessarily having to shout it from the rooftops."

We sympathise with this idea. But we also wonder about the extent of its applicability, particularly where legislative change would be required. For certain lower-profile reforms it may work, but in other more high-profile areas there is a risk that greater scrutiny is eventually attracted if ministers are not transparent about their policy objectives from the start. Failing to attempt to win people over to the benefits of a reform programme could undermine it in the longer term, if few people are persuaded as to why it matters.

v. Starting small

A more viable strategy was suggested by many of the interviewees, or implied by their attitudes toward policy. They argued for a gradualist approach to reforms, which in their view was much more likely to open the door to bolder reforms in the future. Starting off too bold was seen as counter-productive. For many, tackling shorter prison sentences was a key example of a gradualist approach.

Our participants were strongly, personally, against the use of short sentences and thought that the public could be much more easily persuaded of the merits of avoiding them. They also argued that support for reforming longer sentences might only begin to emerge once the argument had been won on short sentences. One reported trying this strategy when in office: "we wanted to embark on quite an ambitious sentencing reform approach. And our starting point of view was the wedge approach. Why don't we just agree that basically for the most minor crimes we agree on easements? And it was slightly a way of making the point. You establish the principle that for a certain category of

people jail is not the right solution. And then having got to that point, you can maybe expand it to something that's more ambitious.”

Others suggested that reformers should think carefully about the types of groups, including those attracting short sentences, who would be more likely to garner public sympathy at first:

“You can totally get people on board with the idea of a young kid who was in care, who had no one to stand up for them, expelled from school, never had a chance and who’s ended up in prison deserving a second chance. When I first started working in the sector the comparison I kept thinking of was how 20 years ago, breast cancer fundraising campaigns would often focus on the 35 year-old, attractive mum with kids who got breast cancer, even though it affects women in their 60s and 70s far more. But it was effective - they attracted huge funding which allowed them to conduct transformational research that helped everyone by focusing on the cases that, fairly or not, people (and especially the media) could really buy into. The same applies in prisons. You can win the arguments on some of this stuff... we could totally win the argument for no pregnant women in prison...I think we could just pick off these obvious groups as a way to prove the case - to say there's other ways to fix this.”

This reflected a wider view that reformers must accept that they are in this for the long haul, and must not expect immediate, comprehensive change to take place. One suggested that reformers need to wake up to the scale of the task:

“We certainly didn't think apartheid was ever going to come to an end, or that Nelson Mandela was going to be released from prison, certainly that he wasn't going to become leader of the country. But all those things happened, right? You know, peace in Northern Ireland, it happened, sort of. It's [i.e. criminal justice reform] up there. It's not easier than those two. So things can happen, but I think it's helpful for Nacro and the others to think of it in those terms. It's *that* hard...what would it require that would get the equivalent of the people of Northern Ireland thinking ‘we have just got to find another way. It's broken?’”

Another argued that as a result, politicians must be given space for gradual, evolutionary change. In their view, campaigns for a more effective justice system must bear this in mind:

“It's going to take 5-10 years [to reform the system]...in order to give politicians the space that they are able to do that...it's about gradual change, opening up the opportunity to move down the right path...the politician who stood up tomorrow and said, ‘I'm going to cut the prison population in half’, or whatever, would just be laughed out of court. But a politician who was allowed to have a bit of a conversation about ‘well, here's a plan to get it down to whatever by whenever, and here's how we would do it’, and in such a way that isn't going to make the public unsafe from violent criminals...and end the absurd waste of a prison system which is wasteful when it comes to both human lives, but also sheer monetary cost, then that's how it will get changed. And I think the problem with the current way in which politics is so divided is that there is so little space for people like that to operate. It's really challenging. I think there needs to be a wake-up on the side of those who want to see reform, that in order to do that we need to really give people a bit of an opportunity to get the space to do it.”

One suggested that changing attitudes to race and LGBTQ+ rights offer lessons, saying that:

“You have to move into campaign mode, and that's a slow burn. You're talking about trying to persuade people over maybe even a generation about an argument, and it might take that long. But you only have to look at what's happened on issues like gay rights or all sorts of issues where there's been big cultural change in recent years, issues around race where society has changed...a lot of that was due to a lot of hard grassroots campaigning work alongside politicians, who then saw that there was the space available to act...it doesn't matter how many reports you give to a politician on it. If they think the public are against it, they're not going to do it. So even if they privately agree with it, you've got to go out there and mobilise and change the terms of the debate.”

A further interviewee put it this way: “if you were to say, you know, we're going to completely reform the prison system, and we're going to have brand new prisons, and they're going to be lovely and rehabilitative, and all those sorts of things. Well, that would just be an absolute joke. You need to have that as part of the plan, longer term...but don't do that straight away.”

