Lord Chancellor's Speech: White Paper Launch – A Smarter Approach to Sentencing

Introduction

Thank you, Iain [1]

And thank you to everyone joining us remotely. It is a great shame that more of you could not be here in person today but, as the Prime Minister set out last week, restrictions on the numbers of people gathering in public is crucial if we are to control coronavirus.

In the last few months, the virus has dominated almost every aspect of our lives. For us at the Ministry of Justice, it has taken a huge amount of effort to minimise coronavirus in our prisons and to get our courts working again. But efforts have continued at pace on the issues that mattered before the pandemic and which will continue to matter after it.

The first duty of any government is to keep the public safe from harm. It is a responsibility this government takes extremely seriously, and my department has been working on a range of measures to make the sentencing system work better to protect people and to reduce crime. It is a great honour for me to present this White Paper – entitled A Smarter Approach to Sentencing.

Throughout the course of my career, I have seen the system from many angles – as prosecution and defence counsel, as a part-time Crown Court judge, as a Member of Parliament serving on the Justice Select Committee, as a Law Officer of the Crown, and now as Lord Chancellor and Secretary of State for Justice.

Indeed, in my maiden speech to Parliament just ten years ago I set out my belief in what I called a smarter sentencing system.

Sentencing as it stands

When I first started practising as a criminal barrister about thirty years ago, it was clear that there were problems with sentencing. In the time that has elapsed, governments of all complexions have come and gone and there have been 17 major pieces of sentencing legislation. Despite all this energetic law-making, few big or meaningful strides have frankly been made in sentencing.

What we have today is a system that can be hugely complex but sadly is nowhere near as effective. Victims and the public struggle to understand it and have too small a faith that it has their safety in mind. The courts can find it difficult to navigate. Inadvertent legal errors requiring correction,

sometimes all the way up to the Court of Appeal, are made, and judges are too often forced to hand down sentences that frankly seem to make little sense in particular cases.

Working with the Law Commission, we have made great progress in simplifying the law with the new Sentencing Code. It is a huge generational moment, streamlining sentencing procedural law, which will mean greater transparency in the sentencing process. It will allow judges and practitioners to move away from having to be overly focused with the technicalities of the process, and instead be much more concerned on the outcomes. It will also give the public confidence that the law is being applied correctly.

That is the bedrock of the reforms we want to make.

Sadly, we know only too well what failure in sentencing can look like, as illustrated by the recent terror attacks, where offenders were released into the community only to commit horrifying acts of violence. We took immediate legislative action to prevent offenders like them from being released automatically without being assessed by the Parole Board.

It is our duty to ensure that innocent people are protected from these threats – to ensure that sentencing puts public protection at the heart of decision-making.

At the other end of the spectrum, sentencing failures can perpetuate low-level offenders getting stuck in a life of crime. The sad reality is that our prisons have far too many offenders like these and, in many cases, their criminality is exacerbated by mental health issues or addictions. I know because, frankly unlike most of my predecessors, I have met and indeed represented people in that situation. But the state often fails to address some of the drivers of crime, such as lack of employment and stable accommodation.

This means that offenders have little hope of being rehabilitated and we, as a society, have little hope of ending the cycles of crime in which any one of us can become victims. That is a failure, letting down everyone concerned. Aside from the social impact, it is also a waste of money, with the cost of reoffending running into the billions every year.

We need a new approach.

Protecting the public from serious offenders

The White Paper focusses firstly on the most serious offenders.

Because we believe it is crucial that sexual and violent offenders spend as much of their sentence behind bars as possible. This is what the public wants, and victims should be able to expect.

Automatic release and parole board oversight

Offenders who have committed serious crimes and who are assessed to be

dangerous at the point of being sentenced can receive either a life sentence or an Extended Determinate term. This means there is no automatic release and these cases go to the Parole Board to assess whether it would be safe to release offenders.

But there are small number who, for particular reasons, are assessed as posing a serious threat to the public, for example through terrorism, when that is not the crime for which they are serving a sentence. At present, these offenders will be eligible for automatic release from prison and will not fall under Parole Board oversight.

