

ORIGINAL ARTICLE

Invisible men: Short prison sentences and the pains of invisibility and insignificance

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Abstract

Introduced as part of the Transforming Rehabilitation (TR) reforms, the Offender Rehabilitation Act (ORA) 2014 promised to offer resettlement support to individuals serving short sentences – a cohort which has long been neglected in penal policy and research discourse. Featuring the perspectives of 16 men serving a short sentence in England, this empirical work argues that there is a dissonance between the rhetoric of the additional support promised and the reality these individuals experienced. The pains literature is used to demonstrate how a perceived lack of institutional care and attention led respondents to feel invisible and insignificant. This caused service users to internalise a sense of reliance for their own resettlement. However, the ability to achieve this is predicated on possessing the necessary capital. Paradoxically the more an individual cycles around the revolving door of repeat short prison sentences, the more this capital becomes eroded, leading to the particular pain of burnout. The article concludes by advocating for a presumption against the use of short sentences in England and Wales.

KEYWORDS

burnout, invisible, pains, resettlement, short sentence, Transforming Rehabilitation (TR)

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1 | INTRODUCTION

The Offender Rehabilitation Act (ORA) 2014 was introduced as one of the central elements of Transforming Rehabilitation (TR) and promised to address a significant and long-standing ‘gap’ in support for the short sentence cohort (Ministry of Justice, 2014). These reforms meant – that for the first time – individuals released from custody having served a sentence of less than twelve months, would now receive a mandatory twelve-month period of post-release supervision in the community. This would consist of a period on licence, followed by a ‘top-up’ period of post-sentence supervision (PSS).¹ The ORA 2014 reforms were also further supported by the introduction of ‘through-the-gate’ support in newly redesignated ‘resettlement prisons’. This involved dedicated practitioners tasked with identifying needs and ensuring that individuals were supported as they left custody (Ministry of Justice, 2013). Previous to these reforms, short sentence prisoners would be released unconditionally at the halfway point of their sentence, with no statutory probation involvement.² As such, this group has historically had the highest reoffending rates in the adult system (Johnstone & Godfrey, 2013).

This article argues that there is a dissonance between the policy rhetoric of the aims and ambitions of the ORA 2014 and the reality experienced by service users. The article will first outline how short sentence prisoners have been largely ‘invisible’ in penal policy and research discourse, before the findings outline how these individuals remain invisible, despite the renewed focus on this group through the addition of the ORA 2014. The ‘pains of imprisonment’ (Sykes, 1957) literature is used here to gain a better understanding of the unique difficulties that these individuals face. Two particular pains are identified in this study. First, the pain of invisibility and insignificance is identified, as the absence of institutional care and attention led service users to feel neglected. In response, many service users adopted a responsabilised attitude towards their own resettlement. A second pain identified, concerns the pain of burnout. As service users continue to cycle around the revolving door of repeat prison sentences, an individual’s capital becomes eroded, making resettlement even harder. A final discussion and conclusion section will then briefly look ahead to the next iteration of policy proposals for the short sentence cohort, post-reunification of the probation service, before advocating for a presumption against the use of short sentences in England and Wales – outlining that this is unlikely in the current political climate.

2 | INVISIBLE IN PENAL POLICY

Since the advent of the modern prison, there have been numerous enquiries into the efficacy of short sentences by charities, government bodies and penal commentators (see, e.g., Armstrong & Weaver, 2013; Banks & Fairhead, 1976; Clancy et al., 2006; Corden, 1983; Corden, Kuipers & Wilson, 1978, 1979; Craven, 1932; Fairhead, 1981; HM Joint Inspectorate of Prisons and Probation, 2001; Hobhouse & Brockway, 1922; Holborn, 1975; Home Office, 1932, 1992; Lewis et al., 2003; Maguire & Raynor, 1997; Maguire et al., 2000; Mannheim, 1955; Morris, 1965; NACRO, 1993, 2000; National Audit Office, 2010; Page, 1950; Priestley, 1970; Schinkel & Lives Sentenced Participants, 2021; Shaw, 1974; Social Exclusion Unit, 2002; Soothill & Holmes, 1981; Stewart, 2008; Trebilcock, 2011). These various enquiries, spanning almost a century, reflect a remarkably similar message – this cohort faces a ‘broadly unchanging pattern of problems and a lack of progress in addressing them’ (Clancy et al., 2006, p.2), where individuals serving short sentences often experience the highest level of social needs in the system, but receive the lowest levels of support. This broad range of literature asserts that short prison sentences are largely ineffective in helping individuals to desist from offending.

