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Justice Reinvestment in an “age of austerity”: Developments in the United Kingdom

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ABSTRACT

In the UK, national and local government are still struggling to cope with the economic crisis which ensued in 2008. The effects of that crisis are still being felt in the United Kingdom with significant reductions in public sector expenditure leading to budget cuts in the criminal justice system and public services more generally. In June 2013, the UK Chancellor projected further expenditure cuts from 2015 onwards.

Justice Reinvestment (JR), however it's been defined has been proposed by UK policy makers and campaign groups as a way of responding to these economic problems. Proponents argue that at a modest level, it has the potential to deliver efficiency gains in the way in

which the criminal justice system is operated. On a more ambitious scale, JR may fundamentally transform the way in which criminal justice services are delivered.

Drawing on evidence from Justice Reinvestment experiments in the UK - including Payment by Results (PbR) pilots in England and Wales - this paper examines the nature and extent to which models of Justice Reinvestment can be implemented in an “age of austerity” against the backdrop of the wider application of Payment by Results commissioning for criminal justice and related services.

Key words: Justice Reinvestment, criminal justice policy, payment by results, reform, economic, reoffending

INTRODUCTION

Justice Reinvestment (JR) is an innovative approach to criminal justice at a social level. The motivation of JR is that it may be more economically efficient to prevent criminality in a neighbourhood than it is for society to try to deal with the crime and the consequences of crime, in short “... being efficient on crime, being efficient on the causes of crime.” (Fox *et al.* 2013a). This holistic approach locates JR within economic and political debates about criminal justice and suggests that it has much to offer current debates about criminal justice policy. However, the breadth of its vision also touches upon broader debates about social justice and the type of society in which we want to live. Others might limit the scope of JR merely to cost savings in criminal justice delivery. There are, of course, other interpretations between these two. What underpins them all is economic efficiency in criminal justice. In these days of cash-strapped western governments, JR has financial appeal.

A question which has bedevilled the United Kingdom (UK) and other governments since the onset of the Global Financial Crisis in 2008 is how to achieve more public good or service from every unit of taxpayer resource. In April 2009, David Cameron (the current UK prime minister) prepared for the UK General Election of May 2010 by declaring at the Conservative Party Spring Conference that “The age of irresponsibility is giving way to the age of austerity”. His vision of a “good society” would be achieved by “delivering more for less” through four big changes for the role of government and the state:

First, a return to traditional public spending control.
Second, a new culture of thrift in government.
Third, curing our big social problems, not just treating them.
And fourth, imagination and innovation as we harness the opportunities of technology to transform the way public services are delivered. (Cameron 2009)

Ostensibly Cameron's notion of "delivering more for less" and the idea of curing social problems rather than "just treating them" accords with the approach offered by Justice Reinvestment (JR).

In this article we briefly describe the principles of JR as developed in the UK. As we shall see, arguably there has been little agreement on: what may be gained from JR; how much can be saved; and even of what JR is comprised. We will examine the implementation of JR in the UK assessing the extent to which initiatives which have been labelled as Justice Reinvestment have fully tested the principles of JR. Based on these initiatives we will identify two models of JR, a social justice model and a criminal justice system redesign model and posit that rather than being mutually exclusive they form a continuum along which JR initiatives in the UK and in other countries can be located. In addition, against a backdrop of continued and growing restrictions on public expenditure we examine the extent to which JR can and should act as a counter (as suggested by some campaign groups) to the prevailing UK policy imperative around marketization, in particular the purchasing of criminal justice and related services through Payment by Results commissioning.

THE DEVELOPMENT OF JUSTICE REINVESTMENT POLICY IN THE UNITED KINGDOM

Applying economic thinking to criminal justice policy

The term "Justice Reinvestment" arises from the observation that, if there are more cost effective ways of reducing crime than what is currently on offer, the social resources saved from the implementation of a successful intervention will more than outweigh the costs. Therefore investment in programmes which reduce criminality will lead to a return, in terms of future costs foregone, which will more than pay for the project. It is suggested these savings are reinvested in further justice promoting innovations, leading to a virtuous spiral in which criminality declines and costs are reduced.

The development of policy positions on JR in the UK has owed much to the seminal paper by Tucker and Cadora (2003) based on analysis in the USA where they argued:

There is no logic to spending a million dollars a year to incarcerate people from one block in Brooklyn—over half for non-violent drug offenses—and return them, on average, in less than three years stigmatized, unskilled, and untrained to the same unchanged block. This unquestioned national dependence on mass incarceration reflects a fundamentalist approach to imprisonment that actually sacrifices public safety. (Tucker and Cadora 2003: 2)

Rob Allen, an early UK proponent of JR and Special Advisor to the House of Commons Justice Committee when it produced its influential report on JR (Justice Committee 2009) argued that, in general, JR has two key elements. First, it seeks to develop measures and policies to “improve the prospects not just of individual cases but of particular places” (Allen 2007: 5). Secondly, JR adopts a strategic approach to the prevention of offending and re-offending by collecting and analysing data to inform commissioning decisions (*ibid.*).

Thus, a JR approach recognises the potential to create a more law-abiding society in a more effective and less costly way than the traditional detect/convict/punish approach. Many of the cost savings may come from reductions in the crime rate. This leads to measurement issues, of course, as it not straightforward to assess the level of crimes which have been deterred. Setting this point aside, however, given appropriate quantitative evidence of savings made, JR proposes redirecting funds spent on punishment of offenders to programmes designed to tackle the underlying problems which gave rise to the criminal behaviour (Allen 2008).

