The Intensive Alternative to Custody: 'Selling' sentences and satisfying judicial concerns

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Abstract

Drawing upon the implementation of the Intensive Alternative to Custody in Greater Manchester, this article explores the key concerns voiced by sentencers when presented with a Pre-Sentence Report (PSR) proposing an 'alternative to custody'. It is argued that the crucial element for effective implementation lies in the gatekeeping provided by PSR authors (probation staff), the dissemination of timely and relevant information to sentencers, and the reassurance that the order fulfils the requisite 'penal punch' to avoid accusations of 'soft options'.

Keywords

alternatives to custody, confidence, pre-sentence reports, probation, sentencing

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Introduction

The prison population in England and Wales has steadily increased over the past decade, exceeding 80,000 in December 2006 (Millie et al., 2007; Prison Reform Trust, 2009). In February 2008 the total population surpassed the useable operational capacity of the prison estate for the first time in history (Berman, 2012). Not surprisingly, there has been renewed interest in alternatives to custody injected with a fresh rhetoric of being 'tough', 'robust' and essentially 'prison-like' (Mills, 2011: 34). This paper explores the implementation of the pilot Intensive Alternative to Custody (IAC) in England and Wales, paying particular attention to the perceptions, tensions and issues raised by sentencers. Given the 'paucity of empirical research on the decision-making processes of sentencers' (Ashworth, 2002: 292), the findings contribute to the literature in this field.

The findings suggest that securing judicial support for alternatives to custody pivots on the gatekeeping provided by Pre-Sentence Report (PSR) authors, the dissemination of timely and relevant information to sentencers, and the reassurance that the IAC fulfils the requisite 'penal punch' to avoid accusations of 'soft options'. The findings are presented in three main sections. First, the cognitive aspects of implementation are explored whereby sentencers need to be both aware of, and understand new community orders. Second, confidence was a key theme; confidence in effective targeting, confidence in enforcement, and confidence that the IAC represents a sufficiently punitive substitute for custodial sentences. Finally, following previous research (e.g. Morgan, 2003; Tata et al., 2008), the findings highlight the importance of the PSR (both expedited and complex reports) as the vehicle to deliver information and provide reassurance to sentencers.

Alternatives to custody

Alternatives to custody have a long history in England and Wales (Mills, 2011), as do intensive community projects (Worrall and Mawby, 2004). In 2008 the Ministry of Justice (MOJ) invested £40 million into the National Offender Management Service (NOMS) to facilitate the promotion of community orders over short custodial sentences (Whitehead, 2010; Williams and Clarke, 2008) and further funding was secured later that year for a number of Intensive Alternative to Custody (IAC) demonstrator projects. This article explores some of the issues with implementation, particularly in gatekeeping and 'selling' the order to the judiciary.

The Intensive Alternative to Custody pilots

The IAC pilots ran from 2008/09 to 2010/11 in seven areas: Derbyshire, West Yorkshire, South Wales, Dyfed-Powys, Manchester and Salford, Merseyside, and Humberside. The aim of the IAC was to divert offenders from short custodial sentences by providing sentencers with a credible alternative comprising both punitive and rehabilitative elements. The IAC builds upon the requirements of the Community Order, which was introduced alongside the Suspended Sentence Order (SSO) in

Table 1. Disposal Outcomes: for those proposed but not disposed the IAC.

Disposals	Proportion
Custody: Adult	24% (<i>n</i> = 169)
Custody: Youth Offender Institution (18–21 year olds)	10% (<i>n</i> = 75)
Community Order (CO)	10% (<i>n</i> = 74)
Suspended Sentence Order (SSO)	7% (<i>n</i> = 50)
Other (fines, conditional discharge)	1% (<i>n</i> = 10)

Table 2. IAC requirements ordered in Manchester and Salford.

IAC Requirement	Proportion
Supervision	100% (<i>n</i> = 342)
Curfew	71% (<i>n</i> = 246)
Community payback	62% (<i>n</i> = 212)
Programme*	42% (<i>n</i> = 144)
Victim activity**	36% (<i>n</i> = 123)
Employment, training and education**	33% (<i>n</i> = 113)
Attendance centre	13% (<i>n</i> = 44)

* The main programmes that offenders were sentenced to as part of the Manchester and Salford IAC were the Integrated Domestic Abuse Programme (IDAP) and Thinking Skills Programme.