Despite the widespread misgivings of the use of short sentences, until the advent of the ORA 2014, no sustained reforms had been put in place for individuals subject to short sentences, except a range of ad-hoc initiatives and short-term pilots (Cracknell, 2021a). Clancy et al. (2006, p.2) characterise this political inaction as amounting to a 'history of neglect'. Johnston & Godfrey (2013) assert that the high recidivism rates of short sentence prisoners had long been acknowledged by penal policymakers and commentators, but never sufficiently addressed, with greater political emphasis placed upon longer-term sentences, or more contemporaneously individuals deemed higher risk of harm. This has led researchers to note that due to the lack of reforms put in place, short-term prisoners remain little better off than they did in the 19th century (Clancy et al., 2006; Raynor, 2004).

Existing research on TR and short sentences reflects a significant gap between the rhetoric and the reality of the support offered to this cohort. An initial Criminal Justice Joint Inspection (CJJI) report outlined numerous failings with the through-the-gate work offered (Criminal Justice Joint Inspection, 2016).³ This was subsequently reaffirmed in a small number of prison-based empirical case studies (Cracknell, 2021b; Millings et al., 2019; Taylor et al., 2017). These reports identify through-the-gate efforts to be a 'box-ticking exercise' and a 'charade', where many short-sentence prisoners were unable to identify any resettlement support (Taylor et al., 2017, p.120). Likewise, in the community, a probation inspectorate report (HMIP) on post-release measures identified similar failings regarding the support offered (HM Inspectorate of Probation, 2019). This was also further reflected in research studies (Cracknell, 2020, 2021c), which characterised initial experiences post-release as not positive, with insignificant or non-existent support that often resulted in little more than individuals being given reporting instructions to probation. Pressures that emerged from the addition of 45,000 individuals nationally serving a short sentence onto probation worker caseloads eroded the ability to provide meaningful supervision, and underfunded pathway services further inhibited resettlement support. The subsequent transfer to a third actor for the PSS sentence was akin to a pass-the-parcel experience.

When looking at short sentences in a comparative context, there are different policy responses and attitudes towards their use. For example, Scotland and Germany both have a presumption against the use of short sentences due to their unproductivity as a sentence (Mills, 2019). Echoing findings in England and Wales, research by Beyens (2019) outlines a two-track policy towards prison release in Belgium, where individuals serving short sentences are released automatically. As such, Beyens reports that the short-sentence prisoner is barely prepared for release and post-release supervisory conditions are only rarely imposed, meaning resettlement support is not generally implemented. However, in stark comparison, in Norway, short sentences are much more widely used and function better (Pratt, 2008). A main reason for this, could be that in Norway individuals serving short sentences are typically sent to smaller 'open' prisons, closer to their community (Mjåland et al., 2021) and as such, can maintain closer ties to community and family support and have better prospects for resettlement. Mjåland et al.'s comparative study of the prison systems of Norway and England and Wales, outlines that in contrast, individuals serving short sentences in England and Wales will commonly go to closed prisons, which (as explained above) have poorer outcomes for resettlement.

3 | INVISIBLE IN PENAL RESEARCH

The literature on the 'pains of imprisonment' (Sykes, 1957) has been instrumental in forming an understanding of the hardships endured during custodial sentences. This literature has

seen extensive expansion to reflect the pains of the contemporary prison system (Crewe, 2009, 2011) and has been further placed into wider contexts, expanded beyond the 'total institution' (Goffman, 1961), or the exclusive experiences of adult male prisoners (see Haggerty & Bucerius (2020) for an extensive literature review on the use of the pains of imprisonment).

However, there is an absence within this literature that reflects upon the unique experiences of the short sentence prisoner (Schinkel & Lives Sentenced Participants, 2021). Armstrong & Weaver (2013) argue that this reflects a tendency to generalise the prison experience of short sentences, collapsing them into all prison sentences, or alternatively, to disqualify them as 'less painful' than longer sentences. Instead, contemporary academic discourse within penological studies is often focused upon individuals serving lengthy sentences and the interrelated pains of imprisonment caused by prolonged periods in custody, utilising time as the key concept within proportionality (Armstrong, 2014). However, there is a small number of studies that help us to understand the unique experiences of this group.