The UK Justice Committee (2009) formulated a four step approach to JR that owes much to the data driven process advocated by the US Council of States Government (Council of States Government 2010):

1. ‘Justice mapping’: Analysis of the prison population and of relevant public spending in the communities to which people return from prison

2. Provision of options to policy-makers for the generation of savings and increases in public safety
3. Implementation of options, quantification of savings and reinvestment in targeted high-risk communities
4. Measurement of impacts, evaluation and assurance of effective implementation

The overriding distinguishing feature of JR is its reliance for its validity on economic theory. It is this aspect which Fox et al (2013b) argue should allow UK politicians to re-shape the debate about criminal justice, enabling the political costs of being thought to be “soft on crime” to be attenuated.

At the least, economics provides a common ground for justifying and comparing different approaches and attitudes to criminality. (Fox et al 2013b)

Moreover, the Justice Committee (2009) proposed that the way to engage the public in a debate about the criminal justice system and its effectiveness was to link effectiveness to cost and affordability. Taking a whole population approach, they recommended that:

“Public information campaigns should seek to promote understanding of the cost of the criminal justice system to the public purse and where the costs of the failure of current initiatives fall. The Government should use this to gauge public reaction to the costs of the system.

(Justice Committee 2009: 160)

Justice Reinvestment and localism

As part of their comprehensive review of the prison service in England (and, to some extent, Wales), *Do Better, Do Less*, the Commission on English Prisons Today (2009) noted the unsustainable increase in demand (and supply) of prison places – and this despite the falling rate of criminality in the nation. Looking abroad (and to Scotland) the Commission concluded that it was possible both to reduce prison numbers and criminality. To achieve this, the Commission recommended a three-fold approach: public fears on law and order must be challenged; moderation rather than excess should be a philosophy of punishment; and a new framework must be realised through practical and appropriate interventions.

The Commission noted (somewhat optimistically) the English characteristics of being “reserved, moderate, prudent, considered, pragmatic, tolerant, temperate and forgiving” (p. 32) and suggested these, together with the lack of confidence the public had in the current criminal justice system, allowed the foundation of a desire for change in the prison system. In practical terms, the policies which might be employed were also threefold: localism; Justice Reinvestment; and Restorative Justice.

The policy of localism allowed the addressing of two issues simultaneously. According to the commission, while the people of England felt their communities were increasingly disempowered (Watts 2008), there was good evidence to show that justice functions were more efficiently delivered at the local level (Mulgan and Bury 2006, Local Government Information Unit 2008, Stern and Allen 2007). It was argued that localising services and service providers also lead to an increase in trust (Lappi-Seppälä 2009 cited in English Prisons Today 2009) which was associated with a reduction of the proportion of the population who are incarcerated and as might be expected, a more effective series of interventions. The commission also argued that co-operation between stakeholders was more likely to be achieved at a local, rather than national, level (p. 51). Localism was, therefore, an approach which might lead to more correctly aligned incentives as well as making it more likely interventions would be supported politically and socially and be successful.

In their consideration of the strengths of the Justice Reinvestment approach, the Commission on English Prisons Today (2009) argued (p. 49) “Justice Reinvestment is not about alternatives within the criminal justice process, it is about alternatives outside of it”. To the Commission, the Justice Reinvestment approach allowed the holistic consideration of the problem of criminality. It was in the interlinking of localised costs and benefits – including social costs and benefits – where real opportunities arose for innovation.

IMPLEMENTING JUSTICE REINVESTMENT IN THE UK

Justice Reinvestment as a misappropriated concept

In an interview conducted in 2011 (Fox et al 2013a), Rob Allen, an early UK proponent of Justice Reinvestment expressed dismay and frustration about the development of Justice Reinvestment in the UK. While he welcomed the interest in JR from national and local policy makers, including civil servants and politicians from across the political spectrum. He observed that Justice Reinvestment was like ‘motherhood and apple pie’ – no-one is going to disagree with it. However, if you asked individuals what they meant by Justice Reinvestment, this was a different matter.

Allen posited that conceptualisations of JR varied considerably – “Three or four people will give you five or six definitions of what it is”. From Nick Herbert (the Minister of State for Policing and Criminal Justice 2010-2012) who equated Justice Reinvestment to Payment by Results (PbR) commissioning (Herbert 2010) – according to Allen, PbR was the “bastard child” of JR – to Allen’s own view of JR as a progressive way of linking together three critical elements: reducing imprisonment; local responsibility for organising and resourcing offender rehabilitation and reintegration; and a focus on effective use of resources.

The cross party House of Commons Justice Committee’s report (House of Commons Justice Committee 2009) *Cutting Crime: The Case for Justice Reinvestment* while considered influential by some commentators (Fox et al 2013a) was given a lukewarm reception (on its publication) by Jack Straw, at that time the Lord Chancellor and Secretary of State for Justice (Ministry of Justice 2010) for the Labour Government. Two months later, the May 2010 General Election, ushered the first UK coalition Government in fifty five years; a coalition of the Conservative and Liberal Democrat parties. The Justice Committee report fared no better under the Coalition Government which largely ignored the more fundamental, holistic approach offered by Justice Reinvestment, instead choosing to focus more narrowly on the way in which justice services were commissioned as the mechanism (so it was suggested) for driving improvements.

The first bullet point under the ‘Justice’ heading in the coalition agreement read:

We will introduce a ‘rehabilitation revolution’ that will pay independent providers to reduce reoffending, paid for by the savings this new approach will generate within the criminal justice system.

As indicated by the Conservative Party (2009), one of the priority areas for reform was the introduction of payment by results for the rehabilitation of offenders. That is, provisions would be put in place to hold providers of rehabilitation services to account for the outcomes achieved. Referring to Payment by Results, the Ministry of Justice stated:

This is a radical and decentralising reform which will deliver a fundamental shift in the way rehabilitation is delivered. It will make the concept of justice reinvestment real by allowing providers to invest money in the activity that will prevent offending rather than spending money on dealing with the consequences

(Ministry of Justice 2010b: 38)

Payment by results is not at odds with the concept of JR, however as noted by Fox et al (2013a) while PbR might form a part of a Justice Reinvestment project, is not, in isolation, capable of making the concept of Justice Reinvestment real. We will return to this and the wider roll out of Payment by Results commissioning announced in the UK Government's strategy for the management of offenders in the community published in May 2013 (Ministry of Justice 2013b).

