

Prison Reform Trust response to The Sentencing Council consultation on the Imposition of community and custodial sentences guideline

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families
- promoting equality and human rights in the criminal justice system.

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As part of this response, and at the request of the Sentencing Council, PRT consulted with its [Prisoner Policy Network](#) (PPN) of current serving prisoners and ex-prisoners. This has enabled us to include the views of people with lived experience of community and custodial sentences in this response. PRT held focus groups in three prisons, two groups in the community (including one group with women) and received written responses through eMates (Email a Prisoner). Two of the groups in prisons were held with men currently serving very long prison sentences. In these groups, the men were asked to reflect on experiences prior to the current sentence they were serving.

Questions

- 1. What is your name?**
- 2. What is your email address?**
- 3. Are you answering as an individual? If so, are you happy for your name to be included in the consultation response document?**
- 4. If you are answering on behalf of an organisation, group or bench, please provide the name of the organisation, group or bench.**

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- 5. Do you agree with the proposed chronological order of the guideline? Would you make any changes?**
 - 1. Thresholds**
 - 2. PSRs**
 - 3. Purposes and effectiveness of sentencing**

4. **Imposition of community orders**
5. **Requirements**
6. **Community order levels**
7. **Imposition of custodial sentences**
8. **Suspended sentence orders**

Thresholds

6. Do you have any comments on the unified thresholds section?

We welcome this section and the improved clarity regarding thresholds and the relevance of previous convictions. We especially welcome the clarification that “numerous and frequent previous convictions might indicate an underlying problem (for example, an addiction) that could be addressed more effectively through a community order with relevant requirements and will not necessarily indicate that a custodial sentence is necessary”. As we have suggested in previous consultation responses, previous convictions should not be a ground alone for the custody threshold being passed. This is especially important when the context of a person’s offending is related to multiple and complex needs, including, for example, unmet mental health need, financial hardship or experience of abuse.

Pre-sentence reports

7. Do you have any comments on the first part of the pre-sentence report section, before the list of cohorts?

We welcome the new section on the importance of PSRs. We agree with the Council that more guidance is needed. We also agree that a PSR may be unnecessary only if the defendant is likely to receive a discharge or fine.

Our consultation with people with lived experience of the criminal justice system revealed mixed experiences of PSRs. Without exception, all contributors were clear that PSRs needed to be valued by sentencers. But this was not always the case in practice.

One person we consulted with spoke positively of their experience and felt the PSR did make a difference to the sentencing decision:

“I felt it gave the judge a fuller picture of me, that I wasn’t a danger to the public I had just made a grave mistake but wasn’t going to repeat it.” (Man in prison)

However, many respondents were unsure of how much weight sentencers gave to them. One respondent told us:

“What happened to me was weird, I had a PSR and the woman from probation...she was lovely, she wrote the report and suggested I don’t go to prison. When I went to court, I got a custodial sentence. When I got out and was on another trial, I had a guy this time...he suggested I go to prison. I went to court thinking I’m definitely getting a custodial, but the judge didn’t send me to prison at all.” (Man in the community)

One woman we spoke to was unsure how much weight was given to the PSR in practice:

“I don’t know; how can you know? I suppose it depends on how much the court takes notice of them and whether they respect the probation officer who does them and how in depth and accurate they are.” (Woman in the community)

Some of the people we spoke with felt that information they gave was not necessarily represented in a way which they felt was fair. One said:

“I’ve had times where I’ve said something to put in a PSR and the person doing it has put their own spin on things. For example, I remember once being asked about whether I often carried a knife when I was growing up, and I said yeah, I would carry it most days. That was written in my PSR as ‘Mr X treats his knife like a credit card, he doesn’t leave home without it.’ I thought that was sneaky.” (Man in the community)

Another person added:

“The issue is that information we give is used against us and sometimes is misinterpreted and misrepresented.” (Man serving a long sentence in prison)

One participant told us that they requested a PSR but the sentencer refused.