** A Victim Activity Requirement (VAR) was created in the second year of the pilot. A common outcome of the VAR is an 'apology letter', but also the possibility of a Restorative Justice conference.

2005. The introduction of these orders were similarly premised on intentions to 'narrow the custody/community divide' and offer 'more robust, demanding and credible alternatives to short custodial sentences' (Mair et al., 2008: 7). The IAC enabled courts to use existing community sentencing options in new ways by combining supervision with a mix of requirements and additional interventions delivered by partner agencies (MoJ, 2011). Reflecting the intensity of the order, across the seven demonstrator projects an IAC order had, on average, 3.4 requirements compared to 1.7 requirements per offender sentenced to a standard community order (*ibid*).

The IAC orders were managed by probation trusts and supported by partner agencies from public, private and third sector providers. Each area had a degree of flexibility in designing the IAC (e.g. targeting, eligibility) to reflect local priorities. This resulted in variation between the cohorts of offenders targeted in each pilot area and the interventions delivered (MoJ, 2011). There were 1,851 IAC orders commenced across the seven pilot regions between 1 April 2008 and 8 March 2011. This article focuses on the IAC in Greater Manchester, implemented and managed by Greater Manchester Probation Trust (GMPT).

The Manchester and Salford IAC pilot

The IAC became available in Crown and Magistrate courts in Manchester and Salford in April 2009. The order is typically 12 months in duration and targeted at

'18-25 year old males living in Manchester and Salford who have crossed the custody threshold and without an IAC Order would receive a prison sentence of less than 12 months' (GMPT, 2009: n.p.). During the two year pilot, 342 individuals were sentenced to the IAC, surpassing the target of 283 commencements. Concordance was 48 per cent (720 individuals were proposed the IAC, with 342 being sentenced to it). The outcome of those proposed and not disposed the IAC are outlined in Table 1.

The average number of requirements on an IAC order was 3.75; more than double the average 1.8 requirements on standard community orders in Greater Manchester, and higher than the overall average of 3.4 requirements per order across the IAC pilots (GMPT, 2009: n.p.). The supervision requirement was used in all IAC orders in Manchester and Salford, and indeed across the seven pilot areas (MoJ, 2011). The breakdown of IAC orders is outlined in Table 2.

In Manchester and Salford, the requirements are designed to be decremental, with restrictions relaxed as the order progresses. In keeping with the Ministry of Justice's emphasis on expeditious completion of unpaid work requirements (MoJ, 2011), the IACs were intended to be labour intensive for the first three months and then reduce significantly as the probationer should, ideally, be making the transition into employment.

The IAC partnership model involving statutory, private and voluntary agencies reflects 'local, integrated services' as recommended in the Coulsfield Report (Esmeé Fairbairn Foundation, 2004: 70). Key partners include: Partners of Prisoners, Work Solutions, G4S transport, and a full-time seconded police officer from Greater Manchester Police. Support services are delivered alongside probation offender management and interventions at a 'one stop shop' in Manchester City Centre.¹ The co-commissioning and co-location of the services, and its strategic and operational delivery, alongside the intensity of requirements are what makes the IAC substantively different from other community orders.

Methodology

The findings presented were collected between April 2009 and March 2011 as part of a broader evaluation of the IAC in Greater Manchester commissioned by the MoJ (see MoJ, 2011). Whilst the evaluation explored numerous aspects of the IAC, such as operational delivery; staff and offender perspectives, this paper focuses on the importance of responding to sentencers' concerns about alternatives to custody.

In the wider evaluation, 49 semi-structured interviews were conducted with Crown Court Judges, Magistrates, solicitors, legal advisors and PSR authors, and four focus groups were completed; one with PSR authors, two with Magistrates, and one with legal advisors. In addition, 35 observations of IAC sentencing, review and breach cases were completed and an audit of 100 PSR's presented at Manchester and Salford courts (67 of these had an IAC proposed). This article predominantly draws upon the findings from sentencers and PSR authors.