By introducing a new power for the Justice Secretary to prevent their automatic release and instead refer their cases to the Parole Board, we will now ensure that these offenders are properly assessed before being released – to determine whether or not they do pose a threat to the public, or if it would be safer for them to serve the remainder of their term in prison. This represents a major change and will reassure the public that dangerous criminals will be properly assessed before release.

Around 2,000 more serious and violent offenders who receive a standard determinate sentence of 7 years or more will now spend at least two thirds of their sentence behind bars, thanks to legislation already brought in by this government. We are going to widen that approach, so that offenders serving a fixed sentence of 4 to 7 years will also spend longer in prison.

Sentence lengths for serious offences

The public rightly expects child killers to feel the fullest and the harshest extent of the law. We will therefore ensure a Whole Life Order is not just available to sentencers in these cases, but that it will be their starting point. In exceptional circumstances we will also give judges the discretion to impose a Whole Life Order on those aged 18 to 20, where currently only those aged 21 or over may receive this severest of punishments.

Adult offenders who are given life sentences in other circumstances often do not serve enough of that sentence before they come before the Parole Board to consider their release – certainly not as much as the public rightly expect.

We will now ensure that these offenders spend longer behind bars before they can be assessed for release. By changing the way in which discretionary life sentences are calculated, we will see to it that judges base the minimum tariff to be served on what two thirds of an equivalent determinate sentence would be, rather than half, as they do at present. We will also increase the time that must be served in prison for those who commit sexual offences against children and receive a “Sentence for Offenders of Particular Concern”. At the moment such offenders may be considered for release by the Parole Board after serving half their custodial term, but we will up that to two-thirds before the Board may look at the case. There exists in law a minimum custodial sentence for those who commit key offences, including a “second strike” for possession of a knife or offensive weapon and a “third strike” burglary of someone’s home. These are serious crimes that put the public at risk of both physical harm and deprivation of their hard-earned

possessions, and of their wellbeing when it comes to safety at home.

But too often these types of offenders receive sentences below the statutory minimum, failing to properly punish or act as any kind of meaningful deterrent and protect the public. We are proposing therefore to modify the criteria for passing sentences below the statutory minimum, making it less likely that a court would depart from the minimum term.

The public want to know that custodial sentences for these sorts of crimes do what they say on the tin. They want to know that when serious and violent offenders go to prison, that's where they'll stay for as long as possible. These reforms will restore their faith that the system will keep dangerous criminals off our streets for longer.

It is imperative that judges and magistrates have the power to impose short custodial sentences, where they are appropriate. I have seen first-hand on many occasions cases where this is the right and frankly the only sentencing option that is realistic for the court to hand down.

But protecting the public is also about making sure that we make smart interventions to prevent low-level and repeat offenders from going back and forth to prison, for short custodial sentences that hold little rehabilitative value for them.

Offenders in this category often live chaotic lifestyles, sometimes driven by drug and alcohol misuse, or poor mental health. Their backgrounds are often characterised by entrenched poverty, absent role models, and a lack of any decent education. This makes for bleak prospects and many offenders believe that they have few options but to get involved in criminality.

There is no doubt that they deserve punishment but, if we are to have any chance of turning their lives around – and in the process preventing crime – then we need to divert them towards lives that hold the promise of the things we all want from life – a place to call home, meaningful work, a future that's better than the past.

If we're going to offer offenders opportunities to work hard towards those things, then we must identify their individual needs and ensure that the sentencing toolkit is able to meet them.

The Community Sentence Treatment Requirement is a sentencing option whereby treatment is ordered as part of a sentence, allowing offenders to address the mental health problems or substance misuse issues that, under certain circumstances, can fuel or worsen their offending. We want more people to have this same chance and will therefore support further scaling up of the CSTR Programme, and thereby encourage sentencers to use it to deliver tailored interventions to support more offenders.

This will of course require funding, which we will make available this year alongside the significant injection of resources already allocated by NHS England and Improvement for the CSTR Programme in their 2019 Long Term Plan.