8. Do you agree with the general inclusion of, and specific cohorts included, in the list of cohorts in the pre-sentence report section?

Whilst we welcome the inclusion of the list of specific cohorts, there are also risks with this approach. PSRs will still be important for groups who are not listed. Therefore, we would suggest amending the text to make it clear that the list of cohorts is not exhaustive. For example:

“Below is a non-exhaustive list of when a pre-sentence report may be particularly important. **This includes** if the offender is:”

We would also recommend including ‘care experienced’ people in the list of cohorts. Care experienced people are overrepresented in the prison population¹ and have particular needs and vulnerabilities. This cohort should not be sentenced without a PSR. Many councils have now adopted ‘care experienced’ as a protected characteristic to reflect the need to protect against discrimination of this group. We urge the Council to do the same. The group is referenced in the consultation document but not explicitly in the guidance.

Furthermore, there may be people where it is not obvious if they belong in a particular cohort. Reports from liaison and diversion services will be vital in identifying individuals with specific vulnerabilities whose membership of a particular cohort may not be immediately apparent. We would recommend that the guidance is amended to reference the importance of the court receiving a report from liaison and diversion services in order to inform a decision on commissioning a PSR.

9. Do you have any comments on second part of the PSR section, specifically on the court giving and indication to Probation, adjournments and on committal?

We understand the practical need for the courts to give some indication to probation of the preliminary level of harm and culpability it has found for the offence. However, we are concerned that this is not allowed to influence or predetermine the findings of the PSR.

¹ HMPPS. (2023). *Care Experience Matters: A guide to how prisons, probation and local authorities can work together to support people with care experience in custody and on probation.*
<https://assets.publishing.service.gov.uk/media/6409b28ed3bf7f02f6e38008/care-experience-matters.pdf>

Indeed, in relation to culpability, information provided in the PSR may be vital in determining the degree of culpability and may require that the court's finding of the preliminary level of culpability is revised. Therefore, we would recommend adding the following to the guidance:

“Subject to the above, it may be helpful for the court to indicate to Probation the preliminary level of harm and culpability it has found for the offence. **An indication of a preliminary level of harm and culpability should not predetermine the final level of harm and culpability decided by the court. Information provided by Probation in the PSR may be helpful to determining the final level of harm and culpability.**”

We welcome the specific guidance on adjournment, and the need to “liaise with Probation on whether a quality report can be delivered on the day and adjourn the case if it cannot”. This is particularly welcome as PSRs have developed in a way which often prizes speed over quality. Same day or oral PSRs will inevitably concentrate on the known offending history and circumstances of the matter before court. That will often not be sufficient to inform the court about the likely impact of a particular sentence in relation to its rehabilitative purpose, or to identify any disproportionate impact in relation to vulnerable defendants or those with dependents.

We would suggest adding a presumption in favour of an adjournment for the preparation of a full PSR whenever the person being sentenced has dependent children, to enable the careful consideration of both whether custody is appropriate and, where it is not, of the ways in which a community sentence should be tailored to improve the chances of it being completed successfully.

For this to be implemented successfully, the Council should ensure training is resourced and available to give sentencers have the confidence to request PSRs and adjourn where necessary.

Deferred sentencing

10. Do you agree with the inclusion of, and information proposed on deferring sentencing?

We welcome the inclusion of a section on deferred sentencing. Deferred sentencing offers courts an opportunity to put individuals in meaningful community programmes whilst retaining an option of an alternative disposal based on engagement and compliance.² It is an option which is currently under-utilised by the courts.³ A number of groups have called for deferred sentencing to be used more, “... in particular for young adults, female offenders, pregnant offenders as well as individuals commencing or undertaking treatment.”⁴

We also welcome the inclusion of young adults in this section. Young adults should include those aged 25 inclusive. Therefore, we suggest amending the guidance to:

“...for young adults (18-25 years of age **inclusive**) or those who are in transitional life circumstances.”

² Centre for Justice Innovation. (2020). *Delivering a Smarter Approach: Deferred Sentencing*.