Contemporary literature on individuals subject to a short sentence primarily falls into three categories: (i) large scale mixed-method studies (see, e.g., NAO, 2010; Social Exclusion Unit, 2002; Stewart, 2008) seeking to bring the particular needs and issues facing this cohort in comparison with other prisoner groups into a greater focus; (ii) smaller studies that provide a qualitative analysis seeking to gain a greater understanding of the experiences of this cohort (Armstrong & Weaver, 2013; Schinkel & Lives Sentenced Participants, 2021; Trebilcock, 2011); and (iii) specialist studies seeking to understand more specific issues and experiences of this cohort, such as health (Brooker, Fox & Callinan, 2009) or educational needs (Ofsted, 2009).

Collectively, this research indicates that the incapacitation experience of short sentences incurs long-lasting effects, resulting in particular forms of the pains of imprisonment which are meaningful, harmful and not an easily forgotten brief experience, making this sentence disproportionate in the pains that are experienced. In particular, these pains are not overtly experienced in any one single prison sentence but are shaped over years by the cumulative effect of serving multiple sentences, which ultimately perpetuates their detrimental effects (Armstrong & Weaver, 2013). These cumulative effects include the 'passive' or 'wasted' time (Armstrong & Weaver, 2013) of serving a sentence in a prison system not designed to meet the rehabilitative needs of a short prison sentence. This is combined with the cumulative pains caused by serving repeat sentences over many years, where a 'revolving door' between prison and the community means repeated experiences of loss, including family separation, interruption of community support, or loss of housing or employment. For many individuals, this becomes a regularly reoccurring feature of their lives, the result of which is a series of minor pains culminating into 'a powerfully damaging force over the course of many years' (Armstrong & Weaver, 2013, p.299). Armstrong & Weaver (2013) term this cycle as serving 'life by instalments' (p.302). In these circumstances, each sentence cannot be viewed in isolation, but they are frequently experienced as one long sentence completed in instalments, merged together, where it becomes difficult to separate punishment and incarceration with life on the 'outside' (Trebilcock, 2011).

4 | METHODS

This article is based on findings from one empirical chapter of a doctoral thesis. The main aim of the thesis was to explore how resettlement is enacted and experienced by practitioners and individuals serving short sentences in relation to the ORA 2014. Data for the thesis were gathered in one case study area based in England, via 35 semi-structured interviews, which consisted of a

'local' Category B prison⁴ (18 interviews undertaken: ten prison practitioners and eight prisoners serving a short sentence) and in the corresponding community rehabilitation company (CRC)⁵ (17 interviews undertaken: nine probation practitioners and eight service users serving the community elements of a short sentence). Access to the case study area was initially approved by the HM Prison and Probation Service (HMPPS) National Research Committee, then via individual gatekeepers at the respective prison and CRC. These gatekeepers played an intrinsic role in the sampling process, assisting in mapping out available services in the case study area and helping to formulate inclusion/exclusion criteria for suitable service users.⁶ Once suitable service users were established, a further purposive sample took place to ensure that individuals were interviewed with a range of experiences and perceived needs. This included individuals with different established resettlement issues, with and without past experiences of short sentences, and from a range of ages and ethnicities.

Findings presented in this article are taken from the 16 semi-structured interviews with men serving a short sentence, either in custody or in the community. This research has not attempted to explore the issues of women serving short prison sentences. This is primarily for practical reasons, as time and resource constraints meant that the author could only access men for this study. Fieldwork was undertaken during multiple site visits between March and September 2018. Each individual was interviewed once by the author for between 40 and 60 minutes. All interviews were recorded and transcribed verbatim by the author. All individuals featured in this article have been given a pseudonym to ensure anonymity. Ethical approval was granted via the university in which the thesis was supervised.

Coding was completed manually, with data analysed using a three-stage grounded theory method (Strauss, 1987). This method helped to identify and establish the particular pains that have been highlighted in this research. This case study reflects the experiences of individuals in one place and at one point in time, so this article does not attempt to generalise findings on a wide scale. Instead, case studies should focus on theoretical generalisations to identify themes and concepts that can be applied to a wider context (Lewis & Ritchie, 2003).