Cognitive challenges: Raising awareness and understanding of the IAC

Appropriating any new sanction into sentencing options requires both the awareness and appreciation of the order by sentencers. Research conducted during the formative stages of IAC implementation clearly demonstrated a general lack of knowledge about the order amongst court stakeholders. This was due in part to the relatively large bench in Greater Manchester, and the difficulties in disseminating information by GMPT.² Numerous approaches were adopted by the IAC team to increase awareness, such as court briefings, articles in *Cascade* (a publication for sentencers in Greater Manchester), and information sheets. Despite the efforts to disseminate the information, sentencers did not feel well informed. Some Magistrates conceded that they did not fully digest information presented to them, either in writing or verbally in presentations, because they might not need it given the relatively few cases that they presided over.³ It was agreed that information on new orders was 'easily forgotten' if it was presented 'in the abstract' (i.e. outside of court proceedings). Not surprisingly there was a preference for detailed information to be provided at the time of a case with a proposal for IAC being presented in the court room. It was clear amongst sentencers that the PSR was the most appropriate method to 'jog memories' (Magistrate, *focus group*, 2010). In light of this, the onus for informing sentencers about the order lies with probation staff when drafting the PSR, supporting previous research findings (Morgan, 2003; Tata et al., 2008).

Sentencers perceived there to be a perpetual influx of sentencing options, particularly as governmental administrations changed. This manifested itself in a reluctance to engage with new sentences as they were viewed as a passing trend. PSR authors outlined how this made it difficult to 'sell' alternatives to custody:

I think there is a bit of a misconception by the court that it's just another fad. It's another new sentence and I think they get a bit suspicious of them so I think a lot of work needs to be done selling it to the courts. (PSR author, *interview*, 2010)

Similar findings were reported following the introduction of the *Criminal Justice Act 2003* in England and Wales, with the use of Pre-CJA requirements such as supervision enduring (Mair et al., 2007, 2008).

A further recurrent finding in the formative stages of the pilot's implementation was that there was a lack of understanding about how the IAC differed substantively from other community orders. There was a prevalent perception amongst sentencers that the IAC was simply an attempt to 'dress up' community orders. This perceived renaming and repackaging of what was considered to essentially be 'probation' was a source of frustration:

[Community Orders] are all just the same old thing really ... they should just call them all 'probation'. (Magistrate, *Sentencing Observation*, 2010)

You think 'great, an alternative to custody' but it's just another community order. (Legal Advisor, *focus group*, 2010)

If the IAC is to be embraced, it is essential to ensure that distinguishing features are clearly articulated (such as the Work Solutions mentors and the intensity of the order), otherwise as Roberts and Gabor (2004) warn, sentencers will use sanctions interchangeably (resulting in potential netwidening).

Instilling sentencer confidence in alternatives to custody: Targeting, enforcement and 'penal punch'

[A]ny policy of reducing the use of imprisonment and the length of sentences must win the hearts and minds of the judges. (Walmsley, 2003: 76)

This section will outline three of the major concerns voiced by sentencers under the theme of confidence: effective targeting, expeditious and punitive enforcement, and confidence that the IAC represents a sufficiently onerous substitute for a custodial sentence.

Instilling confidence: Targeting and suitability of offenders

As with any community order or alternative to custody, effective targeting is central to the success of the IAC. Inappropriate targeting criteria will generate adverse impacts on the number and suitability of referrals (Stern, 2002), and can impact negatively on recidivism (Esmeé Fairbairn Foundation, 2004). In terms of suitability, sentencers in Manchester and Salford drew a clear distinction between those individuals targeted who are deemed to have passed the 'custody threshold' based on offence seriousness, and those who are facing a custodial sentence as a result of non-compliance with an existing community order. The former group were regarded as much more likely to receive a custodial sentence. In that respect, it is questionable whether the IAC was viewed as an alternative to custody, or as 'alternatives to alternatives' (Bishop, 1988). This viewpoint was encapsulated by a Judge, stating: 'there's no alternative to custody; custody has to be used' (District Judge, *interview*, 2011). This indicates the need for further work with the judiciary to examine the role of alternatives to custody, and when they could and should be used.