Early Justice Reinvestment initiatives

A number of projects in the UK have implemented discreet elements that could be associated with Justice Reinvestment. However, to date, none represents a full implementation in the terms of the Justice Committee's four step approach to JR described above.

The Diamond Initiative, for example, a two year scheme (ending in March 2011) piloted by London Probation and the Metropolitan Police Service (MPS), working as part of the London Criminal Justice Board used elements of the Justice Reinvestment approach; specifically Justice Mapping. The Initiative brought together multi-agency teams of Police, Probation, and Local Authority officers to resettle offenders back into the community following a prison sentence of less than 12 months. The project was focused primarily on offenders in custody and after release from custody (Allen 2008b) rather than taking the broader view,

characteristic of some JR projects in the USA, of offenders' criminal careers being rooted in deprived communities. The Commission on English Prisons Today (2009) argued that rather than re-directing resources into communities Diamond Initiative resources were used for the management of individual offenders and that in this sense the Diamond Initiative was simply a reinvention of after-care schemes for short-term prisoners and an extension of Multi-Agency Public Protection arrangements. According to Allen (interviewed for Fox et al 2013a) because of the multicultural make-up and population churn of London, it was unclear how many of the offenders on the programme were UK citizens from the neighbourhoods where the project teams worked. Therefore the geographical focus of the project was not as significant as intended.

In 2005, the International Centre for Prison Studies, Kings College London, with the backing of Gateshead council, began the Gateshead Project, a pilot of a Justice Reinvestment style approach in financing and delivering services to offenders and ex-offenders. Gateshead is a town in northern England, close to Newcastle with a population, according to the 2001 Census of 191,000. The unemployment rate for Gateshead was higher than the national average and those employed receive, on average, correspondingly lower wages; the borough was ranked the 26th most disadvantaged out of the 354 in England (Allen *et al.* 2007).

The aim of the project was to divert money from the criminal justice budget into community support, collect data and thus determine whether the approach was practicable – in the sense of delivering economic efficiencies. However, the project met with only limited success. Allen *et al.* describe the difficulties which the project struggled to overcome.

The first step in much Justice Reinvestment work is justice mapping; however, as Allen *et al.* noted, the prison service was unable to provide information on where the offenders lived prior to imprisonment or where they lived on release. The practice of giving prisoners an additional discharge grant if they reported that they had no fixed abode on release might have created a perverse incentive for offenders to provide inaccurate data. A data-set of sorts was accessed through the probation service but, as the service generally did not support those on short-term sentences, it is likely that the data was incomplete. Therefore, although justice mapping was carried out, it was likely the coverage was limited.

Secondly, the possibility of a neighbourhood based approach to resettling prisoners was discussed with the probation service, the local authority and with the project's advisory board. However, it proved difficult to obtain a consensus about the appropriate form of intervention. It became clear that local residents would not be happy with facilities for released prisoners being located in their midst; neither did released prisoners wish to visit local services, possibly for fear of stigma. Also, it was suggested resources were not necessarily available for probation staff relocation from a headquarters. (*ibid.*)

Although Allen *et al.* (2007) did not express this explicitly, the Gateshead project seemed to have struggled with the limited financial incentives available to encourage local agencies, particularly local authorities, to invest in preventative programmes or community-based alternatives to prison. This despite an explicit aim of the project being the shifting of “the distribution of decision-making power from national to local in promoting local solutions to local problems.” (Gateshead Housing Company 2005). A close reading of Allen *et al.* (2007) suggests the project team could not develop the kinds of sophisticated economic modelling of different options which is characteristic of some Justice Reinvestment projects in the USA. Such analysis might have been useful in pressing the Justice Reinvestment case. In contrast, where the Council of State Governments, Justice Center undertake Justice Reinvestment in the USA, they require bi-partisan support from the beginning.

A further and related problem was to do with the scale of the project. Arguably, it was unrealistic to expect that such an approach would or could work effectively at the level of a single local authority given that funding decisions about the criminal justice system were and are made primarily at a national and regional level. In addition Allen (interviewed for Fox *et al.* 2013a) suggested that a geographic focus was perhaps more problematic in the UK than in the USA. Allen argued, while there was some correlation between people who go to prisons and concentrations in neighbourhoods, in the UK “... we don't have million dollar blocks”. This was a reference to an observation by Tucker and Cadora (2003) and recounted by Cadora:

The phrase 'million-dollar blocks' was coined to refer to research findings which show that in certain communities states are spending up to a million dollars per block to cycle residents back and forth from prison each year.

(Cadora 2007: 11)

Devolution of Budgets and cashability of savings from the criminal justice system

As mentioned earlier one of the key principles for Justice Reinvestment in the UK has been an increased emphasis on localism and the devolving of criminal justice budgets to a local level. This has underpinned two pilot programmes initiated by the Ministry of Justice and commissioned as part of the Ministry's four Payment by Results pilots: the Local Justice Reinvestment Pilot and Youth Justice Reinvestment Pathfinder Initiative. Recently the latter scheme, has in part been superseded by the transfer of the budget for remanding young people (aged up to 18) into custody from central government to local authorities in England and Wales from April 2013. The two pilot initiatives and the transfer of the remand into custody budget for youths serve to illustrate some of the difficulties of achieving and locally reinvesting any cashable savings from the criminal justice system. These difficulties appear to be inherent in any Justice Reinvestment initiative implemented in the UK but also potentially elsewhere.

