

Shoestring justice

They promised the most fundamental shake-up of criminal justice in two centuries – but can the coalition deliver while the cupboard is bare? Two lawyers at different ends of the system fear not

A DAY AFTER the Crown Prosecution Service learned it was losing a quarter of its pocket money, criminal justice minister Nick Herbert was dashing over to the Howard League to boast about how popular his homespun penal reform policy had become among the Conservative new-wave.

The author of the 2007's largely patronised, if not roundly ignored, *Prisons with a Purpose* pamphlet repeatedly told the crowd of criminal justice crusaders that the prisoner purge plan has absolutely nothing to do with the budget deficit – quoting himself to prove it.

"Almost three years ago," Herbert said, "I warned that the previous government's approach to prisons was bankrupt. And I ended by saying this: 'I want to see the most fundamental shake-up of prisons for two centuries'."

The trouble is, the country itself is now bankrupt, so while fans of the reform are

giving the Ministry of Justice pats on the back with one hand, they are scratching their heads as to how it can possibly be achieved with the other.

Herbert, along with his boss Ken Clarke, doesn't seem to have a problem squaring the circle. In his Howard League address last Thursday, Herbert insisted the cash was coming from backroom "efficiencies" and not from some sort of debtors' prison pot. "The Conservative party's plans to reform prisons – and reduce the prison population by reducing re-offending – were set out before the economic crisis took hold," continued Herbert.

"They were founded on a belief that our penal system was broken, that an inexorable rise in the prison population was unsustainable, and that there was a better way. We were motivated not by considerations of public spending, but of public safety."

The necessary savings, Herbert said, will

come from departmental "efficiencies" rather than frontline criminal justice cuts.

But aren't these efficiencies coming from the very people in place to provide the prisons reform? The number of jobs to go at the CPS remains undisclosed, but if its counterparts over at the MoJ are anything to go by, a huge swathe of the 25 per cent budget cut could be coming from the human end of resources. Leaked documents revealed last week that while the MoJ was getting off relatively lightly in the spending review – with only 23 per cent needing to be clawed back – a staggering 14,000 workers would be getting the chop.

Add to that the cuts in welfare, legal aid and local government budgets and no matter how healthy the support is for Herbert's purposeful prisons scheme is, it seems hard to believe there will be anyone left to provide the alternative rehabilitation required.

A prison's perspective

We have one of the most expensive criminal justice systems in the world. The UK spends a higher proportion of its GDP on it than any other of its UN economic counterparts, with £23bn spent last year. A little over half of this was swallowed up by the police (with salaries and overtime a significant element) while prisons and the National Offender Management Service accounted for around £7bn. Legal aid total spend was around £2bn (£1.1bn on criminal and the rest on civil).

Now, £2bn sounds a lot. Indeed critics of legal aid regularly trot out that this spend is more than any of other comparable nation. But ignored in the frenzy of 'undeserving prisoners' headlines are factors which explain why Britain spends this much – the significantly higher number of criminal prosecutions. It also glosses over the extent to which legal aid remains a pillar of the welfare state (rather than the 'Big Society') and that, within that £2bn, three million people (not all of them MPs) are provided with advice and assistance. These are among the poorest and the most vulnerable in our society. Anyone doubting that prisoners fall into this description should take even a cursory look at the demographics and levels of mental illness and history of abuse prevalent in the prison estate.

The legal aid budget will now be cut by £350m as

part of the MoJ's measures to meet the government's spending cuts. The state is spending beyond its means. Legal aid, cut in real terms even in the 'good times', is now going to have to accept the same treatment as the rest of the public sector. However the readiness of politicians on all sides to use legal aid as the safe domain for cuts is very depressing – safe in the knowledge that voters won't mind because it's a service you only really appreciate when you are forced to rely on it.

Hard cell

The questions of how and whether reducing the prison population is going to save money in the long term is more complicated than it seems.

There are broadly two options in reducing the prison population. The first is through front-door options – sending fewer people to prison for shorter periods. Strategies such as changing the sentencing laws would certainly make some impact. However, even a diversion of a substantial number of people away from custodial sentences would not itself halt the growth in the prison population because front-door diversion schemes are invariably targeted at those people already serving the shortest sentences (usually less than a year). It is the prisoners serving lengthy sentences (and the number of prisoners serving indeterminate sentences in England and Wales outstrips the combined lifer population of the

rest of Europe) who are clogging up the system and it is these prisoners who are unlikely to be candidates for any diversion schemes.

The second option is to adopt 'backdoor' mechanisms – here the single and most immediate solution to the rising prison population would be to shorten prison terms. This could be done through a range of measures such as amnesties to changes in release mechanisms. The French, on a regular basis, decide their prison population is too large and reduce it by as much as a third through broad-based amnesties and pardons. The deterrent effect of prison, to the extent that it exists, is not undermined since the timing of any amnesty is unpredictable.

More radical would be to set an absolute limit on prison capacity and once reached forbid admissions except when matched by one-to-one early release. The examples from the Netherlands, Denmark, and Norway show it is possible to place a convicted person on a waiting list. Where someone presents as high risk and requires immediate custody, then a lower-risk prisoner would have to be exceptionally released. Whatever the strategy, it will require real political leadership to reduce the prison population significantly and permanently.

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