<https://justiceinnovation.org/sites/default/files/media/document/2021/Deferred%20sentencing.pdf>

³ Sentencing Academy. (2022). *The Use of Deferred Sentencing in England and Wales*.

<https://barrowcadbury.org.uk/wp-content/uploads/2022/07/The-Use-of-Deferred-Sentencing-in-England-and-Wales.pdf>

⁴ Sentencing Academy. (2022). *The Use of Deferred Sentencing in England and Wales*.

<https://www.sentencingacademy.org.uk/the-use-of-deferred-sentencing-in-england-and-wales-a-review-of-law-guidance-and-research/>

We would suggest including some examples of “transitional life experiences” to make the definition clear to sentencers. For example, in cases where the person being sentenced has dependent children, harm to these children can be minimised if the sentence is deferred to allow for proper arrangements to be made.⁵ This would be in line with the Joint Committee on Human Rights recommendation from their ‘right to family life: children whose mothers are in prison’ report.⁶

Deferring a sentence may also allow a valuable opportunity for restorative justice initiatives to take place which cannot occur if the court moves to sentence immediately.⁷ One person we consulted with highlighted the importance of restorative initiatives as part of a sentence:

“There could be some victim awareness stuff you could build into the community order, at least something to make it more meaningful.” (Man serving a long sentence in prison)

Purposes and effectiveness of sentencing

11. Do you have any comments on the Purposes and Effectiveness of Sentencing section?

We welcome this section and the explicit reference to the five purposes of sentencing, which is along the lines recommended by PRT in its response to the Sentencing Council consultation ‘What Next for the Sentencing Council?’

We also welcome the introduction of an extra step to enable the court to take a step back so that rehabilitation is considered in all cases. We are pleased that the draft guidance recognises that a rehabilitative sentence “can reduce the risk of reoffending when compared to a short custodial sentence, therefore fulfilling other purposes of sentencing, such as reduction of crime and protection of the public, through its sentencing.” This is in line with the Ministry of Justice’s own evidence which shows that community sentences are more effective than short prison sentences at reducing reoffending.⁸

The need to ensure that all five purposes of sentencing are considered, and rehabilitation is considered in all cases, is reflected in the responses PRT received from people with lived experience of the criminal justice system. Some of the people PRT consulted with felt that, in their experience, punishment was the only real purpose of sentencing. One said:

“If this was adhered to then no court would send someone to prison because punishment is the only thing it consistently delivers.” (Man in the community)

Another woman said:

⁵ See: <https://shonaminson.com/safeguarding-children-when-sentencing-parents-information-for-sentencing-courts/>

⁶ See: <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1610/report-files/161002.htm>

⁷ Sentencing Academy. (2022). *The Use of Deferred Sentencing in England and Wales*. p.32.

<https://barrowcadbury.org.uk/wp-content/uploads/2022/07/The-Use-of-Deferred-Sentencing-in-England-and-Wales.pdf>

⁸ Hillier & Mews. (2018). *Do offender characteristics affect the impact of short custodial sentences and court orders on reoffending*. Ministry of Justice.

<https://assets.publishing.service.gov.uk/media/5af9497eed915d0deef5b3d1/do-offender-characteristics-affect-the-impact-of-short-custodial-sentences.pdf>

“Everything is punishment and very little is anything else; I know it sounds nuts to help when someone has done something crazy but you do need to do it if you want [them] to stop.”
(Woman in the community)

Young adult offenders

12. Do you have any comments on the new section on young adult offenders?

We welcome the inclusion of this section and are pleased to see that the Council recognises the important role that both age and maturity play in the commission of an offence. We also welcome the explicit recognition of the risks of self-harm for young adults in prison.