Expanded use of technology

Some offenders need more than just treatment – they need to be monitored closely to drive changes in their behaviour. We now want to see the expanded use of technology right across the sentencing framework to achieve just that.

We will therefore expand the use of Electronic Tagging in enforcing curfews – increasing the maximum amount of time they can be used to up 20 hours per day; and we will legislate to increase the maximum amount of time an Electronic Monitoring Device can be imposed from 12 months to 2 years. Additionally, we plan to allow probation officers some power to vary EM requirements.

These changes will encourage compliance with orders of the court and will allow sentencers to address more serious repeat offending with increased restrictions.

High-Quality Pre-Sentence Reports

Pre-sentence reports should give crucial insights into the individual needs of offenders. These are often complex but with an accurate picture of the offender's history, a court has the best opportunity to pass a sentence likely to drive better outcomes. More information being available also reduces the space for assumptions to creep in, which, too often, can be the entry point for stereotyping.

Evidence suggests that some offenders are sent for short custodial sentences without a PSR ever being produced. I know from my own experience as a practitioner that PSRs can be an invaluable tool, but two questions would always cross my mind in court: will a PSR even be available; and, perhaps more importantly, will it be of any use?

We will now pilot new ways of delivering high-quality PSRs, identifying the offenders who would benefit most.

Other alternatives to custody

At the same time, we will encourage courts to look at other alternatives to custody, such as. deferred sentencing. These can make use of services such as NHS Liaison and Diversion, to divert offenders away from criminal justice, into services that can support them to address mental health problems or substance misuse, with any breach of conditions imposed by the court potentially putting them into custody.

We will also simplify the out of court disposals framework so that low-level offenders can be dealt with quickly and effectively, by avoiding court and saving the taxpayer valuable money but still preventing ongoing crime. This will require a mixed framework of legislation, with community resolutions and conditional cautions used to modify behaviour.

In one of the most innovative ideas in this White Paper, we will also pilot 5 "problem-solving" courts, which will take a completely new approach to

dealing with low-level offending. Utilising the most up to date evidence, these new courts will use elements such as judicial monitoring and graduated sanction incentives for those who have high needs or prolific offending histories, to look at innovative solutions to their offending without taking them into custody.

Neurodivergence in the Criminal Justice System

Neurodivergence – which can include conditions such as autism and dyslexia – is something that is very close to my heart. Offenders with associated conditions can require additional support when they are going through the criminal justice system and particularly in complying with conditions associated with any order.

If a neurodivergent condition and its associated needs are not recognised as early as possible and appropriate interventions put in place, then it can set up a chain reaction for the offender, cascading that failure throughout the system. This is not frankly their fault but the effects on their lives and their life chances can be devastating.

When I was still practising as a barrister, I once represented a young offender with autism. He had been jailed by the magistrates but on appeal was given a community sentence. We were able to obtain clear evidence of his condition and, with the help of the Probation Service, crafted an order that was a punishment but also addressed his individual needs.

It is time that we made a similarly concerted effort to better understand just how neurodivergence affects outcomes across the justice system and, through examining the data for unjustified differences, being confident that the assessment reliably reaches all those who need it, and that no individual or group should be left behind.

We will therefore launch a national “Call for Evidence”, so that we can obtain the clearest picture to date of both the prevalence and the quality of supportive provision available. This will enable us to understand what happens to neurodivergent people now and how we can better support them in future to realise better outcomes.

We must never forget that to commit crime is to make a choice. There is, however, a sliding scale of increasing inevitability that we cannot ignore. The drivers are clear – it’s a lack of prospects, chaotic lifestyles, ill-health and addiction. All these underlying causes of crime can so often be addressed much more effectively by looking beyond custody, to the right interventions that really will support offenders to change their ways.

If we can do that and bring down crime, why would we do anything else?

Empowering Probation

Something that will be vital to these reforms is a world-class probation service.

