



Reimagine sentencing

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James Dearman

Incarceration may prevent crime in the very short term – but as long as reoffending rates remain high, our prisons are failing the public. James Dearman argues that sentences should help offenders address their behaviour and build the skills for life on the outside.



In an ideal world, every aspect of the justice system would be set up to maximise the chances of people emerging from prison fully rehabilitated. Yes, punishment and deterrence are important aspects of criminal justice – but with those goals satisfied, it's better for everyone if prisoners can fully integrate back into civil society on their release, rather than becoming trapped in a revolving door between a life of crime and incarceration.

Unfortunately, one key aspect of the justice system simply isn't making the contribution that it could: sentencing.

Under political, public and legislative pressure, judges are giving longer sentences for serious crimes; according to the Prison Reform Trust¹, the use of long sentences has grown alarmingly in recent years. At the same time, judges are using prison as a deterrent for more and more minor offences, replacing alternatives such as community sentences; this has got to the point where in 2017 nearly half (47%) of prisoners were serving sentences of six months or less.

If the current system was succeeding in minimising reoffending, this wouldn't be problematic; but the statistics indicate otherwise. Quite simply, prison has a poor record when it comes to rehabilitating prisoners and reducing reoffending – especially for the many serving short sentences without purposeful activity. Again according to the Prison Reform Trust, 44% of adults are reconvicted within one year of release; a statistic that increases to 59% for prisoners serving sentences of less than 12 months.

Personal development alongside punishment

It is time to reimagine sentencing. Instead of simply specifying the length of a sentence to be served, what if judges had more options at their disposal – enabling them to set relevant, positive goals for offenders to achieve whilst in prison?

So instead of sentencing somebody to a 10-year prison term, with a possible 50% reduction for good behaviour, judges could stipulate that offenders can only be released early if – as well as exhibiting good behaviour – they've completed activities or achieved goals designed to reduce the likelihood of their reoffending.

For instance, a prisoner whose poor literacy has prevented them from finding work might have to pass a reading and writing test before they are eligible for early release – assuming that their tutors didn't uncover dyslexia or learning difficulties, in which case they could receive appropriate support. The incentive to study would be great indeed.

Similarly, a prisoner sentenced for crimes of dishonesty might have to demonstrate a level of trustworthiness before earning the right to parole. Having identified a suitable job, the prisoner would not be able to demonstrate genuine 'good behaviour' until they had completed vocational qualifications and undertaken a period of release on temporary licence (ROTL) work experience. A similar strategy could be deployed to demand that prisoners engage with drug rehabilitation programmes.

Addressing objections

One potential objection to the idea is that prisoners could game the system to ensure they qualify for early release. So it might be in their interest to fail a reading test pre-sentencing, only to then make apparently miraculous progress on a literacy programme once inside. Prisoners are, as HM Prison and Probation Service staff will know, experts in playing the system. This risk could be minimised by stipulating a package of conditions – making it harder to cheat – and by cross-referencing test findings with other data held on the offender, with punitive tariff increases for those caught trying to deceive parole boards.

Another concern is that some people may find it impossible to meet the requirements set, particularly when it comes to issues such as drug addiction. And certainly, the system could not be 100% successful. Yet tying early release to passing regular drugs tests would provide a strong incentive for many offenders to engage positively with a rehabilitation programme. Importantly, our proposal would not cover those given indeterminate sentences, so there would be no danger of inmates languishing in prison forever. And whilst the system we propose would not work for everyone, it would be a vast improvement on how sentencing works at present.

By allowing the courts to specify the type of rehabilitative programmes to be completed, our proposal hands more control to the courts. But by setting dual objectives for offenders to attain before winning parole, it would – all else being equal – be likely to increase average incarceration periods, whilst making it more difficult to predict how long prisoners will serve. In response, the Prison Service might fairly ask: how can we budget on that basis? The answer is that judges would be given far more information on the costs of various interventions, with the goal of keeping overall spending steady.

So a shorter custodial sentence with more interventions might cost less than a longer sentence with fewer rehabilitative programmes; and where the evidence – gathered as similar offenders pass through the system – suggests that the former option would be likely to drive down reoffending and improve rehabilitation, judges would be able to justify choosing such an option. Obviously, in the first instance such changes to sentencing tariffs could only be made within the flexibility already available to judges under current legislation; we acknowledge that further work with the Sentencing Council is required.

For instance, judges would know that it costs about £36,000² a year to incarcerate a single prisoner; and they'd understand both the costs of various interventions, and the evidence available on their efficacy with other prisoners in similar circumstances. And they'd be tasked with specifying the mix of time served and relevant interventions likely to best blend the needs for deterrence, punishment, protection of the public and rehabilitation, feeding in their judgement and the available data on the chances of each intervention succeeding – whilst keeping overall spending at a similar level.

Data-driven decision-making

To improve judges' understanding of the likely outcomes of different interventions, data on release provisions and reoffending rates – enriched by information on offenders' criminal records, demographic profiles and probation assessments – would be gathered and fed back to the judiciary, directly linking the sentences handed down for different groups of offenders with the outcomes achieved.

There are already systems in place – albeit underutilised – to allow court administrators and probation officers to access information on what works in terms of rehabilitation; but this system would demand a much more data-rich and formal way for judges to understand the likely outcomes of the sentencing decisions they make, and to track the real outcomes in the case of individuals they've sentenced. Putting in place this feedback loop would give judges more confidence to engage in more creative, rehabilitation-focussed sentencing.