However, to make it clear that ‘young adults’ includes those aged 25, we would suggest amending the following wording:

“When sentencing young adult offenders (18-25 years **inclusive**)”

We are pleased to see the Council references concerns regarding “adultification” in the consultation documents; however, this has not been reflected in the draft guidance. As the consultation document highlights, adultification, as well as affecting children, can also impact young adults, “for example, who have recently turned 18 (particularly acute for males, looked-after children and those leaving care).” Evidence suggests that black children and young adults may also be at particular risk.⁹ Given the growing body of evidence on this issue, we would urge the Council to make explicit reference to the risks of adultification in the guidance.

We agree with Birth Companions submission that sentencers should recognise the “accumulated disadvantage faced by pregnant or postnatal girls” and refer the Council to their submission.

Female offenders

13. Do you have any comments on the new section on female offenders?

We welcome the inclusion of the new section on women who are being sentenced, to better reflect the distinct experiences and needs of women in the criminal justice system.

PSRs

For women, standard PSRs prepared in advance will be especially important. A standard PSR should be the presumption rather than oral on the day reports. Written reports can be completed in advance. This means the woman is more likely to feel comfortable disclosing private but relevant information about her case - for example caring responsibilities.

As one woman we consulted with told us:

“I did get a PSR but it was on the morning of the hearing and it was really rushed. I couldn’t really concentrate because I was worried about the court hearing and I didn’t understand

⁹ HM Inspectorate of Probation. (2021). *The experiences of black and mixed heritage boys in the youth justice system. A thematic inspection by HM Inspectorate of Probation.* [The experiences of black and mixed heritage boys in the youth justice system \(justiceinspectorates.gov.uk\)](https://www.justiceinspectorates.gov.uk/psr-reports/the-experiences-of-black-and-mixed-heritage-boys-in-the-youth-justice-system/). See also Davies, J. (2022). *Adultification bias within child protection and safeguarding.* HM Inspectorate of Probation. [Adultification bias within child protection and safeguarding \(justiceinspectorates.gov.uk\)](https://www.justiceinspectorates.gov.uk/psr-reports/adultification-bias-within-child-protection-and-safeguarding/)

how it was going to be used so didn't say all that I should have said really to help the court understand why I did what I did; and so it was a bit sparse on detail and so I don't think it was that helpful." (Woman in the community)

We recommend amending the wording of the guidance as follows:

"As such, when considering a community or custodial sentence for a female offender, the court should ask Probation for a pre-sentence report. **The pre-sentence report should be a standard written report.** Courts should be aware of the following **(non-exhaustive list of)** considerations when sentencing a female offender:"

There will need to be training support around this, to give sentencers confidence to request timely written reports.

Women from ethnic minorities

We welcome the recognition of the distinct needs of women from ethnic minority backgrounds. However, without clearly stating some examples of what these needs are, we are concerned that the guidance will not have the intended effect. Therefore, we suggest the Council includes examples.

Women with caring responsibilities

We welcome the inclusion of the bullet point on women being more likely to be primary carers. This reflects the Court of Appeal decision in *R v Petherick*, which outlines the court's duty to investigate sole or primary caring responsibilities of defendants and the need to take these responsibilities into account in sentencing decisions. The UK has also ratified the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offender 2010 (Bangkok Rules), which state non-custodial sentences are preferable for women with dependent children, and if a custodial sentence is necessary, it should only be given after considering the best interests of the child and ensuring appropriate provision has been made for the child.

We would suggest slightly amending the wording to also include sole carers. So, it would read:

"Female offenders are more likely to be **sole or** primary carers than male offenders."

