

Does prison still work?



Dr Peter Pratt shines a light on sex offender treatment that increased the risk of reconviction and asks, is history repeating itself?

"Prison works. It ensures we are protected from murderers, muggers and rapists." When Michael Howard spoke at the Conservative party conference in 1993, after he had become Home Secretary, and announced the above with confidence and aplomb, his phrase undoubtedly resonated with the then general public. Indeed, it is still, perhaps, a prevalent opinion. However, fast forward nearly 30 years and, in the light of available research, a whole different meaning might be adduced to this position. Some prison treatment may even be dangerous to the public.

Sex Offender Treatment Programme (SOTP)

In February 2012, Kathryn Hopkins, then senior researcher in the Department of Analytics at the Ministry of Justice (MoJ), presented the results of her commissioned research into the effectiveness of the core Sex Offender Treatment Programme (SOTP) to the MoJ. This was an accredited programme, ie fully endorsed by the MoJ. The SOTP had been the go-to, course-based, group treatment for imprisoned sex offenders since the year dot. There is no doubt, however, a significant increase in risk was not what the MoJ wanted to hear when they had tasked Hopkins to evaluate the effectiveness of the SOTP a year or so earlier, because the core SOTP was not only the most expensive of the various group-based treatments that are provided within the prison estate, but also the most widely used. Hopkins used propensity score matching (PCM), basically matching two groups, but with one key

difference. In this particular case, the difference was engagement with the core programme, as opposed to the non-engagement, ie control, groups

The main key points are as follows:

- At a two-year follow up, there were no differences between the treatment and the control groups.
- However, at the five-year follow up, more treatment offenders were reconvicted of at least one sexual offence than the comparison group (statistically significant at the five per cent level). Contact offences against adults more than doubled. Contact offences against children were up 35 per cent, while indecent images almost quadrupled.

It was, however, acknowledged at this early stage there were limitations to this study, and it was then hoped a randomised control trial (RCT) could be considered.

No withdrawal

Importantly, the MoJ response was not to withdraw or at least suspend the programme immediately, in the name of public protection, but to ask Hopkins to go away and 'rework' the research. However, her head of department, Ms Endean, head of analytics, informed the accreditation committee (who made the decision in June 2012) it was 'highly unlikely' that the key findings would change.

The revised research

Mainly as a result of adding another year (ie a larger cohort) and significantly increasing the number of matching variables, Hopkins presented her reworked research in March 2014. This time, her research, which received final quality assurance, also in March 2014, showed, at the 10-year point (ie a longer period than in the earlier research), the risk of a reconviction rose from one in 20 without treatment to one in eight with treatment. Again, the MoJ chose not to withdraw the SOTP at that point, but allowed it to continue to be dispensed for a further three years. In that time, it referred the task to an external team, whose results were made available (MoJ impact statement, 30 June 2017). This referred only to a relatively small increase in risk, from eight per cent up to 10 per cent, ie an increase of 25 per cent at the five-year point. There is no information, in the impact statement, about the much larger increases which were demonstrated by Hopkins in her 2012 and 2014 research. There was no mention of the final quality assurance that was granted. There was, however, mention of the belatedly known and additional fact that the extended SOTP, which sometimes followed the core programme, also increased risk by 75 per cent, ie up from 10 per cent to 17.5 per cent.

What happened?

Hopkins, in the employment tribunal two years later, referred to "corruption" in paragraph [71] of the record. She regularly mentioned a "cover-up". Neither description was seemingly challenged by the representative of the MoJ. In any case,

I had hoped all parts of the criminal justice system were fully committed to the rule of law. My understanding is that this rightly prioritises public protection over the other four functions. However, it is noticeable when there was the first submission from the MoJ to the then Secretary of State, Liz Truss, and the Minister of State, Sam Gyimah, on 24 February 2017, there is only a small mention of the fact this information had been known since 2012, and no mention of the final quality assurance for the research presented in March 2014.

However, there was an expressed hope in the press this would be presented as “natural evolution of learning and knowledge”. An embargo, because of the looming general election, was then placed on the imminent publication, and the impact statement appeared only on the MOJ website after the election, on 30 June 2017. Needless to say, there was a tsunami of vilification.

This clearly and properly questioned whether forensic psychology, in the prison estate, was a science or a faith. Prison psychologists, as a professional group, were unknowingly public enemy number one. Of course, at that time, it was a closely guarded secret that this significant and substantial increase had been known to the MoJ for a number of years prior to the actual withdrawal of the core SOTP and the extended SOTP in 2017. Prisons and the Parole Board continued to be kept in the dark – and what has now been called the ‘sex offender treatment industry’ rolled on.

What now?