5 | FINDINGS

5.1 | The pains of invisibility and insignificance

TR and the introduction of the ORA 2014 were largely designed to address the imbalances of the invisibility that the short sentence population had experienced. However, fieldwork in the case study area demonstrated how various blockages, barriers and processes interconnected to inhibit resettlement. For instance, the spatial conditions of the prison, combined with austerity cuts, left prisoners feeling abandoned by staff and unable to receive meaningful support within its vast and depersonalised space. These conditions rendered the individuals who resided within the prison to feel invisible and insignificant. For many individuals, the struggles of the prison to provide resettlement help was perceived as disinterest, leaving prisoners to feel unrecognised by staff. Jermaine outlined these experiences in custody:

The prison just leaves you to your own devices. No one bothered to understand who they're dealing with. If they had spoken to me inside, they would have realised that I'm part of society already, they would have realised that this guy works, is family orientated, he's not really going to offend as long as they push him and give him

the right tools to continue with life and help him to reintegrate back into society.
(Jermaine)

Several prisoners in the study revealed a sense of feeling lost within the prison system and serving their sentence in a space where they felt unseen by staff. Similarly, empirical research by Crewe & Levins (2021) on men convicted of sexual offences, identify how institutional inattention and an absence of grip can be experienced as painful. Indeed, as indicated by Jermaine above, institutional grip can be welcomed, yet monitoring and assessment are often experienced as deficient rather than excessive, leaving individuals idle and static.

These perceptions of insignificance and invisibility seemingly followed service users out into the community, where several service users felt that their supervising officer did not show interest or understanding in their needs and their resettlement. This indicated that the unrecognised status that prisoners felt extended out into the community and became a pervasive experience of the extended short sentence. Luke further discussed this perception of invisibility while on supervision:

I'm just another appointment. I just sit down, they ask me how things have been, where I've been, it's just s**t really ... Probation have been ok, but what can they do for you, I'm just a statistic. (Luke)

Several service users outlined experiences of insignificance similar to Luke, of feeling 'just another appointment' on an officer's caseload. The constraints that officers faced in their workloads and the resulting effect this had on supervision, culminated in a form of supervision that was very perfunctory and experienced by service users as remote and uncaring, exacerbating pervasive feelings of insignificance.

Collectively, the experiences of short sentence prisoners, suggest a perception of being 'dividualised' (Deleuze, 1992) into a statistic. Service users asserted a belief that they were not seen as an individual with specific needs, but as part of a larger homogenous mass of service users, lost and abandoned to an uncaring system. The sense of homogeneity for the short sentence population was partly formed through the disproportionate numbers that continued to circulate through the system and through practitioner caseloads, giving these individuals a sense of mass and collective – rather than individual – weight, corresponding to the views of 'mass supervision' of McNeill (2019).

5.2 | Responsibilised resettlement

Within these adverse conditions for resettlement which rendered service users invisible, service users were compelled to plan and progress their own resettlement, often forced to facilitate their own reintegration back into the community, internalising their own sense of responsabilisation for this (O'Malley, 1992). One such example of this was Carl who entered the case study prison with substance misuse issues and relayed his experiences of detox from heroin and his methadone prescription:

I chose to do the detox myself, but there was no backup support or nothing, no one from the drugs team came to see me and ask if I'm ok, or get on this course as soon as possible. It wasn't until a week ago that the officers knew at all that I was on drugs

and doing a dry cluck!⁷ I was on 40 ml [of methadone] on the out, so I went from 40 to nothing straight away. And no support from the prison service at all, or the medical side of it. (Carl)

Carl undertook this potentially medically harmful action on his own, without the knowledge of prison staff, or any medical interventions or assistance from the prison's substance misuse team, demonstrating an example of internalising responsibility for his own rehabilitation and resettlement in the absence of support. Another prisoner, Simon, outlined his frustrations of the lack of support he had received in the case study prison:

I've been wanting to talk to probation, talk to my offending officer, but there isn't anyone, I've been doing everything by myself. I'm fortunate to have a job waiting for me, but these are the sort of things I'm sorting out for myself. (Simon)

Simon claimed that he had not served a prison sentence for over 20 years and in this time he had gained skills and contacts in information technology. Simon was clearly seeking guidance within the prison but in its absence had been able to draw upon contacts to secure employment upon his release. This had been achieved without the assistance of any careers advisor or education, training and employment (ETE) practitioners operating within the prison. Another prisoner in the case study prison, Lee, outlined his plans for release and the level of involvement prison and probation have had in his plans:

F**k all mate. Everything I've done, I've done myself or my mum has helped me. I've got a place in the ___ project, but that's all through my mum calling them and getting it set up. The prison haven't helped me at all. (Lee)

Lee had secured a place in a residential project for young homeless people, without any assistance from the prison. He was able to draw on help from his family, but the prison or probation were not aware of his release plans. The above four examples, all demonstrate how individuals felt compelled to take responsibility for their own resettlement, in the absence of formal help and support.