There are significant issues with the expression 'custody threshold'. Whilst the Criminal Justice Act 1991 attempted to provide some general regulation by defining a threshold for community penalties and a threshold for custody (carried forward in the sections 147 and 152 of the Criminal Justice Act 2003), there remains issues around definitions and interpretation as reported in the Coulsfield Report (Esmeé Fairbairn Foundation, 2004). Padfield (2011: 593) asserts that 'thinking in terms of either a "threshold" test, or a line or a pyramid, has encouraged sentencers to take too rigid an approach to the supposed hierarchy of available sentences'. This is particularly problematic for alternatives to custody as the IAC is difficult to locate on a scale of severity as each order can be comprised of a different mix of sanctions.

Instilling confidence: Enforcement and Breach procedures

Breach represents one of the most contested aspects of community orders and has generated much debate (e.g. see Mair et al., 2007, 2008; Robinson and McNeill, 2008). Mair (2004) extols the difficulties associated with strict enforcement as 'breach enthusiasm' (Drakeford, 1993) can undermine sentencer confidence in the order and result in more offenders being incarcerated for breach; often conflicting with decarceral intentions. Hearnden and Millie (2004: 48) argue that 'vigorous enforcement is not necessarily synonymous with effective enforcement', and Robinson and McNeill (2008: 431) have accused overly prescriptive approaches of 'compliance myopia'. On the other hand, disinclination and undue reticence towards initiating breach proceedings will undermine the punitive side of alternatives to custody. In addition, any deterrent capability will be compromised and signify to offenders that alternative sanctions such as the IAC are an easy option.

IAC probation officers were aware that the intensity of the order was likely to manifest itself in heightened non-compliance, at least initially. Nationally, stakeholders reported that the benefits of an IAC order over an SSO were the ability to monitor risk more effectively through intensive supervision and greater flexibility in managing breaches (MoJ, 2011). This greater flexibility and discretion is a contentious issue for sentencers who are wary of a culture of 'anti-custodialism' traditionally associated with the probation service (Nellis, 1995).

Unsurprisingly, a key factor for sentencers considering the IAC was a reassurance that the requirements would be adequately enforced, with breach proceedings initiated if there was evidence of non-compliance. This was particularly salient as many of the offenders proposed the IAC were assessed as presenting a high risk of re-offending; 66 per cent were assessed as 'high' or 'medium' on the Offender Group Reconviction Scale (OGRS) and sentencers sought reassurance that this risk could be effectively managed within the community.

Some sentencers were unclear about what constituted breach on the IAC, and what action would be taken against non-compliance. As Mair et al. (2008) discovered with SSOs, sentencers wanted to use custody as a threat if there was a lack of compliance. In all the observed case proceedings, the sentencers heavily emphasized that if the offender were to breach the IAC they would return to court and face an immediate custodial sentence:

The ball is in your court... I will allow this alternative to custody. But if you breach you will be sentenced to your custodial sentence. If you breach this it is a question of *how long* I send you down for, not *if*. (IAC Sentencing Observation, 2011, *emphasis added*)

The SSO was perceived as more punitive compared to the IAC and sentencers in Greater Manchester expressed a sense of reassurance that should risk escalate, or an offender did not embrace their 'second chance', then incarceration would be expedited. It is likely that the treatment of the IAC as a type of SSO is an attempt to manufacture the same level of assurance. However, this is problematic for the IAC

as it is in danger of being used inappropriately. Given its intensity, there is the very real potential for it being used as 'an SSO with conditions'. As Roberts and Gabor note in their examination of Conditional Sentences 'sentencers are not always using them as policy-makers intended' (2004: 99). As a proportion of offenders that would have been sentenced to a term of probation will inevitably end up in prison having violated the conditions placed of the IAC, this would result in net-widening via up-tariffing (Brownlee, 1998; Roberts and Gabor, 2004).