Women who are pregnant

We also welcome the Council's inclusion of pregnancy as a consideration. However, we would suggest amending the wording to make it clear that prison is harmful for pregnant women and their babies. As we outlined in our previous submission to the Council's consultation on miscellaneous amendments to sentencing guidelines, it is widely recognised and accepted that all pregnancies in prison are high risk.¹⁰ Pregnant women in prison are seven times more likely to suffer stillbirth.¹¹ Yet figures show being pregnant and in prison is

¹⁰ See NHS. (2022). *Service specification: National service specification for the care of women who are pregnant or post-natal in detained settings (prisons, immigration removal centres, children and young people settings)*. [Service Specification \(england.nhs.uk\)](https://www.nhs.uk/publications/service-specification-england.nhs.uk) and Prisons & Probation Ombudsman. (2021). *Independent investigation into the death of Baby A at HMP Bronzefield on 27 September 2019*. [F4055-19-Death-of-Baby-A-Bronzefield-26-09-2019-NC-Under-18-0.pdf](https://www.ppo.gov.uk/our-work/investigations/f4055-19-Death-of-Baby-A-Bronzefield-26-09-2019-NC-Under-18-0.pdf)

¹¹ Summers, H. & Murray, N. (2023). *Pregnant women in English jails are seven times more likely to suffer stillbirth*. The Observer. [Pregnant women in English jails are seven times more likely to suffer stillbirth | Prisons and probation | The Guardian](https://www.theguardian.com/prisons-and-probation/2023/jun/05/pregnant-women-in-english-jails-are-seven-times-more-likely-to-suffer-stillbirth)

becoming more common. In the year to March 2023 nearly 200 pregnant women were held in prison.¹² Therefore, we would strongly suggest the following wording:

“The impact of custody on pregnant offenders **will** be harmful for both the offender and the child.”

We support the response given by Birth Companions and Level Up, who are experts in this area.

Short sentences

The Ministry of Justice’s own evidence shows that short prison sentences are less effective than community sentences at reducing reoffending.¹³ The draft guidance does not need to be qualified by “generally”. We would suggest amending the final sentence in the Female Offenders box to read:

“Courts should consider the research referenced in this guideline that short custodial sentences are **generally** less effective at reducing reoffending than community sentences, which can **seek to** better address the underlying causes of offending.”

Imposition of community orders

14. Do you have any comments on the imposition of community orders section?

15. Is the new guidance on determining the length of a community order and how courts should consider time remanded in custody or on qualifying curfew clear?

Requirements

16. Do you have any comments on the new information against each of the requirements in the requirements section?

We welcome the new approach to community order requirements. Requirements should be relevant and achievable and tailored to be most suitable for the person in receipt of the order. Proportionality in these circumstances is key, to ensure individuals are not being set up to fail. Requirements should be adapted by a person with relevant professional expertise, as necessary, to accommodate any disability and/or other protected characteristics, in accordance with the Equality Act. Reasonable adjustments should be made in accordance with professional guidance concerning the protected characteristic(s) of the person being sentenced and agreed with the individual and with their full understanding. Care should be taken that a more punitive response is not imposed in the absence of appropriately adapted requirements; adaptations and outcomes should be monitored accordingly and reviewed. We would recommend including a prominent link in this section to the Equal Treatment Benchbook.

It will not always be possible to predict how a person will respond to requirements of a community order. Probationers have reported that “parts of community sentences that are

¹² Table 11.1 and 11.2. Ministry of Justice. (2023). *Annual HM Prison and Probation Service digest, April 2022 to March 2023*.

¹³ Eaton, G. & Mews, A. (2019). *The impact of short custodial sentences, community orders and suspended sentence orders on reoffending*.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814177/impact-short-custodial-sentences.pdf

intended to be rehabilitative are intrusive, even painful, while others experience 'punitive' sanctions such as unpaid work as motivating and even enjoyable" so often community sentences are experienced differently from "what is intended by judges and lawmakers".¹⁴ Therefore it is important to have a person centric approach at all times, and to allow for requirements to be adapted if necessary.

The guidance states:

"At least one requirement must be imposed for the purpose of punishment and/or a fine must be imposed, unless there are exceptional circumstances which relate to the offence or the offender that would make it unjust in all the circumstances to do so.

It is a matter for the court to decide which requirements amount to a punishment in each case."