We acknowledge that this system would be likely to lead to shorter average sentences, as judges cut tariffs in order to release money for interventions within the existing financial envelope. That obviously has political implications, and risks being seen by the public as 'soft on crime'. Against that, though, we should recognise that sentences have increased over time – with only a proportion of that due to legislated tariff increases. Between 2006 and 2016, the average length of all sentences rose from 12.4 to 16.4 months, while tariffs for indictable (more serious) offences increased from 35.7 to 56.8 months³.

Incentivising improvements

Moreover, the changes we are advocating actually make life tougher for prisoners – increasing the expectations on them, and transforming a life of enforced inactivity into one of structured, goal-oriented work.

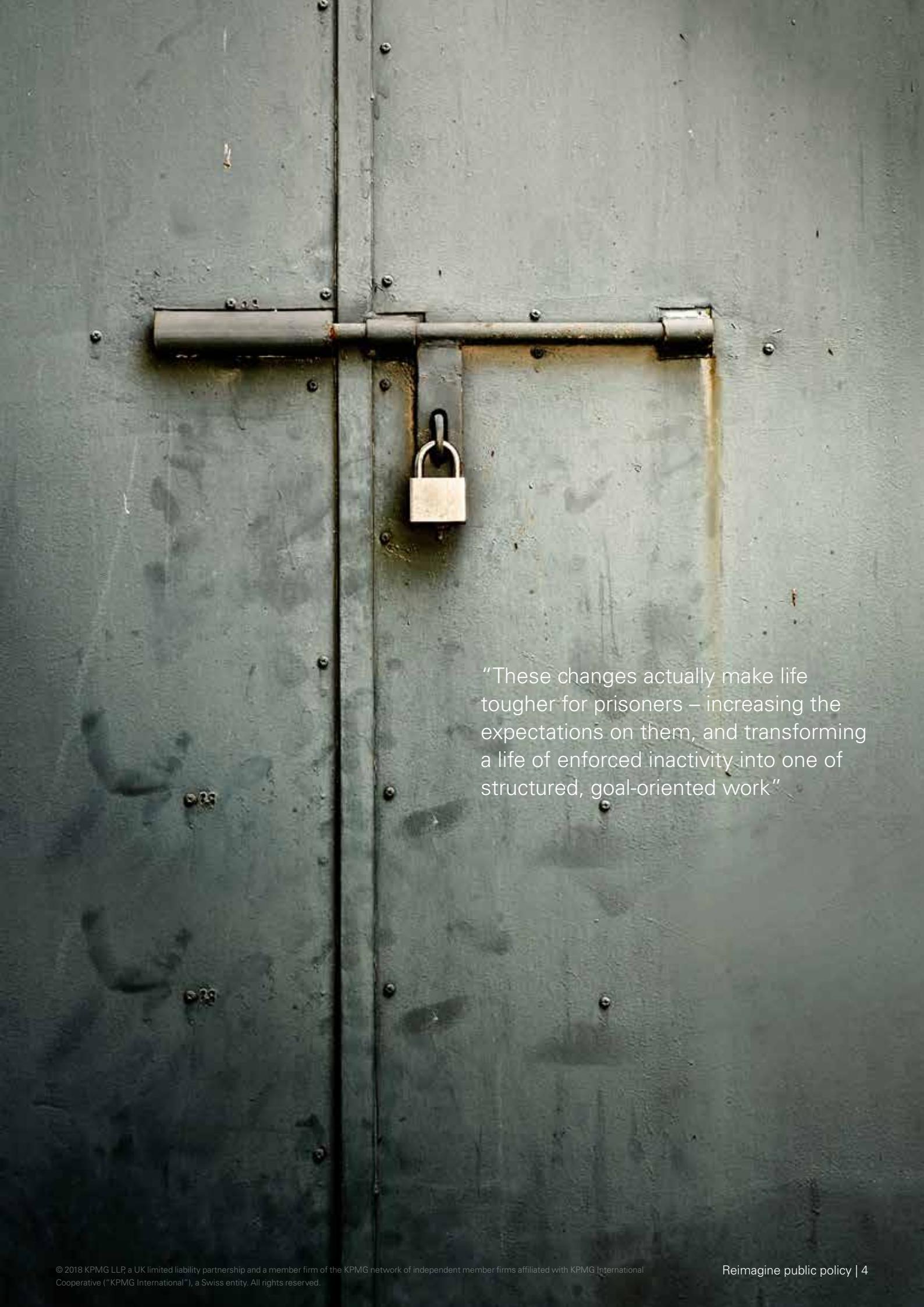
At present, prisoners only need to stay out of trouble in order to qualify for early release: to avoid doing anything negative, rather than doing something positive. By making early release conditional on completing the rehabilitative programmes specified by a judge, prisoners would have to work harder – to engage positively with their personal development – in order to qualify. And those who refuse to take steps to improve their chances of contributing to society after release would actually see their prison terms increasing; something that would appeal to the public's sense of natural justice.

Above all, the completion of a set of programmes – and the attainment of specific goals – designed to minimise the chances of people reoffending should drive down crime rates, reducing harm to the public. This would also, of course, release more resources to fund longer sentences for the most serious offenders and those who refuse to engage with the programme.

Precisely how the system would work in terms of the facilities required and how rehabilitative programmes could be designed are the subjects of other Reimagine papers. But reimagining how sentencing could be changed to focus on both punishment and rehabilitation should itself produce benefits, whether introduced alone or alongside these other ideas.

At present, there is a massive disconnect between the sentences laid down by judges and the rehabilitative outcomes achieved. Ensuring that judges are engaged with the impacts of their decisions would lead to a greater focus on rehabilitation; something that would work for both prisoners and society at large.

What we are doing at the moment is clearly not working. The question is not whether we can afford to reimagine sentencing, but whether we can afford not to do so.



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Contact

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2. <https://www.gov.uk/government/statistics/prison-performance-statistics-2016-to-2017>
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