At a minimum, probation ‘manages’ offenders through their sentence, putting in place requirements from the courts as part of licence conditions and checking compliance. But when probation is at its very best, it goes much further. It is in the proactive ‘supervision’ of offenders, by dedicated probation staff, that lasting change can happen. By influencing the way sentencing works throughout the process, adjusting to the unique journey made by each offender under supervision, and having the professional discretion to tighten up restrictions, we can better protect the public and address underlying offender behaviour.

In order to do that, probation practitioners must be able to build meaningful relationships with offenders – to understand the risks they pose and their individual needs, so that they can put in place not just what is required by a court or licence, but what is most likely to drive successful rehabilitation in each case. Ultimately, that is the best way to reduce the number of victims.

In recent years, the probation service in England and Wales has come under significant scrutiny and last year we announced large-scale changes to improve the way the service operates, bringing the system under a unified National Probation Service, to be responsible for the delivery of community sentences, licences and other forms of post-sentence supervision.

Improving the way probation interacts with sentencing starts with how it informs the way sentences are handed down. Under the new system we propose, we will unify sentence management under the National Probation Service – growing confidence with sentencers, with whom they have a much closer relationship than they did under the previous Community Rehabilitation Company model, for example, to compile the crucial high-quality Pre-Sentence Reports that I talked about earlier.

The 12 new probation regions will create a unified approach, as well as working more closely with local justice partners, meaning they can commission and deliver solutions based truly on local needs. A new Dynamic Framework for rehabilitation will enable these services to be more easily delivered by voluntary and specialist organisations that can really get results – particularly for vulnerable offenders and those with complex needs. More than 160 organisations have already signed up to bid for contacts, of which 60% are from the voluntary sector – an excellent start.

At the true heart of a successful probation system is its practitioners. Something I saw time and again in my career was that a really good probation officer can make all the difference. Through the Workforce Programme we launched in January this year, we’ve set ourselves an ambitious target to recruit 1,000 new probation officers and to train probation staff to be better equipped for the modern demands of the criminal justice system.

Building relationships with offenders is critical to influencing rehabilitation, but we also want probation staff to have the powers necessary to do their jobs where other methods fail. We will now legislate to give probation officers greater flexibility to take action where an offenders’ rehabilitative needs are not being met or where they pose a risk to the

public, meaning that they will be able to act swiftly, using their professional judgement to warn offenders about their behaviour and to advise courts to take enforcement action.

Taken together, these changes will empower probation services to be more dynamic in the way they operate and more useful at every point at which they interact with other criminal justice agencies – informing better sentencing and carrying them out to much better effect.

Reducing reoffending

Too often it is sadly the case that offenders find themselves back within the criminal justice system over and over again, with rates of reoffending remaining stubbornly and disappointingly high.

More than three-quarters of people convicted or cautioned in England and Wales already have at least one other criminal conviction or caution to their name. What this demonstrates is that the criminal justice system is too often unable to rehabilitate offenders the first time around. If we are to bring down crime rates and stop individuals from posing a menacing and continued threat to our communities, there are a number of options we must now consider.

As I have mentioned, technology already plays a role in sentencing but, for offenders who blight our neighbourhoods and burgle homes for example, it's time we looked at how electronic monitoring and GPS tagging could better protect the public and drive offender behaviour change.

For some offenders who are stuck in cycles of crime, not being able to get a job can be both a major driver in their offending, but also a major barrier to their rehabilitation. Evidence suggests that offenders who find P45 employment in the twelve months after release from prison have one-year reoffending rates that are 6-9 percentage points lower than similar offenders who did not find employment. It doesn't sound much but literally we are talking about thousands of crimes, thousands of lives, thousands of victims we can safeguard.

We want to now reduce the time period after which some sentences can be considered spent for the purposes of criminal records check. This will enable offenders who do not pose a risk to the public to finally get a job that could be a significant milestone on their route away from offending once and for all.

Prisons and probation must provide the opportunity for individuals to rehabilitate, so we will also deliver a Prison Education Service, focussing on getting them the skills and training to re-join society as contributing, law-abiding members – that helps to bring down crime too.