We note the submission from Janet Cater, a recently retired HMCTS Barrister, regarding this draft guidance. She argues that this is a misinterpretation of s.208(1) Sentencing Act 2020 which requires "a requirement for the purpose of punishment". This can legitimately be absolutely any requirement as they now carry a restriction on liberty, e.g. the activity days of the Rehabilitation Activity Requirement (RAR). This legislation originated when 'supervision' requirements still existed, and they carried no specific restriction on liberty. The legislation which originated in 2013 sought to address this by requiring an additional requirement which did restrict liberty as punishment. The supervision requirement no longer exists and was replaced in 2014 by RARs. Therefore, the draft guidance is redundant, since all requirements can be said to meet the purposes of punishment.

The need for requirements to be relevant and achievable and tailored to individual need was reflected in our consultations with people with lived experience of community orders. One of the women on we spoke to talked positively of her experience of community orders:

"Mine wasn't too bad and I did it at a centre and the probation office came to see me and we talked about stuff, that was helpful." (Woman in the community)

Most of the people we consulted with said that it was important to have elements to community orders which are not just punishment. For example, employment assistance, financial support, apprenticeships, or mandated programmes/interventions. They felt that currently, the focus was only on hours completed rather than rehabilitation or direction to support. One person said:

"I think there needs to be something for the individual, the person doing the order, there should be something for them at the end of it as well, not just keeping you keep him out of prison." (Man in the community)

Another added:

"Community orders have to be tailored to people based on need, addressing their concerns that lead to crime. It's about income and poverty most of the time so you have to address these things somehow if you want to stop people committing crime and going to jail." (Man serving a long sentence in prison)

¹⁴ Centre for Justice Innovation. (2020). *Smarter Community Sentences*. pp.2-3. https://www.justiceinnovation.org/sites/default/files/media/documents/2020-09/smarter_community_sentences.pdf

Another spoke about support being essential to completing the order successfully:

“Community orders only work if there’s support to stop what you are doing; but I was a drug addict using to deal with situations that were hell, and I didn’t know how to stop, but community orders and suspended sentences didn’t help me stop just hate court and probation more.” (Woman in the community)

Community order levels

17. Do you agree with the new approach to rehabilitative requirements in the Community Order Levels section?

We agree with the response from Janet Carter, a recently retired HMCTS Barrister, on this section. She argues that whilst it is understandable that the guideline has moved away from stating any specific number of requirements at the different levels of community order, it will be essential to retain some distinction with ‘low’ orders to continue with the assumption they remain a single requirement. As she explains, this level is only just above a fine, and as the drafted guideline allows an increase of requirements at the level, it could result in disproportionality to the level of seriousness. This in turn could result in unintended consequences such as a greater number of breaches resulting in increased re-sentencing to custody.

We welcome the guidance that “courts should tailor community orders for each offender according to their specific circumstances.” In practice, however, quality PSRs will be required to ensure sentencers have all the information they need to make informed decisions.

18. Do you have any other comments on the Community order levels section?

Many people that come in front of the courts will be in receipt of benefits or have financial difficulties. This may be linked to their offending behaviour. The implications of a fine, especially on these defendants should be highlighted in the guidance. There should be provision for support for debt and money management made available whenever a fine is imposed. Guidance on how to pay the fine should also be provided.

Imposition of custodial sentences

19. Do you have any comments on the Imposition of custodial sentences section? We welcome comments both on content and format/structure.

Whilst we are pleased to see the assertion that “A suspended sentence MUST NOT be imposed as a more severe form of community order”, the guidelines need to be clearer that even if the custody threshold is passed, a suspended sentence is not always appropriate. For example, if factors including disability, dependents, vulnerability and lack of maturity tip the balance against custody in a particular case. This is particularly important given that the Council has found that suspended sentence orders have been effectively treated as more severe forms of community orders and are being passed in circumstances even where the custody threshold has not been met.

We support the response from Level Up to this question and refer the Council to it.

20. Do you agree with the restructure and new factor in the table of factors indicating it may or may not be appropriate to suspend a custodial sentence?