However, when prisoners were burdened with pursuing their own resettlement plans, some were more equipped than others to be able to successfully navigate the complexities and difficulties of resettlement. For example, Jon, serving his first custodial sentence, previously spent twelve years in the military. Jon believed that his previous life experiences and skills provided him with an advantage in his resettlement planning:

I got on a RAPt⁸ programme within two weeks of being in here, but I know guys who have been waiting for years. I don't know if it's because of my background, or if it's because I said 'look, I'm f**ked, I need help'. There's a small community here of ex-military and some officers here are ex-military, so come to see me from time to time. (Jon)

The military background of Jon opened up access to a set of resources which were supporting his resettlement and had subsequently enabled him to address his substance misuse needs while in custody. The experiences of Jon and other service users featured, indicated that to successfully resettle and desist, significant sums of 'recovery capital' (Cloud & Granfield, 2001) or

'resettlement capital' (Hall et al., 2018) were needed in order to overcome the insignificance and invisibility that had become inherent to a short sentence within the case study prison. Cloud & Granfield (2001) developed the concept of recovery capital into substance user recovery literature. In doing so, they outline the key resources that individuals are able to draw upon in their efforts to overcome substance use. The authors developed four forms of capital that are interrelated to each other. These include: social – the resources from relationships, including family; physical – the tangible resources such as housing or employment; human – including education and skills; and cultural – values, beliefs and attitudes. Cloud & Granfield (2008) note that this capital can be accumulated and exhausted over time. Utilising the recovery capital framework, Hall et al. (2018) developed the notion of 'resettlement capital'. This involves the individual drawing on a set of innate resources, including personal capabilities, families and partner networks and community resources, in order to successfully resettle in the community. In regard to this study, capital used by respondents in relation to resettlement could be in the form of family support (Lee), connections in the community (Simon), or resources and status through past employment history (Jon).

Capital also played a crucial role in being able to navigate around the remote bureaucratic system of prison and probation, in order to alleviate the frustrations and complexities that this entailed. Jon also had reserves of human and cultural capital that helped him operate within these adverse spatial conditions of the prison and specifically demonstrated resilience and patience in order to persevere when issues occurred:

Last week I was supposed to have a phone call with my probation officer, but I didn't get the movement slip in time. But two days after the phone call date, the movement slip gets put through my door. Now because I'm grounded and I get it, I know staff haven't done that deliberately and staffing levels are short. An angry person would of torn someone to pieces over that and because they've been failed so many times they'd say 'f**k this' and not bother again. (Jon)

Jon subsequently understood that he had a level of patience and understanding for the wider structural issues that existed within the prison and did not take this communication failure personally. He was able to demonstrate resilience, which is a crucial factor in responsabilised resettlement. However, he also recognised that had he been failed multiple times, this setback might have had a bigger impact upon his outlook. Jon explained that he was able to rectify the situation with his probation officer by sending weekly letters to update on his resettlement plans. Jon also realises that prisoners without these tools and resources at their disposal face significant struggles to overcome these barriers and become stuck in the system and unable to move on.

Jon's experiences were reflective of a wider understanding that to successfully navigate through the resettlement system a set of tools and resources were crucial. Social and physical capital were required to attain fundamental resettlement needs such as housing and employment, but human and cultural capital were just as important, as these equipped individuals with reserves of resilience and patience to persevere with responsabilised resettlement when inevitable barriers presented themselves. In effect, the four forms of capital interconnected and complemented each other.

5.3 | The pain of burnout

Paradoxically, the more one continued to recycle between prison and the community and experienced multiple failures to successfully resettle and the more the individual was exposed to

the bureaucratic failings of the prison, then the more one's capital eroded. This could result in the individual becoming increasingly jaded and cynical towards successfully reintegrating and is the second pain identified in this study. This was a process that occurred cumulatively and could lead to burnout, which was a unique pain experienced gradually over multiple short sentences, corroding capital and resilience each time an individual revolved around the prison gate.