There was a suggestion from some that lobbyists for change are insufficiently attentive to how long it may take to get results: “I do think the criminal justice lobby has to hold its hands up here as well in terms of not really helping some of the politicians who've got real serious intent to deliver reform which is meaningful and long lasting. Sometimes they're not really allowed the space to be able to do some of that work because of the expectation of immediate change.” There is an important lesson here. Starting with relatively modest goals, on which agreement may be more widespread – such as ending short sentences – may not be reformers’ dream policy package, but it may well be the most effective way to gradually win over a public and press who are slower to see potential merits in leniency more widely. Trust must be earned, gradually.

In order to properly reduce the prison population, curtailing short sentences cannot be the end point. Indeed, the current government’s own recent changes will see a curtailment of short sentences in an attempt to reduce short-term pressure in prisons, alongside a more punitive shift in overall sentencing policy that is likely to increase the prison population in the longer term.⁶ Our respondents’ point, though, is that even for those who genuinely want a long-run reduction in prison numbers, short sentences are the best place to start.

Recommendation 11:

The Better Justice Partnership should adopt a more gradualist approach to reforms, thinking strategically about short-term steps that can gradually build confidence in criminal justice reforms.

vi. Present a wider reform package

A further implication of this gradual approach to policy, emphasised by a number of our participants, was not to introduce liberalising reforms on their own. Rather, they should be wrapped up in a larger package that also improves policing and support for victims of crime. This would allow politicians to frame their changes as primarily aimed at getting a better deal for the public. One respondent

⁶ Our interviews almost all took place before Alex Chalk’s recent announcement of changes to sentencing, as well as the King’s Speech proposals.

suggested Joe Biden's 'Inflation Reduction Act' as inspiration, which introduced very bold and far-reaching changes to green industrial policies in a way that could be framed as reducing inflation.

A typical response came from one of our respondents, who argued that "the public have to have confidence in policymakers that they recognize that with most crimes there is a victim and that victim is an incredibly important person in that whole debate...we've also got to give confidence to the victim that the system's dealing with their experience in a positive way." Some also suggested that the public might respond to liberalising reforms with fear that the government no longer prioritises their safety or reducing the threat of crime. Thus layering reforms to the justice system on top of reforms that improve policing, including police responses to more minor but highly visible and distressing crimes like burglary, would be helpful. As one interviewee suggested, "what people want is a safe community and a safe community, free of crime, which means visible, effective policing...what they want to know is that the politicians are dealing with that to try to reduce that threat of crime."

The implication is that addressing public safety and the needs of victims alongside other reforms is key to getting the press and public on side. Persuading them that politicians understand their concerns was seen as paramount. Their confidence can easily be lost, which would be the end of any wider reform package. Addressing these concerns could also help persuade reluctant colleagues in Parliament too, as suggested by one of our Conservative interviewees: "the Members of Parliament who have got direct experience in the criminal justice system absolutely recognise that it needs to change. But the vast majority of members of Parliament haven't got that direct experience and their own experience is primarily hearing from victims of crime, and victims of crime have to get a better deal...it's absolutely right that they have a stronger voice." Another suggested that "presentationally...just make sure there's carrot and stick. If you're going out with something, which is, could be seen to be liberal, put in something at the other end which is tough... making it clear, this isn't about people getting off scot-free, there is still going to be punishment."⁷

Recommendation 12:

The Better Justice Partnership should consider presenting liberalising reforms as part of a wider package that can be framed primarily as public safety measures, or steps to improve victims' rights.

vii. Smart tagging and community payback

It is important to realise that politicians and their advisers instinctively want to achieve both punishment *and* rehabilitation. This leads them to naturally favour alternatives to custody that can still be construed as punitive or 'tough on crime'. They favour these schemes ideologically but they also see them as a further way to gradually gain the confidence of the public and the press, reducing anxiety about people who commit crimes being fully released into the community.

⁷ Nevertheless, it should also be noted that there are some clear tensions emerging within interviewees' own rhetoric about what is necessary to achieve reforms. For example, they discuss a need for reforms which are both punitive *and* effective, or policing that is both visible *and* effective.

Both smart tagging and community payback schemes were widely praised. For instance, a Conservative participant recalled advocating smart tagging: “it was obvious it was a quite a useful way of trying to move the debate on. Tagging is an interesting example of where you can probably square the political demand to be stricter with a want to actually deliver a kind of more progressive approach to political justice.” Another talked of “devising new types of sentence that can deprive people of their liberty, but still keep them in accommodation and a job. And that's why I was very strong in advocating the use of tags and GPS in order to enforce curfews so that people in effect can be under house arrest, you know, being punished, but not having to actually come into a prison.” a Labour respondent put it like this: “we were trying to look for alternatives, to see if there were better ways of integrating people into the community, but also just reducing the pressure on the prison population and doing it in a way that commanded public support. So, it had to be quite visible that people were doing something in the community...and part of the thing was getting people in high vis jackets.”