Under factors indicating that it may not be appropriate to suspend a custodial sentence, we welcome the wording around “History of poor compliance with court orders AND unlikely to comply in the future”. Non-compliance with previous orders alone should not be a barrier to suspending a sentence. We agree with the Council that it is more important to consider the offender’s potential for rehabilitation at the point of sentence rather than on previous convictions. For many, rehabilitation is not a linear journey, and previous poor compliance may have more to do with inadequacy of the order or the inability of the individual to comply (due to, for example, disability/mental ill health/domestic circumstances).

We agree with Level Up who suggest amending one of the factors which indicates when it may be appropriate to suspend a custodial sentence to reflect the importance of considering dependent children and pregnancy. We would suggest the following wording:

“Immediate custody will result in significant harmful impact upon others, **including a pregnancy and/or dependent children**”.

Suspended sentence orders

21. Do you have any comments on the suspended sentence order section, including the guidance on requirements of a suspended sentence order?

We welcome the expanded information in the draft guidance around requirements on a suspended sentence order. In particular, we welcome the new wording that “requirements imposed as part of a suspended sentence order are more likely to be predominantly rehabilitative in purpose, as the imposition of a custodial sentence, even if suspended, it itself both a punishment and a deterrent”.

22. Is the guidance on determining the operational and supervision periods of a suspended sentence order and how courts should consider time remanded in custody or on qualifying curfew clear?

The guidance seems to be clear. However, we would recommend that the Council conducts trials with some magistrates of different ages and levels of experience to determine whether the guidance is clear to those who will use it.

Sentencing flow chart

23. Do you think that the flowchart aligns with the proposed new structure in the guideline, and do you have any comments on the sentencing flow chart?

We agree that the flowchart aligns with the proposed new structure in the guideline. However, we would suggest a note should be added to make clear that the flowchart is not comprehensive and should be read in conjunction with guidance.

We agree with the submission from Level Up that while the inclusion of the question “Would a custodial sentence have an impact on dependants, including any unborn children, that could make it disproportionate?” is welcome, it does not give sufficient consideration to the impact pregnancy in prison has. Therefore, we would also suggest amending the question to read as follows:

“Would a custodial sentence have an impact on dependants or **an offender’s pregnancy**, that could make it disproportionate?”

This term would better encompass both mother and unborn child.

Impact and resource assessment

24. Do you have any comments on the resource assessment and/or on the likely impact of the proposals on sentencing practice?

We are concerned with the wording that “standard reports are the most comprehensive type of PSR, requiring substantially more resource and so are **only appropriate for cases of higher seriousness**”. This seems at odds with the draft guidance elsewhere which highlights the importance of PSRs. This is especially concerning in cases where women are defendants. Quality written PSRs are particularly important for this cohort, as we have outlined in our answer to question 13. Often an oral PSR will not include the detail needed to give the sentencer the full picture of the person being sentenced, including that of any dependent children.

Whilst we appreciate this is somewhat out of the scope of the consultation, it is important to note that these changes will need to be properly resourced to ensure they have the intended impact. Otherwise, the Council may well be in the same position where guidance is not followed as closely as anticipated/expected. Sentencers will need appropriate training and support so that they feel confident of these changes and are able to put the guidance in to practice.

Equality and diversity

25. Are there any equalities issues relating to the proposed revised guideline that should be addressed?

26. Are there any other comments you wish to make on the proposed revised guideline?

We are concerned with the continued use of the word “offender” in the draft guidelines. The use of this term is widely recognised as stigmatising and dehumanising and other agencies have made moves away from the term. The probation service, for example, has moved away from the term “offender” to more “descriptive, neutral, person-centred language”, including “person on probation”.¹⁵ Therefore we would strongly recommend the Council considers changing references to “offender” in the guidance. We would suggest the new wording could be “**person being sentenced**”.

**Prison Reform Trust
February 2024**

¹⁵ See:

<https://static1.squarespace.com/static/5ec3ce97a1716758c54691b7/t/60d9c35377db0f12778bd351/1624884051251/Language+policy.pdf>