The Local Justice Reinvestment Pilot which ran from two years from July 2011 to June 2013 had at its heart a local financial incentives approach to reward a successful reduction in demand on the criminal justice system (Wong et al 2013a). It was piloted in six sites: Greater Manchester (an urban conurbation comprising ten local authorities with a combined population of 2.69 million according to the UK Office of National Statistics) and five individual London boroughs (urban areas with populations ranging from 247,000 to 365,000 according to the UK Office of National Statistics) all of which had previously participated in the Diamond Initiative (see above). The aim of the pilot was to reduce demand on the criminal justice system specifically:

Where demand falls beyond a certain threshold (5% for adults and 10% for youths, up to a maximum of 20%) in either of the two measurement years compared to the baseline, local partners will receive a success payment. In the event that demand

does not fall below the specified threshold in any of the measurement years, no payment is made to the local partners. (Ministry of Justice 2013b)

The total cost of demand at each site was calculated by multiplying the agreed demand metrics by prices for each metric agreed prior to commencement of the pilot and held at the same level for both years (Ministry of Justice 2013a). The demand metrics were the number of:

Under 12-month adult custodial convictions and custody months from those convictions, community orders, suspended sentence orders, other convictions (non-custody and non-court order convictions) in magistrates courts, and a range of probation requirements (*'Accredited programme'*; *'Unpaid work'*; *'Drug treatment'*; *'Supervision'*; *'Specified activity'*; *'Mental health'*; *'Alcohol treatment'*; *'Residence'*; *'Curfew'*; *'Exclusion'*; *'Prohibited activity'*, and *'Attendance centre'*).

Youth metrics are volume of: under 24-month custodial convictions and custody months from those convictions, community orders, and other convictions in magistrates courts.

(Wong et al 2013)

The prices were based on what the Ministry of Justice agencies (National Offender Management service, Her Majesties Court and Tribunal Service and the Legal Services Commission) agreed were the potential cashable savings from a reduction in the metrics (Ministry of Justice 2013a).

As indicated by Ministry of Justice (2013a) these estimates of savings were specific to the pilot and did not represent estimates of the costs of delivering the services. Different prices were reduced by different amounts based on an estimate by the Justice agencies on the likely realisable savings associated with the different disposals (*ibid.*). For example the 'saving' made through reducing by one month a custodial sentence of under twelve months was £360 (*ibid.*). This contrasts with £2,553, the estimated average monthly cost of a custodial sentence of under twelve months. This had been calculated based on £30,637, the

annual resource expenditure cost per prisoner in a Category C prison (Ministry of Justice 2012). A Category C prison is the most likely category of prison to hold someone sentenced to an under 12 month sentence. In other words, for this metric, only 14% of the saving in delivery cost (of a short-term sentence) could be converted to a cashable saving.

Interviews with stakeholders involved in the pilot in May/June 2011 for Fox et al 2013a suggested that the level of cashability was determined by two things. One, the duration of the pilot – it was due to run for two years, the interviewees suggested that it may not run long enough to achieve substantial savings. Two, the size of the pilot - it was on too small a scale. The economies of scale required to close, for example, the wing of a prison, may be beyond the scope of such a pilot (Fox et al 2013a).

In their interim evaluation report of the pilot Wong et al (2013a) found that the pilot had:

...provided insufficient incentives to encourage local agencies to make significant investments in reducing demand and/or make substantial changes to practice (that were not already in train)

(Wong et al 2013a)

This was due to the perceived low level of payments for reducing demand (due to the problem of cashability); a perceived inability of agencies to implement interventions that were likely to reduce demand; the payment structure (there was no upfront payment to invest in interventions or processes); and the complexity of metrics (Wong et al 2013).

In addition, the limited availability of robust research evidence and cost–benefit analysis to inform the local sites choice of interventions and approaches was a barrier to implementation of the pilot except in one site - Greater Manchester. In this site they made best use of the evidence available and committed to evaluating the effectiveness of promising interventions (ibid). Greater Manchester was also the only site to collate management data and review the performance of interventions that were part of the pilot's portfolio (ibid).

Assessed against the four step approach to Justice Reinvestment proposed by the Justice Committee (discussed above), only one of the six sites in the pilot – Greater Manchester appeared to take up the opportunity to attempt a JR approach to the delivery of local criminal justice services.

The Youth Justice Reinvestment Pathfinder Initiative (ongoing at the time of writing till September 2013) is based on a partial devolving of custodial budgets for young offenders (aged up to 18). Ministry of Justice (2010c) states:

Specifically, we are proposing that local authorities should share both the financial risk of young people entering custody, and the financial rewards if fewer young people require a custodial sentence. We therefore propose to run a small number of pilots, each working in partnership with a consortia of volunteer local authorities. We will agree a target reduction in the use of custody with the consortia and provide a reinvestment grant, on top of the standard grant to Youth Offending Teams, to help them achieve this.

(Ministry of Justice 2010c: para. 256,257)

The sites which commenced the pilot in October 2011 were: Birmingham, a single local authority (an urban area with a 1.07 million population according to the UK Office for National Statistics); West London a consortium of three London boroughs (an urban area with a combined population of 899,000 according the UK Office for National Statistics); North East London Partnership, a consortium of seven London boroughs (an urban area with a combined population of 1.82 million according the UK Office for National Statistics); and West Yorkshire, a consortium of five local authorities (with urban and rural areas and a combined population of 2.27 million according the UK Office for National Statistics). The pilot is due to finish at the end of September 2013. At the end of the first year two sites withdrew from the pilot invoking a no penalty break clause.

In contrast to the Local Justice Reinvestment Pilot which had a plethora of demand metrics, the Youth Justice Reinvestment Pathfinder initiative focussed on one demand metric – reducing custody bed nights for both the remand population and custodial sentences (Youth Justice Board 2010a). This focus on reducing custody bed nights, accords with the

fundamental principle of Justice Reinvestment envisaged by Tucker and Cadora (2003) and championed by Allen - that of reducing the use of imprisonment.