Burnout further inhibited resettlement and desistance, particularly in fostering motivation, cognitive transformation and self-efficacy. In place, a sense of despondency and negativity was fostered, as optimism regarding achieving meaningful change was gradually worn down over years of repeat sentences. The more the individual revolved around the system, the more pessimistic one became over their future and their belief in the criminal justice system to help make a positive difference was eroded. Reflecting this sense of burnout, Chris, serving a short sentence for his second breach of licence conditions, explained his lack of optimism after receiving multiple custodial periods over several years:

I'm coming back [to prison] 100%. Anyone that would tell you otherwise is wishful thinking. It gets to a point where they don't know what to do with you anymore, so they just send you to prison. You get into a cycle where you don't know anything else, all you know is prison. Prison has turned me into a worse person than I was before. It's made me bitter and angry and I can see myself coming back in the future. (Chris)

These repeat periods of short-term imprisonment could cumulatively become very painful and leave an individual subject to the ORA 2014 trapped in a cycle of prison sentences and licence restrictions. This could become particularly frustrating as the short period in prison did not provide adequate time to address needs or challenge behaviour, which subsequently exacerbated and increased the likelihood of a return to custody once back in the community. David, who had experienced multiple short sentences over numerous years, encapsulated this experience:

That licence they give you is stupid. If you serve even one day in prison you get out to an automatic twelve-month licence. For some people, that's a life sentence. Just a never-ending circle. You get recalled for two weeks at a time, but you haven't got enough time to sort yourself out and get anything in place for when you get out. What's two weeks in here, it's nothing. Then you get out and it starts all over again another twelve months. You're never going to be free of it unless you manage to do a whole twelve months outside. For some people, that's impossible. (David)

For many service users in the study, once trapped within the confines of the sentence, it was very difficult to escape from its clutches and to successfully comply with the post-sentence requirements, effectively condemning individuals to cycle between prison and probation supervision. Several respondents subject to these repeat experiences became increasingly cynical of the abilities of probation to assist them and felt that probation supervision was not a tool of support, but of surveillance. In effect, burnout meant a more detached and cynical perspective towards probation. Michael reflected on his experiences of the support he had received from his officer:

You just come here every few weeks for half an hour and then you're gone. I hate wasting my time and that's what I keep saying to them, 'why do I have to come here?' Nothing happens, nothing changes and nothing progresses. But I still have to come

here and sit and talk to someone who writes it all down, then I come back and they write down all the same things. (Michael)

The pain of burnout further complements existing research on short sentences which encapsulates the cumulative pains of serving multiple repeat sentences over several years (Armstrong & Weaver, 2013). This can lead to the accumulation of social needs and entrenched psychological effects of repeat failures to integrate into the community, contributing towards a fatalistic mindset, where the individual feels powerless to change their future (Howerton et al., 2009).

6 | DISCUSSION AND CONCLUSION

TR promised to provide extra support to a cohort of short sentence service users who have been long neglected in policy discourse. However, based on interview data with service users pre- and post-release in one case study area, the structural barriers and blockages to providing effective resettlement that practitioners faced, served to render service users invisible and insignificant. This particular pain was first actualised in prison, as the spatial conditions, combined with wide-scale economic cutbacks and severely curtailed opportunities for engagement and meaningful work with prisoners. Individuals felt that they were left alone to navigate this bureaucratic and depersonalised space. These issues continued into the community, as large practitioner caseloads, underfunded pathway services and numerous issues regarding the transfer to PSS, resulted in service users feeling like a statistic, or just another appointment to their overburdened probation practitioner.

The absence of any meaningful support as individuals traversed through-the-gate, responsibility was placed on service users for their own resettlement. In this environment respondents related how they took it upon themselves to secure employment or accommodation upon release, plan their own resettlement, or even detox from heroin on their own. However, when responsibility was placed on the individual, an individual's recovery capital became a crucial factor in determining one's success in resettlement. This included the physical capital of resources, the social capital of relationships, the cultural capital of belief and positive attitude and the human capital of resilience needed to navigate through this bureaucratic process. Consequentially, the more an individual rotated through the revolving door of repeat short sentences, the more this capital eroded, further inhibiting resettlement. When this process repeated over several years, with the individual serving multiple sentences, then burnout could occur, a pain unique to revolving door short sentences, where a sense of cynicism and pessimism pervaded, leaving an individual unable to foresee a positive future, free of the revolving door.

This article has sought to help develop the theoretical understanding of the short prison sentence, which has been largely invisible in policy and academic discourse on imprisonment. This contribution to academic literature on short sentences and the pains literature, helps shine a spotlight on a neglected cohort. Two distinct pains are identified in this article; the first pain of invisibility and insignificance further underlines the failures of the resettlement support promised by TR. The pain of burnout is also identified and helps us to understand the lack of productivity of the short sentence, and the detrimental consequences of serving repeat 'revolving door' short sentences. However, as this research was based in one case study area, in one particular point in time, further research would be welcome in order to develop a better understanding of these pains and their applicability to different groups and types of sentences and in different jurisdictions.