Some sentencers in Manchester and Salford were concerned that breach action would be avoided 'to make the figures look good', and the IAC appear more effective:⁴

The order has to mean business otherwise what's the point? I am very suspicious of the level of breach. The whole thing is being massaged along. The courts and the public will find this unacceptable; it's not a therapy centre it's a court process. (Judge, *Interview*, 2010).

There was much less suspicion regarding the IAC breach figures as the project evolved and breach cases did materialize in the courts.

Instilling confidence: Punishment and rehabilitation

Striking the right balance between rehabilitation and punishment was key to sentencers. There was consensus that the IAC must provide something 'new', rather than a rehash of existing community sanctions. The emphasis was on the ability to punish whilst ensuring that an individual's needs were addressed. It was claimed that the IAC provided 'the ideal mix' of punitive measures and the 'the ability to address complex needs' (PSR Author, *interview*, 2011) that a prison sentence would preclude:

Prison wouldn't cater for any of this. He would just be in a cell for a few months. (PSR Author, *interview*, 2011)

If it's not rehabilitative then it's the same as custody... the most important thing has to be rehabilitation. (Magistrate, *interview*, 2011)

Due to the defendant's complex needs, many sentencers in Manchester and Salford felt they were providing the individual with the opportunity to change their lives for the better. Sentencers emphasized the order was intensive and onerous but that the purpose of sentencing them to the IAC was to give them the opportunity to get the help they needed to desist from further offending:

He's doing his best to get his life on track and the package of the IAC seemed to me to be the most constructive way forward. I got the impression from the report that he seemed reasonably well motivated. (Judge, *interview*, 2011)

However, an issue of considerable concern amongst stakeholders was that of public perception. Sentencers and probation officers were resigned to the public perceiving the IAC as a 'soft option':

Obviously the general public would see it as them getting away with it – they've got a community order. It's often not the case, to keep up with all these requirements is quite hard for them, especially a 21 year old who could quite easily just go 'oh forget it'. (PSR Author, *interview*, 2011)

Community penalties have gained the reputation of being an easy option, which Raine (2005) attributes to a perception of under-enforcement. However, research by Gelb (2006) demonstrated that the public viewed community orders as lenient because of a misconception of what they entailed; most respondents thought they consisted only of community work. As a result of misinformation, Lappi-Seppala (2006: 89) argues 'Governments should . . . invest more in public education and information in these matters'. Extra efforts are needed to raise the public awareness of basic facts on criminality, the functioning of criminal justice and the existence and content of different crime prevention strategies. Furthermore, calls to include the criminal justice system in the school curriculum should be acted on (Esmeé Fairbairn Foundation, 2004). The lack of public confidence needs to be addressed and alternatives need to be marketed more imaginatively to sentencers, the media and the community. It is vital to the success of the IAC that it is taken seriously by the public as a genuine alternative to custody that is both onerous and rehabilitative.

Public perception appears to have a varied impact on sentencers. Hough et al.'s (2003) study found that sentencers reported being able to resist pressures to 'get tough' from the media and the public, whereas Millie et al. (2007) found that the wider public interest exerted pressure on decision making. In Manchester and Salford, there was evidence that sentencers were mindful of the public perception that community sanctions were 'soft options':

If you are not putting serious offenders behind bars there has got to be a risk to the community and how you manage that within the IAC is quite critical . . . The public perception could be that it's a soft option. (Magistrate, *interview*, 2010)

Findings from a nationally representative survey of 6,005 members of the public in Australia, found that although the majority of respondents were dissatisfied with sentences imposed by the courts for being too lenient, many were strongly supportive of alternatives to imprisonment for a range of sentences (Mackenzie et al., 2012). It is clear that public opinion is 'significantly nuanced' (Mackenzie et al., 2012: 56). The provision of information to communities about the IAC order, regarding both its rehabilitative and punitive aspects, may assist in alleviating concerns that it is unduly lenient. Some alternatives to custody have been satirized by the media and presented as 'a get out of jail free card' (Roberts and Gabor, 2004: 96). However, in contrast to other alternatives to custody, the IAC has received very little press coverage, but that which it has received has been positive. For example, an article in the *Economist* (May 2012) stated:

[C]ommunity disposals are a mixed bag. Some, such as the Intensive Alternative to Custody (IAC) operated in Manchester, require a lot of both offenders and supervisors. The results seem good.