In terms of the cashability for this pilot, the sites receive a grant based on the costs of community alternatives to custody. At the end of the two year pilot, if the sites fall short of their custody bed night reduction target they must pay back a proportion of the grant based on the average weighted bed price of that shortfall (Youth Justice Board 2010b). The average weighted bed price being the cost across the secure youth estate, i.e. Young Offender Institution (YOI), Secure Training Centre and Secure Children's Home (Youth Justice Board 2010a). In terms of scale, in order to deliver the "significant savings" required of this pilot, arguably the most important eligibility criteria was the requirement that each area (which could be one or more local authorities) must have at least 50 young people in custody at any one time (Youth Justice Board 2010b).

In practice, the Youth Justice Reinvestment Pathfinder initiative has in part been superseded by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Part 3, Chapter 3 – Sections 91-107 of the act provides for the transfer of financial responsibility for remands for young people (aged up to 18) in custody to local authorities from April 2013. Ostensibly, the policy shift underpinning this accords with the principle of localism promoted by the Commission on English Prisons Today (2009) and Allen, as well as the JR proposition of reducing the use of custody. However, JR involves measuring realised savings and this is not straightforward as a significant degree of complexity lies behind the budget transfer. Further, there are limitations to the level of funding local authorities are able to invest locally in alternative provision. This is illustrated by the settlement for 2013/14 detailed in the Ministry of Justice and Youth Justice Board's response to the consultation published in February 2013:

We intend to distribute funding to meet the costs of remands to under-18 young offender institutions on the basis of 3 year historic data on secure remand bed nights.

There will be no transfer of funding to meet the costs of remands to secure children's homes and secure training centres.

The cost of remands to youth detention accommodation will be recovered on the basis of sector prices.

(Ministry of Justice 2013)

According to the Ministry and the Youth Justice Board the budget to be transferred to local authorities has been affected by three variables (ibid):

- *The under 18 youth offender institution sector price* – which was expected to be £171 between April and June 2013 and £160 from July 2013 to March 2014 due to the planned decommissioning of Ashfield Young Offenders Institution (YOI), subject to finalisation with the private sector provider
- *The total number of bed nights* - following data verification this was 145,702 for England and Wales
- *Impact of the new remand framework and population adjustment for 2012/13* - Population data showed a “significant and sustained reduction in the number of children on remand in under-18 YOIs” (ibid). The YOI remand population was adjusted by minus 26 percent to take account of the reduction. A reduction to take into account the impact of new remand framework (which places a stricter test on the use of remand into custody) was not applied.

In a presentation to the London Councils in March 2013, Sean Dunkling a senior manager in Wandsworth Council acknowledged that the transfer of budgets for YOI placement costs was an “...incentive for local authorities to reduce *unnecessary* secure remands and reinvest any savings achieved” (Dunkling 2013) However, he suggested that taking together the transfer of the remand YOI budget and the introduction of looked after children status for young people remanded into custody (a part of the transfer of responsibility) meant that his council was facing a £321,000 funding shortfall after taking into account the £281,697 indicative allocation for YOI remands for 2013/14 (ibid).

The transfer of the remand custody budget for youths to local authorities is significant; it represents the first mainstream devolution of criminal justice funds to local authorities. However, the extent to which the level of devolved funds make the scheme viable, rather than a financial burden for local authorities, is difficult to determine at this stage – the

transfer only took place in April 2013. Also it is too early to tell the extent to which the budget transfer has affected youth justice practice – according to Dunkling, reducing “unnecessary secure remands” – now that remand into custody is not a free service for local authorities.

MODELS OF JUSTICE REINVESTMENT: SOCIAL JUSTICE OR SYSTEM REDESIGN?

As indicated earlier the Justice Reinvestment movement which started in the USA has influenced the development of JR in the UK.

Social Justice redesign underpinned by Justice Reinvestment theory

Early concepts of JR were motivated by the observation that some communities are clearly more in need of criminal justice interventions than are others. This is the observation lying behind Cadora’s (2007: 11) so-called “million-dollar blocks”.

The question that Cadora and other pioneers of JR posed was simply whether the financial resource spent on incarceration might be better spent on other criminal justice/social justice interventions. The suggestion and vision of JR was to “to invest in public safety by reallocating justice dollars to refinance education, housing, healthcare, and jobs.” (Cadora 2007:11)

This early model of JR places criminal justice within a broader model of social justice, the strategy implies it is less than efficient to separate the two. Thus, part of the JR approach is to prevent criminality arising in the first place and, where it does arise, there is a need to address its underlying causes in communities and families. Clearly, social innovations based on rehabilitation cannot reach those individuals who are currently at risk of becoming first-time offenders; it is so-called “pre-habilitation” which will reach these latter. Clearly, therefore, interventions based on “pre-habilitation (Justice Committee 2009) must take a holistic view of the society from which offenders come.

In their consideration of the strengths of the JR approach, the Commission on English Prisons Today (2009) argues (p. 49) “Justice Reinvestment is not about alternatives within the criminal justice process, it is about alternatives outside of it”. To the Commission, the JR approach allows the social consideration of the problem of criminality. It is in the interlinking

of localised costs and benefits – including social costs and benefits – it is this holistic approach where real opportunities arise for innovation and cost savings.

Criminal Justice System redesign underpinned by Justice Reinvestment theory

La Vigne *et al.* (2010), in their guide to planning and implementing Justice Reinvestment programmes in the USA advocated diverting individuals from the criminal justice system to more effective and cheaper options. Such diversion may take place at key points in the system: arrest; pretrial; case processing; sentencing; discharge from prison; and community supervision. However, they also put rehabilitation centre stage. As well as being concerned with strategies to reduce the number of people entering the criminal justice system and to expedite the criminal justice process. However, La Vigne *et al.* also place considerable emphasis on reducing re-offending through the greater use of prisoner re-entry programmes before and after release. They also advocate the use of the rate of recidivism as a measure of programme success in a local jurisdiction (in particular see La Vigne *et al.* 2010: 71); again emphasising that the reduction of re-offending arising from more effective rehabilitation is an important component of Justice Reinvestment.