Doing this was sometimes talked about as an urgent need for the sector, as with this interviewee: “the policy incentive is nearly always going to be to be harsher unless we can prove that there is a really good solid alternative [to prison]. That's where theoretically, more effective community orders can come into play. And perhaps more punitive community orders.” Some suggested that to get there, reformers need to become more comfortable with visible forms of community payback that nonetheless avoid prison, and that opposition to tagging and highly visible community payback may fail to understand the pressures that politicians are under. This echoed some of the concerns we noted earlier about campaign groups appearing out-of-touch with political reality. For instance, another Labour participant said that:

“The key thing is to find a mechanism where you gain community confidence for the offending behaviour to stop. And that's why, again, if we go back to 2007/8, one of the things that we did was to make the community payback orange vests very visible, and that faced a lot of criticism from at the time, from many professionals in the system. But the idea behind that was to say, you know, to the public: ‘you can see visibly that there is some form of rehabilitation going on with some form of work commitments’... it wasn't seen as a soft option for people...it was still visible, and it was hopefully effective in trying to help people not go to prison, but also be rehabilitated at the same time as having some form of general discomfort in their lives as a consequence of their criminal activity.”

This idea attracted bipartisan support. A Conservative politician said to us that:

“I think that if they [non-custodial sentences] were seen to be meaningful, and seemed to be high profile, and seemed to fit the severity of the crime, and particularly if it had the buy-in of the victims, then people would say: fair dues.... in [name of constituency], in the past, people who've been serial graffiti artists have been made to go and clean it up in full public view. Not just their own graffiti but everybody else's as well. A lot of people said that's a suitable punishment.”

Based on these findings, serious thought could be given by Better Justice to developing a programme of work around non-custodial sentences that can be framed by politicians as sufficiently punitive. The idea is attractive to politicians on all sides of the debate, and it was often raised by them without any prompting from us. Politicians instinctively feel that they must be able to frame

any reforms as punitive and so to them, smart tagging and community payback feel completely natural as policy strategies. In fact, pretty much every respondent felt that tagging and community orders were likely to be key building blocks of future reforms. They also support these policies because they think that if the public and press can be won over to non-custodial sentences for less severe crimes, space might gradually open up for wider reforms. This is seen, in other words, as an easy place to begin a much longer-term project of reforms. There are other potential benefits too. Eventually, community payback schemes could be a way to incorporate principles of restorative justice into the system, for example. They could also be a vehicle for enhanced rehabilitation by providing skills and qualifications for those undertaking work.

We note that there are concerns in the sector about the stigmatisation that is associated with tagging and visible forms of community payback and the limited evidence base for the efficacy of the former. However, if campaign groups could find a way to get behind such plans, it would help politicians feel that the pressures they face are understood. Opposition to visible forms of community payback, as well as tagging, may prove counterproductive in that it could lead policymakers to feel a sense of exasperation, that no solution can be 'good enough', making it hard to get a hearing. As we have shown above, the sector's reputation as refuseniks may ultimately harm attempts to introduce reforms. If the choice is made to get behind some version of tagging or visible community payback, this might involve considering within the Better Justice Partnership how to approach resistance by some in the sector to their use. Or alternatively, if it is felt that these schemes are too stigmatising to be recommended, some thought could be given to improving the evidence base against them and more clearly communicating to policymakers and the public about why they should not be considered viable.

Recommendation 13:

The Better Justice Partnership should consider shifting towards greater support for non-custodial sentences that can be framed by politicians as punitive, such as smart tagging and visible community payback schemes. Or if this is not possible, it should prioritise improving the evidence base against them and more clearly communicating to policymakers and the public about why they are not felt to be viable.

Appendix: Details of the Interviews

We carried out 22 interviews in total from July to November 2023. Tom O’Grady was present at all interviews and Gemma Buckland for about one-third of them. They were mostly conducted online, although some were done in-person, particularly those with parliamentarians. Each one lasted for about one hour. Our interviews were semi-structured. That is, we had a script of questions that we tried to use for each interview but where appropriate we allowed conversations to develop naturally in different directions, depending on the expertise of the interviewee. Our main aim was to allow the participants to speak freely for themselves; our role was to listen, not to challenge their views. We allowed them to speak freely, without interruption.