To bring the issue up to date, it is notable that the Rt Hon Kit Malthouse, recently Minister of State for Crime, Policing and Probation, in his evidence to the Justice Committee of 14 December 2021 on imprisonment for public protection (IPPs), stated, on about seven occasions, that the primary function of the MoJ was to “protect the public”. The transcripts are available on the government website, as are the actual sessions, on ‘Parliamentlive’. In fact, the Minister now states, in a letter to my MP (20 May 2022), that it would not have been “responsible” to withdraw the programme based on this “early” research. However, the reworked research that received final quality assurance in 2014 is particularly striking. In that five-year period, 22,000 sex offenders completed the core programme. When one considers this against the 13.1 per cent found to reoffend over a 10-year period if they had done the programme, as opposed to 5.2 per cent if they had not, as the reworked research shows, it is clear that there have been, or will be, approximately 1,700 to 1,800 additional sexual offences as a result of that decision.

For me, as an aged and committed psychologist, this raises, at the very least, a real concern about vicarious liability. Given that Malthouse was repetitively clear that the function of the MoJ is indeed “public safety” first and foremost, it is perhaps a matter of concern that there has been a facilitation of so many additional offences. This is particularly so when they had the simple and expedient option of withdrawing, or suspending, the risk-increasing programme at the very first opportunity and publishing the initial research in 2012, albeit, as Endean suggested, “with caveats”. A subsequent and recent Parliamentary Committee, the Science and Technology Committee, reviewed ‘The Evidence Base of Parole Board Decisions’. In my opinion, the Parliamentary Committee anticipated the evidence base would be scientific. However, in that forum, Professor Podmore, Professor of Sociology at the University of Durham, stated: “We have looked at sex offenders. There is a scandal that has

been overlooked in terms of sex offender treatment. It was found sex offender treatment programmes were making people worse. The data was sat on for five years. We need to talk about that. We need to talk about what it means for other offending programmes.” I very much concur, and this article is a contribution to that very objective.

The way ahead

All this, in my opinion, raises a number of important issues. For example, one such issue is the assessment, in a judicial context, of the responsibility and culpability for reoffending, together with the retrospective effectiveness of prison-based treatment – particularly, in this case, sexual reoffending. It is, of course, challenging to easily explain why the rate of reoffending so dramatically increases after treatment – in fact more so as the period of time increases. Almost certainly, this has much to do with either being ‘off the radar’, or being confident one will not be immediately apprehended should there be a planned reoffence.

Other explanations are certainly possible, such as the original offending being normalised by this group process. In my respectful opinion to practising lawyers, it is incumbent, or at least desirable, on those either prosecuting or, more likely perhaps, defending individuals who have at some stage in their life completed the SOTP, to raise these matters in perhaps hopeful mitigation before a sentencing court. At the very least, knowledge of these facts may reduce the impact of claimed aggravating elements, such as ‘treatment failure’. Unfortunately, subsequent correspondence has also shown that the MoJ appears to have taken no action on possible remedial steps. I have no information to demonstrate the MoJ has advised the Parole Board about how to address the assessment, or management by licence conditions, of those prisoners who have had their risk increased by ‘treatment’.

As Professor Podmore asks, what does all this really mean for other offending programmes? Furthermore, if more psychological treatment is planned or anticipated by a court, a legal team might usefully and necessarily ask ‘does it work?’ Lawyers might be aware of the benchmark judgment of *Gill v Secretary of State for Justice* [2010] EWHC 364 (Admin) which states that “offending behaviour programmes are neither necessary nor sufficient to reduce risk”.

The judgment also announces that the MoJ uses ‘seven pathways’ to reduce risk.

They are as follows:

- accommodation;
- education, training and employment;
- mental and physical health;
- drug and alcohol misuse;
- finance, benefit and debt;
- children and families of offenders;
- attitudes, thinking and behaviour.

Without a shadow of a doubt, there is ample evidence the six other non-psychological pathways are welcomed and effective, particularly substance misuse, mental health and employment. These are often badged as ‘protective factors’ – ie items that evidently and significantly reduce the risk of reoffending. Nevertheless, I

also fear additional and more recent research into the Offender Personality Disorder Pathway (OPDP) – also commissioned by the MoJ and first presented to it in 2018 by Professor Moran of the University of Bristol – may be an example of history repeating itself. This is currently only reported in the Daily Mail on 20 March 2021, in an article by David Rose. This matter too has been raised in the 2021 Justice Committee. In that article, Professor Graham Towl, who also gave evidence to the Justice Committee, which is well worth viewing and reading in its own right, stated that he considered it to be an act of “disloyalty” to even question the effectiveness of prison-based treatment. In my opinion, it is a duty to the public we serve that we challenge the effectiveness of treatment. In Moran’s research, a mere 28,000 prisoners were followed-up for six years at a cost of just under £1m, and it was found that the OPDP pathway also increased risk. Unfortunately, we do not know by how much, or when, the increase occurs, since the research remains unpublished.

Conclusion

In any case, Malthouse announced on 14 December 2021 when he appeared before the Justice Committee, that he hoped it would be published “early next year”. Early next year has come and gone. In Tom Bingham’s book, *The Rule of Law* (2010), it is stated (at p64): “Parliament is assumed not to have intended that statutory powers should be used to facilitate the commission of criminal offences.” Unfortunately, National Institute for Clinical Excellence (NICE) guidelines do not apply to all prison-based treatments. I can only assume that if any NHS procedure was found to be harmful and promptly reported, it would be withdrawn immediately, not five years later.

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