In the UK, Lanning *et al.* (2011) likewise set out a vision for Justice Reinvestment in which offenders are diverted from the criminal justice system and, within the criminal justice system, more offenders being diverted away from custody to community alternatives. There is, at the heart of their model, a redesigned offender management system which will be more effective than custody in cutting reoffending rates:

The goal, if it can be reached, is a great one: a criminal justice system that both punishes offenders and rehabilitates them, that costs less and is more effective at tackling crime and protecting the public

(Lanning *et al.* 2011: 3)

Community sentences are recommended precisely because Lanning *et al.* feel they are more likely to be effective in rehabilitation than a custodial sentence – particularly a short-term custodial sentence. (*ibid.*: 10).

The delivery model adopted by West Yorkshire, one of the pilot sites for the Youth Justice Reinvestment Pathfinder (mentioned above) reflects a system redesign approach to reducing custody bed nights for young offenders (aged up to 18). By analysing custody bed night data local agencies identified the key entry points into custody and in response to this identified practice changes and interventions to reduce: remands into custody; and custodial sentences by offering robust community alternatives. They also aimed to reduce the duration of custodial sentences by supporting appeals against sentence length mounted by defence barristers; and by reducing breach offences through better engagement and contact with young offenders and their families (O' Hara 2013).

Similarly, the Transition to Adulthood (T2A) Alliance, a coalition of twelve criminal justice, health and youth organisations convened by the Barrow Cadbury Trust have identified “ten points in the criminal justice process where a more rigorous and effective approach for young adults and young people in the transition to adulthood (16-24) can be delivered.” (T2A Alliance 2011); referring to these as the T2A pathways from crime. However of the ten points identified by the Alliance, arguably only six are pathway intervention points in the criminal system: policing and arrest; prosecution, sentencing, community sentence, custody and resettlement. The remaining “points” are pathway processes which could occur at any of six intervention points – diversion to drug, alcohol and mental health provision; restorative justice; managing the transfer process between youth and adult criminal justice systems; and enabling desistance from crime.

What these examples illustrate is that recently the focus of JR in the UK has remained ‘efficiency’ in dealing with offenders, rather than seeking to divert the vulnerable from crime altogether. The concept of efficiency and the time frame over which savings may accrue have been reconsidered as is indicated by the assessments of limited cashable savings for the Local Justice Reinvestment Pilot detailed above, compared to the more generous estimates in the case of the Youth Justice Reinvestment Pathfinder. Increasingly the aspirations of JR programmes have focussed on reducing the use of incarceration through analysis of demand for prison places and identifying opportunities at different points in the system to divert offenders from custody and/or reduce the likelihood of re-offending on release. This model of JR – which we may describe as a criminal justice system redesign approach – focusses attention on what is happening within the criminal justice system.

System redesign is a pragmatic response to austerity conditions, given that this is within the preserve of criminal justice agencies. However in not extending their reach beyond the criminal justice system these programmes may miss the opportunity to prevent criminality in the first place.

Justice Reinvestment as a continuum

We would not argue that JR interventions will generally fall neatly into one of two categories: social justice and criminal justice redesign. In reality social justice and criminal justice are not mutually exclusive models; they represent two ends of the scale of JR as a continuum. In practice the approach that is adopted by local, regional or national agencies may be shaped by dynamic factors – factors which can (and do) change over time. For example, such factors might include:

- Political acceptability. In these financially straightened times, it may be easier to justify describe Justice Reinvestment as offering a cost effective criminal justice system than it is to champion social justice.
- Ability to re-direct budgets for public services. In the UK, budgets which might be brought together to offer a more holistic social justice approach to Justice Reinvestment are retained within individual Government departments. This constrains their reallocation at a regional and local level.
- Short term versus long term planning. Redesigning the criminal justice system offers a quicker fix than a redesign of the social welfare interventions.

Real life experience suggests Justice Reinvestment is a journey – an observation made by Jennet Peters in conversation with the authors in 2011. At the time she was the reducing re-offending lead at Government Office North West, and the Strategic Advisor to the Greater Manchester Local Justice Reinvestment Pilot. In 2011, her view of the Greater Manchester pilot was that they were on a journey taking a step towards Justice Reinvestment as a broader social justice focussed public service management approach. At the time the pilot was narrowly focussed on efficiency measures to divert individuals from more expensive interventions within the criminal justice system at four key points: arrest, sentencing, release from prison and the transition between youth and adult criminal justice systems (Wong *et al.* 2013). This mirrored the system based reduction approach to Justice

Reinvestment advocated by La Vigne *et al.* (2010). Arguably this was a rational response to the funding that was available as “The Local Justice Reinvestment Pilot provided no upfront funding to enable initial investment in interventions and processes” (Wong *et al.* 2013). The payment structure was cited by the local agencies across the six sites as one of the reasons why they made limited changes other than those that were generally already in train (*ibid.*).

However, during the first year of the pilot, Greater Manchester became involved in the Whole Place Community Budget pilot which aimed to break down the spending and funding constraints between Government budgets and allow local agencies the flexibility to allocate funds for more upstream “pre-habilitation” work as well as integrate criminal justice services more closely with non-criminal justice services such as accommodation and employment, through the development of new service delivery models (*ibid.*). This latter development has enabled the Local Justice Reinvestment Pilot in greater Manchester to move from the systems based approach along the continuum towards the broader social justice end of Justice Reinvestment.