The following is a list of some of the core questions that we asked all of our interviewees:

- What examples would you cite as being successful recent justice initiatives in the UK?
- The UK prison population is estimated to rise to as much as 106,000 by March 2027. It is now at approximately 85,000. Do you consider this to be too low, about right or too high, and why?
- Why do you think the prison population has risen so much in the last two decades?
- How would you characterise public opinion on i) the causes of crime and ii) what constitute effective responses to crime?
- How do you think the public forms their views on i) the causes of crime and ii) what constitute effective responses to crime?
- To what extent do you see it as the role of politicians to i) influence and/or ii) follow public opinion on crime? Why?
- To what extent do you see it as the role of politicians to i) influence and/or ii) follow media opinion on crime? Why?
- What are the main constraints on making fair, sustainable and effective policy to reduce crime in your view?
- To what extent do issues of race and racial justice influence your thinking on crime policy? How should they be part of the conversation going forward?
- What advice, if any, would you give to your colleagues seeking to improve the sustainability and effectiveness of policies to reduce crime after the next election?
- What advice, if any, would you give to external organisations seeking to improve the sustainability and effectiveness of policies to reduce crime?

We recorded all of the interviews and analysed both the transcripts and the recordings. We began by inductively developing the key themes that emerged from the interviews, and then we reviewed the interviews in detail for ideas related to these themes.

This is a list of all interviewees for the project (one of whom asked to remain anonymous):

Name	Relevant Position(s) Held
Lord David Blunkett	Labour MP 1987-2015 Home Secretary 2001-04 Labour Peer 2015-
Crispin Blunt MP	Conservative MP 1997- Parliamentary Under-Secretary of State for Prisons and Youth Justice 2010-12
Robert Buckland MP	Conservative MP 2010- Solicitor General 2014-19 Minister of State for Prisons and Probation 2019 Secretary of State for Justice 2019-21
Rob Butler MP	Former director, HM Prisons and Probation Service Conservative MP 2019- Member of Justice Select Committee 2020- Parliamentary Under-Secretary of State for Prisons and Probation 2022
Baroness Shami Chakrabarti	Director of Liberty [human rights campaign group] 2003-2016 Labour Peer 2016- Shadow Attorney General 2016-20
Andy Coulson	Editor, <i>News of the World</i> 2003-07 Conservative Party Director of Communications, 2007-11
Mark Davies	Special Adviser to Jack Straw 2005-10, Labour Secretary of State for Justice
Pamela Dow	Director of Strategy, Ministry of Justice 2015-16 Director of Development, HMP Wandsworth 2016-17 Founding Adviser, Code4000 (a charity teaching coding to prisoners)
James Dowling	Special Adviser to David Gauke 2017-19, Conservative Secretary of State for Justice
Huw Evans	Special Adviser to David Blunkett, 2001-04, Labour Home Secretary Special Adviser to Tony Blair, 2005-6, Labour Prime Minister
Tom Gash	Special Adviser in Prime Minister's Strategy Unit (crime policy), 2006-07 Honorary Senior Lecturer, UCL Jill Dando Institute of Crime Science 2017- Author of <i>Criminal: The Truth about Why People do Bad Things</i> 2016
David Hanson	Labour MP 1992-2019 Minister of State for Justice 2007-09 Minister of State for Security, Counter-Terrorism, Crime and Policing 2009-10
Tim Loughton MP	Conservative MP 1997- Member, Home Affairs Select Committee Chair, Home Affairs Select Committee 2016 and 2021
Lord Tom McNally	Political Secretary to James Callaghan, Labour Prime Minister 1976-9 Labour MP 1979-83 Liberal Democrat Peer 1996- Leader of the Liberal Democrats, House of Lords 2004-13 Deputy Leader, House of Lords 2010-13 Minister of State for Justice 2010-13

	Chairman, Youth Justice Board 2014-17
Declan McHugh	Special Adviser to Jack Straw 2006-10, Labour Secretary of State for Justice Labour Party Director of Strategic Planning 2011-14
Rick Muir	Labour Councillor 2002-6 and 2010-16 Director, The Police Foundation 2015-
Sarah Pearson	External Relations Director, Unlocked Graduates
Harvey Redgrave	Deputy Director, Prime Minister's Strategy Unit (crime and policing) 2008-11 Head of Home Affairs Policy, Labour Party 2011-15
Jonathan Slater	Director of Performance Improvement, National Offender Management Service 2006-08 Chief Executive, Office of Criminal Justice Reform (Civil Service) Director General, Transforming Justice 2009-11
Luke Tryl	Director, More in Common Think Tank 2021- Conservative Special Adviser 2014-16
Jack Worlidge	Senior Researcher, Institute for Government 2022- Special Adviser to Dominic Raab, Conservative Secretary of State for Justice 2021-22
Former Special Adviser	Labour Party, involved in justice policy