Despite the dominant perception that the public views community orders as lenient, this study found evidence to suggest that service users perceived the IAC to be a tougher sanction than a short prison sentence. Similar findings have been found by the Howard League for Penal Reform who report that 'some prisoners considered community sentences to have been more of a punishment because it "put them out more"' (Trebilcock, 2011: 1).

The role and influence of the Pre-Sentence Report in sentencing decisions

Morgan (2003: 11) identifies sentencers as 'the probation service's core users' or in other words, 'their principal customers'. Given this significant relationship, the success (or failure) of new community orders lies in effective communication and the judiciary's willingness to concord with proposals. It is the task of the probation officer, as PSR author, to effectively persuade or 'sell' the disposal to the sentencing Judge or Magistrate since the PSR is 'the primary vehicle to condition opinion and influence action' (Tata et al., 2008: 2).

The PSR can adopt three formats: Standard Delivery Report (SDR) (Complex/Adjourned Reports), Fast Delivery Report (FDR) (Expedited Reports), or a verbal report. The Standard Delivery Report (SDR) is a written report that is structured by the computerized Offender Assessment System ('OASys'). It should provide a full risk assessment and a proposal for sentencing that takes into account the risk of harm, the likelihood of re-offending, the nature of the offence and the suitability of the offender to the proposed sentence.

Fast Delivery Reports (FDRs) are a condensed version of the PSR that draws upon the headings of the OASys but without the need to conduct a full assessment. The FDR should be completed within five working days, but 'ideally' on the day requested by the courts (Whitehead, 2010). The format is structured differently to a PSR and draws upon a number of 'tick boxes' to expedite the presentation of data (Whitehead, 2010). Over one-third of all reports presented to the courts in 2009 in England and Wales were FDR's (MoJ, 2010a). Third, the probation service can provide an 'oral report' or 'verbal report' (historically termed a 'stand-down report') (Whitehead, 2010). In such circumstances the probation officer conducts a short interview with the offender before providing verbal feedback to the court to accelerate the sentencing process.

There were more than 113,000 Standard PSR's written in 2009 in England and Wales (MoJ, 2010a). In addition 68,000 FDRs, and 34,000 verbal reports presented to the courts (MoJ, 2010a). They involve considerable resource from the probation service, but provide an invaluable mechanism via which influence can be exerted over sentencing decisions. Sentencers in Manchester and Salford were explicit in recognizing the ability of the probation service to gatekeep decision making and exert influence over the most suitable sentence outcome:

The main influence is always background. I use the [Pre-Sentence] reports a lot. Probation are key players in my final decision. I need to know the social background of the individual, the context. (Magistrate, Interview, 2010)

Issues such as repetition, lack of clarity, and the length of the report have all been found to impact upon the efficacy of the PSR in influencing the sentence outcome (for example, see Rush and Robertson, 1987). According to Gelsthorpe and Raynor (1995: 195), sentencers describe 'good' reports as those that 'identified sources of information, were reasonably concise, calendar dated, logical and consistent as well as having paid attention to layout' (Gelsthorpe and Raynor, 1995: 195). Despite the overall satisfaction with PSRs proposing the IAC in Greater Manchester, there were some issues apparent. The IAC practitioners issued a template and although this enabled PSR authors to quickly and confidently present the key attributes of the sentence, in some cases it actually served to undermine the very defining characteristic purported by the pilot, i.e. that the order is tailored to meet the individual's needs.

A review of 100 PSR's conducted as part of the process evaluation also highlighted that the specific attributes of the IAC that render it substantively different to other orders were not thoroughly articulated. In particular, the key providers involved in the delivery of the interventions, the potential sequencing of requirements, and their decremental intent was rarely mentioned. As outlined above, the IAC was operated from a 'one stop shop' enabling clients to access help with education, training, substance misuse, housing, welfare, and family mediation. These aspects of the IAC reflect the recommendations of the Coulsfield Report (Esmeé Fairbairn Foundation, 2004). However, these features were not consistently communicated to sentencers thus contributing towards their inability to differentiate between the IAC and a standard community order.