FUTURE CHALLENGES TO THE IMPLEMENTATION OF JUSTICE REINVESTMENT IN THE UK

The economy

In the UK In 2007, the government spent approximately 2.5 per cent of GDP on public order and safety, the highest of all countries in the Organisation for Economic Co-operation and Development (OECD) (Duffy *et al.* 2007). Up until the 2008 economic crisis spending had been remorselessly increasing. The total budget for Ministry of Justice for 2009/2010 was just over £10bn (Ministry of Justice 2009) and the National Offender Management Service (NOMS) budget, from which the cost of prisons is met, was approximately £4bn of this. In 2010 the UK coalition government announced an ambitious cost reduction of 23 per cent over four years for the two Government departments with joint and sometimes competing

responsibility for criminal justice: the Ministry of Justice; and the Home Office. Their targets for capital spend were reduced by 50 per cent and 49 per cent respectively.¹

On the 26th June 2013, George Osborne, the Coalition Government Chancellor of the Exchequer announced further spending cuts to be undertaken by 2015/16 (compared to the 2014/15 baseline): a further 10 percent reduction of funding for the Ministry of Justice and a slightly smaller reduction of 6.1 percent for the Home Office (HM Treasury 2013). The budgets for the Department for Communities and Local Government and the Department for Work and Pensions, government departments whose remit includes social justice outcomes such as accommodation and employment and benefits have also been cut by 10 per cent and 9.5 per cent respectively over the same time period. If the holistic model of JR is correct, such cuts will impact on criminal justice outcome. Nor is austerity likely to end any time soon, if ever. In Ed Milliband's speech to the Labour Party National Policy Forum on the 22nd of June 2013 (in advance of Osborne's budget announcements), the Labour Party leader stated: "...we cannot reverse any cut in day to day, current spending unless it is fully funded from cuts elsewhere or extra revenue." In effect this is a promise that a future Labour Government will match the Coalition Government's spending plans.

The climate of further cuts to services arising from these budget reductions is likely to promote less innovative behaviour in relation to criminal justice innovation. Budget cuts and financial uncertainty arising from the 2010 spending round was identified by local agencies involved in the Local Justice Reinvestment Pilot as another of the factors influencing their decision to make limited service changes (Wong *et al.* 2013).

Organisational complexity

The number of organisations currently involved in the delivery of custodial and community sentences in England and Wales, i.e. within the criminal justice system itself also appears likely to promote less innovative approaches to criminal justice interventions. This is because there is a high degree of organisational complexity, which makes it difficult for cross-agency co-ordination in delivering effective services which support 'pre-habilitation', rehabilitation and prevention. Overall responsibility for criminal justice lies with the Ministry

¹ http://cdn.hm-treasury.gov.uk/sr2010_departmentalexpenditure.pdf Accessed 26th April 2011

of Justice, a central government department, however this is shared with the Home Office which has responsibility for policing, the recently created Police and Crime Commissioners and local community safety partnerships; and takes the lead for integrated offender management across the two departments.

The National Offender Management Service, NOMS, is an executive agency of the Ministry of Justice responsible for commissioning and delivering prison and probation services in England and Wales. NOMS is responsible for the National Probation Service and Her Majesty's Prison Service. Through these it delivers offender services by means of (National Offender Management Service 2012) 35 Probation Trusts, 119 public sector prisons; and several private sector organisations which between them operate twelve prisons under contract and provide other services including prisoner escorts and electronic monitoring of offenders in the community. As we discuss below, further organisational change is planned. Change is inevitable, as conventional wisdom would have it: improvement, on the other hand, is not guaranteed.

The policy landscape

As mentioned above, the coalition government of the Conservative Party and Liberal Democrats signalled their intention to introduce a “rehabilitation revolution” in the coalition agreement (Her Majesty's Government 2010). Central to the “Rehabilitation Revolution” is the use of Payment by Results (see Fox and Albertson 2011). In its *Breaking the Cycle* Green Paper, the Ministry of Justice proposed extending the principle of Payment by Results to all services for offenders by 2015 (Ministry of Justice 2010). Payment by Results, as implemented by the UK government, is narrowly focussed on privatisation and marketisation of criminal justice – that is, it focuses on system redesign. Thus, it might form a part of a Justice Reinvestment innovation, however, it should not be confused with JR.

Further reforms have recently been proposed in *Transforming Rehabilitation – A Revolution in the Way we Manage Offenders* (Ministry of Justice 2013b). These latest proposals reiterate the intention to introduce a widespread programme of competition so that the majority of community-based offender services are subject to competition with providers drawn from the private and voluntary sectors and the existing probation service potentially allowed to join the competition by setting up new independent entities (such as employee-

led mutuals). It is beyond the scope of this paper to comment on the merits or otherwise of the proposed reforms. We restrict ourselves to identifying some potential opportunities to implement a radical model of JR within this emerging policy landscape.

A mixed economy of criminal justice provision is envisaged by Tucker and Cadora (2003) in their original sketch of the JR model of social innovation. They suggest that the cycle of offending and re-offending can be broken by a concerted effort from National government, state government, NGO's, the private sector, the individual at risk from criminality and his or her family working together to improve education, health, job training and (especially pertinent given the recent rise in youth unemployment worldwide, and particularly in the western democracies) job creation. The latest UK government reforms favour a mixed economy of criminal justice provision, this is conducive to a model of JR designed to deliver social justice (Fox *et al.* 2013a).

The model of JR we discussed above (further elaborated in Fox *et al.* 2013) and the original model of JR developed by Tucker and Cadora (2003) envisage a holistic approach to pre-rehabilitation and rehabilitation that extends beyond the efforts of criminal justice agencies. In *Transforming Rehabilitation* the government is explicit in its desire to see providers of rehabilitation services "tackling offenders' broader life management issues" (Ministry of Justice 2013: 17). It also recognises the need for offenders to be able to access a range of public services provided by other Government departments and agencies in order to tackle the multiple issues that offenders often have. Thus interest in maximising results from collective government and public sector resources is explicitly linked to delivering more effective social justice (Ministry of Justice 2013b).