This article will conclude by outlining the next iteration of policy proposals for the short sentence cohort, and by the author putting forward a case for a presumption against the use of short sentences. The demise of TR and the recent reunification of the probation service provides an opportunity to improve outcomes for the short sentence cohort. The *Target operating model for probation services in England and Wales* (HM Prison and Probation Service, 2021), has laid out two central reforms; first, the introduction of a new resettlement model ‘offender management in custody’ (OMiC). The OMiC model provides far more responsibility to prisons for resettlement, only handing over responsibility to probation a short time before an individual’s release. The OMiC model promises enhanced through-the-gate services that are able to offer more than the ‘tick-box’ services identified under TR. Weekly keywork sessions for prisoners will also be offered by prison staff.

Placing more emphasis on the prison for resettlement management and planning, potentially brings an end to a decade-long format of promising an ‘end-to-end – seamless’ transition between prison and probation (Cracknell, 2021a; Raynor, 2020). However, critics question if prisons have the staffing levels or possess the right ‘rehabilitative’ culture to play such a central role in resettlement, particularly after a decade of cuts and austerity (Cracknell, 2021b; Maguire and Raynor, 2019).

The second reform involves the introduction of a specialist community-based ‘short sentence function’, which will set up specialist probation teams that are dedicated to supervising individuals serving sentences of less than ten months (HM Prison and Probation Service, 2021). The aim of these teams is to minimise the disruption caused by short sentences and aid the continuity of support offered. The short sentence function is due to begin later in 2022.

Although this is a potentially welcome development, the relative success of the short sentence function teams will be based on the ability of probation workers to have the time and space to work intensively with these individuals, to develop meaningful professional relationships and be given the resources to adequately fund the pathways that are crucial to resettlement (Cracknell, 2020, 2021a). Doing so could help eradicate the perception of invisibility and insignificance felt by the individuals serving these sentences.

Having considered the implications for future practice, the author advocates for a presumption against the use of short sentences but deduces that it is unlikely to occur in the current political climate. This article posits that short sentences entail numerous inherent flaws, which no resettlement policy can remedy. An argument in favour of substituting a short prison sentence for a community order has been well-established, with evidence that it would be far more beneficial and cost-effective to society (Make Justice Work, 2009; Mills, 2010) and countries including Scotland (Tata, 2016) and other European nations have introduced presumptions against the use of the short sentence.

However, evidence suggests that the presumption in Scotland has not been as effective as hoped, with limited impacts on prison numbers (Brangan, 2019; Mills, 2019). Mills (2019) contends that for a presumption to be more effective, the level of sentencer discretion to imprison needs to be carefully defined. In a comparison between Scotland and Germany, Mills (2019) outlines that in Scotland previous non-compliance is given as a valid reason to sentence to custody instead of to a community order, meaning that the short sentence remains a default for the individuals who society does not know how to deal with. While in Germany, a short sentence is only permissible if it better fits the objectives of the sentence (Mills, 2019, p.4). Therefore, if such a presumption was to be introduced in England and Wales, more consideration is needed regarding how to clearly define sentence powers and the exceptions that would allow a short period of custody.

There are also several potential implications for introducing a presumption against the use of short sentences that require careful thought. First, is the potential for sentence inflation or ‘up-tariffing’. Eley et al. (2005) discuss how the introduction of a presumption against short sentences in Western Australia led to individuals receiving longer sentences. To guard against this, community orders should be strengthened in order to effectively advocate for their use as a more meaningful and impactful sentence than a short stint in prison.

A focus on strengthening community orders leads to the second implication, that in response to a presumption, community sentences need to be seen as sufficiently onerous in order to retain the confidence of the courts, with swift punishment for non-compliance – as has previously been suggested by the policy advisor group Crest – (Du Mont & Redgrave, 2017). In the author’s view, to go down this route of ‘tougher’ community penalties would be a mistake and inevitably lead to individuals entering the prison through the ‘back door’ of non-compliance (Padfield & Maruna, 2006).

Furthermore, there have been numerous failed attempts to make community sentences sufficiently legitimate and punitive in order to replace short sentences by making these orders increasingly onerous (Mills, 2010). However, a historical disposition regarding who were ‘deserving’ of a community order (Mair & Burke, 2012) combined with a belief that the public never bought into community sentences as a robust form of punishment (McCulloch & McNeill, 2007), have meant that community orders – no matter how robust or restrictive – ‘cannot compete with the iron bars, high walls and razor wire of the prison battle for being the “toughest”’ (Maruna & King, 2004, p.104).