The lack of tailoring in reports may correlate with the increased use of Fast Delivery Reports (FDR). The review of a random sample of 100 PSR's undertaken by the researchers in 2009, as part of the first year evaluation of the Manchester and Salford IAC pilot, showed that 67 per cent were FDR format.^{5,6} Standard Delivery Reports (SDR), unlike FDR's, allow for greater evidence to be collated and more time to individualize. Where complexities require that the appropriateness of the IAC is fully articulated, there is the potential for the FDR to preclude adequate detail. This has resource implications for the Probation service, and potential impact on the speed of sentencing; however, it may go a long way towards reducing sentencer frustration with reports that lack tailoring, and thereby increase confidence and efficacy. The issue was also identified in the other IAC pilot sites (see MoJ, 2011).

Findings suggest that sentencers are at times frustrated by the use of templates and copied formats within PSRs:

I feel that some reports are just copied from others. The variation is very limited, you can almost predict what is being written, I feel that they should be more individual. (Greater Manchester Magistrate, cited in Taylor, 2009)

Although the template has been found to be effective in the early stages of the IAC, its continued use is likely to undermine the credibility of the IAC as an intense order focusing on individual's specific needs. A review of 69 PSR's proposing the IAC⁷ demonstrated that, on the whole the assessments of offence, 'criminogenic

needs' (such as accommodation, substance misuse and education and training), and risk met most if not all criteria, but many were undermined by a proposal that failed to personalize the case for the IAC and tailor the order to individual circumstances.

In Manchester and Salford, sentencers indicated that well-written PSR reports that are detailed and tailored to the individual, are very influential:

It really is a case of the crime and the criminal fitting the proposed disposal. Today's [proposal] had very sensible options. It had punitive options, it had options which restricted liberty, and it had constructive programmes working forward. A perfect combination. (Judge, *interview*, 2011)

The IAC achieved an overall concordance rate of 48 per cent over the two year pilot. On average in Greater Manchester the concordance rate of standard community orders is 65–70 per cent, and 50–55 per cent for SSOs. Custody (not differentiated by length) has a concordance rate between 75–80 per cent. The IAC concordance rate is consistently lower in the Crown than Magistrates courts; in all likelihood reflecting the seriousness of the offences presiding there. The relatively low concordance highlights the need to ensure that the proposals made in PSRs are appropriate, targeted, tailored to the individual and articulated in requisite detail. Furthermore, the disposal types of those IAC proposals which were not ordered infers that uptrifling was not overly problematic. Of the 372 non-IAC disposals, 244 were sentenced to immediate custody and a further 50 received a Suspended Sentence Order, just 74 received a different Community Order.

Conclusion: Alternatives to custody and the future

The effective implementation of alternatives to custody will largely be dependent upon the coalescence of many factors. International examples of success, such as those achieved in Finland in the 1990s and more recently in the Czech Republic, reflect the various ingredients required (Lappi-Seppala, 2001; Walters, 2004). Lappi-Seppala (2001), in examining the case of Finland's decarceration trend between 1950 and 2000, demonstrated that in conjunction with macro level structural changes and ideological changes in penal theory, simply increasing options can instigate conceptual changes in the use of custody, and contribute towards reducing the prison population.

Reflecting on the current political rhetoric in England and Wales, there are both challenges and opportunities. An ever increasing demand for punishment is clearly set out in the current government consultation on community sentences and the sentiment is one of 'harsher' and 'tougher' community sanctions (MoJ, 2012). In this context alternatives to custody will need to be effective in articulating how they will punish and inconvenience offenders. However, the drive to reduce ineffective spending and the rocketing costs of criminal justice delivery provides the context within which the value of alternatives to custody can be considered (MoJ, 2010b). The reforms that are being proposed by the coalition are not as original as the

political rhetoric insists, but the prospect of better outcomes is a positive development.