The recently elected (in November 2012) local Police Crime Commissioners (PCCs) in England and Wales could provide a single point of political leadership needed to drive forward JR at a local level. However, a cursory review of some of the police and crime plans produced by PCCs suggest a limited ambition and a lack of understanding or even awareness of Justice Reinvestment. The latest UK Rehabilitation proposals set out a model for commissioning services where the geographies across which services will be commissioned have co-terminosity with PCC administrative boundaries in seven of the twenty one contract packages areas (Ministry of Justice 2013c). In the other fourteen areas these cover two or

three PCC administrative boundaries (ibid), which are likely to make such arrangements more complicated. In their evaluation of the Local Justice Reinvestment Pilot, Wong et al (2013) recommended that future PbR and Justice Reinvestment initiatives should be commissioned at a geographical level with “groupings of local authorities which are coterminous with the key criminal justice agencies: police forces, probation trusts, court structures and police and crime commissioners” (Wong et al 2013: 34). This was based on the experience of Greater Manchester where such co-terminosity operated and facilitated the delivery of the Local Justice Reinvestment Pilot, notwithstanding some co-ordination challenges arising from geographical size and the need to work across ten local authorities (Wong et al 2013).

Capacity and capability

As mentioned earlier, Justice Reinvestment is a data driven process and as such requires agencies to have both the capacity and capability to analyse data and then to use it inform strategy and delivery through effective performance management. The evidence from the Local Justice Reinvestment Pilot suggests that such capacity and capability was in short supply.

The absence of effective performance management to support the LJR pilots across some sites was perceived to be partly due to having limited access to the desired range of management information held by MoJ [Ministry of Justice] on a frequent and timely basis ; the commitment of local agencies to undertake performance management; the capacity and capability of local staff to analyse central and local data and to use this to inform delivery; and the capacity and capability of staff to undertake an investment appraisal analysis of available options.

(Wong et al 2013)

There is anecdotal evidence that absence of such analytical capacity may in part be explained by the abolition of regional Government Offices reductions in local authority and policing budget cuts as noted by Fox et al (2013b).

As indicated above the proposed outsourcing of community based offender management services to private and voluntary sector agencies is not without its challenges. While David

Cameron has championed the role of the 'Big Society' (Cameron 2010), i.e. the involvement of the voluntary and community sector (VCS) in the management and delivery of public services, as noted by Wong (Forthcoming) there needs to be a more nuanced and realistic assessment of the capacity of the VCS to deliver offender management services. The range in the capabilities of the VCS varies widely and reflects the diversity of a sector which encompasses large organisations with annual turnovers in excess of £5 million with many paid staff, down to small organisations with an annual turnover of less than £10,000, principally run by volunteers (Wong Forthcoming).

This is highlighted by the experience of the VCS involvement in integrated offender management in four pilot sites in England. Wong et al (2012) uncovered a number of challenges including:

- The need for local VCS infra-structure organisations to act in a brokerage role, between the VCS (which had previous limited involvement in the criminal justice system) and statutory criminal justice agencies.
- Increasing the involvement of the VCS in delivering services to offenders, including the use of volunteers required resources and funding incentives to build such capacity.

The default position of previous Governments to fund VCS capacity building initiatives as a means of addressing this may not necessarily be the answer given the relative lack of efficacy of such programmes as noted by Wong (Forthcoming).

CONCLUSION

Resisting the seduction of radical change

Tim Harford a senior columnist with the Financial Times and presenter of the BBC's programme on statistics "More or Less" has argued that organisations need to strike a balance between innovations derived from making marginal improvements and opting for more radical risky change. In a talk given at Wired 2012, he described the small improvements that Matt Parker made to help the British Cycling Team win seven out of the ten gold medals (available for cycling) at the London Olympics in 2012 (Solon 2012). Matt Parker's job title was "Head of Marginal Gains". The marginal improvements he instigated included: advising the cyclists to bring their favourite pillow with them to the games to

maximise their sleeping; using specially designed hot pants to keep their muscles warm and rubbing alcohol along the wheels of the bikes to remove dust and grime to optimise aerodynamic performance (ibid).

However, that no amount of marginal gains could have turned the penny-farthing to a modern chain-drive racing machine; sometimes radical reform is needed. The example that Harford gave for radical change was the competition held by the UK Air Ministry in the 1930s to find a single seat fighter plane, an unusual request at the time given that fighter planes were two seat models, with room for a pilot and a gunner (ibid). The design that Air Commodore Henry Cave-Browne-Cave decided to commission became the Spitfire which was much admired by Herman Goering, the Head of the German Luftwaffe and helped Britain to win the aerial war that became the Battle of Britain (ibid).

In the context of the two models of Justice Reinvestment mentioned above, the criminal justice system re-design approach falls into Harford's notion of innovation through marginal gains and the social justice model of JR with that of radical change. While the concept of an inclusive social justice model of Justice Reinvestment may be seductive to criminal justice reformers in the UK looking for an alternative to the Coalition Government's drive for Payment by Results commissioning (Howard League 2013), the example of the Local Justice Reinvestment Pilot suggests there are significant limitations to the feasibility of implementing this more widely (Wong et al. 2013). Given the likely continuation of David Cameron's 'age of austerity' along with the current policy landscape and the capability and capacity of agencies to implement Justice Reinvestment approaches, the example that the Greater Manchester Local Justice Reinvestment Pilot offers is a more pragmatic solution. It may be easier in the first instance to commence the Justice Reinvestment journey with a criminal justice system redesign approach, en route towards a more social justice destination. As the Chinese philosopher Laozi wrote in the Tao Te Ching, "A journey of a thousand miles begins with a single step".

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