Instead of fighting a losing battle against the prison to be the toughest, significant funding needs to be given to probation services and related community services including those concerned with housing, mental health and substance use, in order to make community orders more attractive and viable to sentencers. This will help to ensure that the short prison sentence does not remain the dominant form of punishment for the petty persistent offender. One recent initiative to address this has been the Community Sentence Treatment Requirement Protocol (Ministry of Justice, 2018). This pilot programme recognises that mental health and substance use are prevalent issues among offenders, but that suitable community requirements have been significantly underused, primarily due to barriers to accessing these services and a resulting lack of confidence among sentencers. To mitigate these issues local panels of psychologists and health experts sit alongside sentencers to improve collaboration. Initial results from these pilots suggest that they have been successful in reducing the use of ‘ineffective’ short sentences and as having led to lower rates of reoffending (Ministry of Justice, 2018, para. 2). This suggests that extending the use of the Community Sentence Treatment Requirement Protocol nationally may help to encourage the use of community sentences over a short prison sentence. A final important element to consider is the role of pre-sentence reports. The *Target operating model* (HM Prison and Probation Service, 2021) recognises that the numbers of these reports have fallen in recent years and understands the need to promote their use. Doing so will help advocate for the value of effective community orders to sentencers.

However, in this current political climate, the likelihood of a presumption against short sentences being introduced seems highly improbable. In previous governments, there has been significant contestation by the various Justice Ministers regarding the effectiveness of short sentences. Kenneth Clarke initially spoke against them (Kirkup & Whitehead, 2010) and David Gauke advocated for a presumption against short sentences while Justice Minister (Ministry of Justice, 2019). However, before any concrete reforms in this area could be enacted, both left their positions and were replaced by ministers who took a tougher approach. Furthermore, the populist rhetoric

of the current Conservative government suggests a move away from a presumption against short sentences or any notions of what might be perceived as 'soft justice'. The result is that once again, individuals serving short sentences continue to be insignificant in policy discourse.

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ENDNOTES

¹ A licence is a set of conditions that individuals must follow when they are released from prison while serving the remainder of their sentence in the community. A probation worker will supervise an individual in the community, in order to ensure that a person is complying with their licence conditions. A person can be returned to custody if they are deemed to have broken these conditions. PSS has slightly different enforcement procedures – whereas the licence period allows an automatic return to custody through the standard recall procedures, the PSS period requires a return to court via breach proceedings.

² There are two main types of prison sentences in England and Wales: determinate and indeterminate. For a determinate sentence, the individual is automatically released from prison halfway through their sentence. For the remaining half, they are on licence in the community and supervised by the probation service. Indeterminate sentences include life sentences and an indeterminate sentence for public protection. For these sentences, the individual will not be considered for release until they have served their full tariff and will then only be released via a parole board. Once released they can be subject to licence conditions for the rest of their life. Research by Trebilcock & Worrall (2018) find that for many high-risk offenders, public protection, rigorous monitoring and strict compliance with licence conditions become prioritised, making resettlement a secondary priority.

³ Through-the-gate services were extended to all prisoners – not just individuals serving short sentences. However, a subsequent Inspectorate report on resettlement for individuals serving longer than twelve months, outlined that these individuals fared little better (Criminal Justice Joint Inspection, 2017).

⁴ There are four security categories of prison in England and Wales: A, B, C and D. A is the highest security category and D the lowest. Category B prisons are commonly referred to as 'local' prisons, as they are typically located close to a court, and a Category B prison is often the first prison to which an individual will be sent after sentencing. Many – but not all – individuals serving a short sentence, will serve their sentence in a local Category B prison.

⁵ A major element of the TR reforms involved splitting the previously publicly-run Probation Trusts into two organisations; CRCs, which were run by a mixture of private and third-sector organisations, and the National Probation Service (NPS), which stayed in the public sector. All cases were divided using the logic of risk; all low- and medium-risk individuals were supervised by CRCs, and the remaining high-risk, parole and public protection cases were with the NPS. Many – but not all – individuals serving a short sentence, were supervised by CRCs.

⁶ Inclusionary criteria for service users included: male; aged over 21 years; were released into the corresponding case study area. Exclusionary criteria included: diagnosed as suffering from severe mental health or psychotic issues; assessed as a high risk of harm.

⁷ A clean or dry cluck, is a slang term for suddenly and completely stopping all use of a particular substance with no assistance from any other medications.

⁸ RAPt (rehabilitation for addicted prisoners trust) is a twelve-step prison-based treatment programme for substance misuse.

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