The findings from the Manchester and Salford IAC pilot demonstrated that the introduction of community-based penalties as alternatives to imprisonment was a significant challenge. In particular, the requirement to satisfy judicial and public concerns around confidence and enforcement represented specific issues. These challenges could certainly be overcome with further investment in extolling the positives of alternatives to custody and countering the view that they are soft options.

In England and Wales, as has been seen within the United States in recent years, an increasing dimension of the decarceration debate has been the unsustainable cost of criminal justice strategies, particularly the costs of imprisoning individuals in such large numbers (Albertson et al., 2010; Aos and Drake, 2010; Clear and Austin, 2009; Fox, 2010). In addition, the success of any alternative to custody will be the ability to sustain and extend the resource investment of delivering services in the community to individuals who would usually be viewed as 'non statutory' and therefore not accounted for in the cost of community interventions (Walters, 2004).

The MoJ are currently testing out a number of 'payment by results' pilots in England and Wales and one of these models, being trialled in Greater Manchester and some London boroughs, is the Local Financial Incentives Model (FIM). This FIM has been designed to incentivize reductions in demand by establishing financial rewards for local agencies where data demonstrates they have achieved established threshold reductions in demand on the system across a number of 'metrics'. One of the metrics included in the FIM is to reduce the number of short (less than 12 month) custodial sentences. Clearly there is an ongoing drive towards reducing short custodial sentences and replacing them with alternatives to custody such as the IAC.

The economic case for more effective and cheaper alternatives is being strongly put forth (Marsh et al., 2009; Matrix Knowledge Group, 2007). There may now be a real interest in understanding how imaginative and innovative community penalties can be effectively used to halt the incessant rise in the prison population in England and Wales, and further afield. There are some issues with ATCs going forward. One is that the politically driven insistence on making community sentences highly punitive may also make them less effective. As Roberts and Gabor (2004: 110) have noted, those who are critical of the punitive drive in community sanctions 'condemn the attempt to convert a restorative sanction into a retributive one'. This will require careful monitoring to ensure that community sentences are not overloaded or that the IAC is not 'slipped down-tariff' (Mair, 2004: 136).

The design of effective interventions is critical. Finding the right balance of punishment and rehabilitation, restriction and opportunity to change, is only one aspect of creating a successful alternative. The perception and application of such sentencing options by the judiciary is a further obstacle which, whilst not insurmountable, requires careful consideration and understanding. Involving sentencers in the design, development and implementation of alternatives to custody is one way to alleviate judicial concerns and increase confidence in new community orders.

A concern voiced by sentencers was that the public view orders such as the IAC as 'soft options'. The 'climate of opinion' (Millie et al., 2003: 378) is increasingly influential in sentencing. Following European examples (Lappi-Seppala, 2001; Walters, 2004), alternatives to custody require significant political support to challenge the ideological view that prison is the only real punishment. In the current climate whereby payment-by-results will drive the design, commissioning and delivery of intervention, the knowledge and understanding regarding how court stakeholders view and adopt new approaches within their sentencing framework will be key to the successful implementation of any future alternative disposals. As such, further research exploring the factors that influence sentencing, and how to address some of the tensions that have been identified in this article, are critical for the future success of reducing re-offending, decreasing short-term prison sentences and rehabilitating offenders.

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Notes

1. The 'attendance centre' is situated off site.
2. There are approximately 2,000 Magistrates in Greater Manchester; over 400 in Manchester and approximately 160 in Salford.
3. Magistrates in England and Wales are volunteers and are only required to sit for a minimum of 26 half days per year.
4. From April 2009 to March 2011 there were 342 total starts; with 32 early terminations, 86 normal terminations, and 89 revocations.
5. It should be noted, however, that the methodology approach automatically excludes verbal reports as they would not be contained in the sample.
6. The FDR as the default format for PSRs in Magistrates courts was reinforced in Probation Circular 06/2009 which aimed to raise the proportion of FDRs to 70 per cent (see Whitehead [2010] for a discussion of these developments).
7. Of the review of 100 PSR's in the first year evaluation, 69 of these were IAC proposals. Of those 69 court reports; 36 reports were proposed and disposed, and 33 were proposed and not disposed.

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