Youth sentencing

In the youth justice system, there is a separate sentencing framework, which is focussed on reducing offending but also considers the welfare of the

child. We think there are significant changes that could be made to improve the way it does that.

Judges' hands are too often tied in handing down sentences to young offenders that are too lenient and potentially put the public at risk. We want to see a more coherent approach with courts given more tools to pass appropriate sentences and a better opportunity to balance public protection and the culpability of the child in question.

We will now legislate to modernise the Detention and Training Order system, ending the inflexibility that meant courts had to hand down sentences in fixed lengths, split evenly between time in custody and in the community.

For many serious, violent offences where a person has been killed and for sexual offences, we will move the earliest release point for a young offender from halfway through the sentence to two-thirds of it – ensuring that the time served behind bars truly reflects the seriousness of the crime committed.

We will also ensure that an offenders' age and the nature of their crime are factored into murder sentencing and will reduce the number of tariff reviews available – so that the sentence persists into adulthood, rather than being revised down.

At the lower end of the scale of youth offending, we know that strong community sentences can be made more effective than custody, so we want to give courts more discretion to hand them out, and we will monitor their application to understand how to reverse the widening disparity in the numbers of Black and minority ethnic children held in youth custody.

We will legislate to make greater provision in the Youth Rehabilitation Order for location monitoring and for flexibility around curfews – to make it more straightforward to put in place community sentences and reduce the likelihood that offenders will breach conditions imposed on them by the court.

We will also make Youth Offending Teams or probation officers responsible for Youth Rehabilitation Orders, rather than the Electronic Monitoring Provider themselves, so that trained youth justice workers can use their own professional judgement about how to react appropriately and to drive better behaviours where a breach does occur.

If time served in the community is really going to work and custody is to be seen as a last resort, then we must give courts the flexibility to use them as they see fit. We will therefore pilot extending the maximum length of high intensity community alternatives to custody, so that courts can still hand out a robust sentence but avoid sending a young person into custody; as well as piloting the addition of mandatory location monitoring requirements to the high intensity alternatives.

Finally, we will look at the way young suspects of crime enter custody on remand. We will change the law so that courts have the full range of remand options for young offenders and suspects but also amend the test, raising the

threshold for when it is suitable, with courts required to explain their rationale; and to amend the history conditions, so that only recent and significant history of breach can play a factor in decision-making. Data collected should show if and where disparities by ethnicity need to be rigorously examined.

All of these measures will help to achieve more balance in the youth justice system – making sure the public are safer from harm and, at the same time, ensuring offenders have the right opportunities to change their lives.

A more joined-up approach

That balance is what characterises the entirety of this White Paper.

It's about making sure that sentences are robust enough to keep the most dangerous offenders in prison for as long as possible, in order to protect the public from harm and to act as a deterrent; but agile enough to protect them from crime too, by supporting offenders to get the best possible start and continue thatsupport on their road to rehabilitation.

It's also about fulfilling a promise – because we are a government that is committed to keeping its word to the British people. Tougher sentencing for the worst offenders, more tagging, tighter community curfews, tackling drug-related crime and treatment to break the cycle of crime, improved employment opportunities for offenders, a root-and-branch review of the parole system – all these measures were in the manifesto we put to the electorate just 10 months ago and today we have outlined our plans to make them happen.

I have said before that every department in government should be a criminal justice department. I make no apology whatsoever for that. Throughout the White Paper you will see contributions from departments across Whitehall and it has the full and energetic support of the Prime Minister.

It will take a joined-up approach from all of us – both in local and national government – to make a new sentencing framework successful. As part of the work associated with this White Paper, we will develop an ambitious, cross-government plan to reduce reoffending by pulling on every lever at our disposal.

This White Paper is an opportunity to grow trust and confidence in the sentencing system – in its ability to make the smart choices to protect the public from the harmful effects of crime, in whatever form they take. I look forward working with colleagues across government and more widely to take these measures through Parliament in the months and years ahead.

Thank you.

1: Iain Duncan-Smith, Chairman, Centre for Social Justice