

Speech by the Lord Chancellor and Secretary of State for Justice, the Rt Hon David Gauke MP, at a reception of the *Care not Custody* coalition, on Thursday, 21 June 2018

Introduction

Thank you, Lord Bradley for that introduction. The government continues to be grateful for your work on vulnerable people, those with mental health problems or learning disabilities, within the criminal justice system. Almost ten years on from the important findings of the Bradley Report, I think we have a positive story of change to tell about the treatment of vulnerable offenders in England.

I have to say, it's a real pleasure to be here today and following in the illustrious footsteps of the Prime Minister, who I know addressed this same event as Home Secretary in 2014. With such a wide and varied membership of organisations and professional bodies, the Coalition brings together every agency within the system as well as the third sector to support the government in keeping the 'care not custody' promise and, quite rightly, to hold us to account for how effectively we deliver on it.

Let me say from the outset that this is something about which I care deeply.

Short sentencing

Since I became the Justice Secretary at the beginning of the year, I have been thinking long and hard about the approach we take when it comes to vulnerable prisoners, including those for whom mental health and/or substance abuse play a key role in how they enter the criminal justice system.

What is clear to me right now is that the approach we are taking presently is not working. For example, we know that at 66% the reoffending rate for those given immediate custodial sentences of twelve months or less is higher in comparison to community and suspended sentences.

And yet, every year around 60,000 offenders are given sentences of less than a year. We know that these relatively short periods in custody have little rehabilitative value for offenders.

Short sentences can also have devastating effects on families, particularly where an offender has children. In the absence of an established wider support network, it can lead to children being taken into care, putting an even greater burden on public services. More alarmingly, international evidence has found that the children of offenders are at increased risk of antisocial behaviour and becoming offenders themselves—perpetuating intergenerational cycles of offending.

Often these offenders have complex needs and vulnerabilities, which in many cases relate to the underlying causes of offending. We know that what they need is care not custody, treatment not time, rehabilitation not incarceration.

I'm not saying that we need to go soft on crime—not at all. My first priority is protecting the public from its often-devastating effects. Sentences must be sufficiently punitive, both to act as a deterrent and to maintain confidence. But that is exactly why I'm saying that we need to look again at short sentences—to ensure that they are seen as an absolute last resort and to build confidence in the ability of community alternatives to provide better outcomes for

offenders. So, it is about time we started to look more broadly at the underlying causes of crime and what actually works to break the cycle of re-offending.

In the long-term that is how we will protect the public from crime.

Liaison and Diversion Services

But there are things happening in the system right now to ensure that vulnerable offenders receive appropriate outcomes to their cases; so that their individual needs are met with the correct punishment to enable rehabilitation, rather than custody being the default option.

We continue to support the rollout of NHS England's Liaison and Diversion services – so that clinicians can firstly identify people with mental health and/or substance misuse problems and other vulnerabilities who come into contact with the criminal justice system; and secondly refer them into appropriate services to address their needs and help to break the cycle of re-offending. I am grateful to Lord Bradley and other colleagues in the room for their continued engagement and support on this.

The success of Liaison and Diversion services hinges on people – the clinical staff placed at police stations and courts to advise decision-makers within the justice system in real time. That ability to assess and refer vulnerable offenders as they enter the system and pass through it is slowly changing the culture around how vulnerable offenders are charged and sentenced—so that it is tailored to meet their specific needs.

In terms of the Care Not Custody pledge, this means that vulnerable offenders, where appropriate, can be diverted away from the criminal justice system altogether. Liaison and Diversion services can act as a proper check and balance to support decision makers in ensuring that where being charged is inappropriate, it is stopped; where a custodial sentence is inappropriate, a conditional caution or community sentence with a treatment requirement can be put in place instead. It's also worth noting that my department is working in partnership with the National Police Chiefs Council to simplify the Out of Court Disposals framework so that we can increase the use of conditional disposals – which is another opportunity to provide early intervention.

I'm really pleased to say that Liaison and Diversion services are already operating across more than 80% of England and we expect the full roll-out to be complete by 2020/21. Once that happens we can have the confidence that, no matter where vulnerable individuals encounter the criminal justice system, the right intervention can be made to ensure that they are treated according to their needs.

Community Sentence Treatment Requirement Protocol

This government has pledged to make data driven, fact informed policy-making the backbone of everything it does. So, I want my department to follow the evidence on this. A recent study suggests that sentences which have mental health treatment requirements attached to them are associated with significant reductions in reoffending.

That's why we are in the process of working with the Department of Health and Social Care, NHS England and Public Health England to develop a Community Sentence Treatment Requirement Protocol (or CSTRP), which will set out what is expected of each public agency involved in a case – the courts, probation services and treatment providers.

The protocol is designed to ensure that access to mental health and substance misuse services improves for vulnerable offenders because we know that the need is there. A study

of adult offenders starting community orders in 2009 and 2010, for example, showed that, of those who received a formal assessment, 32% were identified as having a drug misuse need and 38% an alcohol problem. The same survey found that 35% of people reported having a formal diagnosis of a mental health condition.

Despite this obvious need, in 2017, only 538 Mental Health Treatment Requirements were given, which amounts to less than 1% of all treatment requirements commenced as part of a community sentence. During the same year, 8,719 Drug Rehabilitation Requirements and 5,419 Alcohol Treatment Requirements were given—representing 5% and 3% of all commenced requirements.

The CSTRP will build on the Liaison and Diversion assessment, amounting to a proper treatment plan, tailored for each individual offender as they pass through the criminal justice system and complete their sentence.

It will also set out a new maximum waiting time for court-ordered treatment so that offenders will be able to hold agencies to account for the treatment they receive and these waiting times will rightly be in line with those we set down for the general population.

I'm really pleased to say that the CSTRP is already being tested in five areas across England and I look forward to reporting back shortly on the outcomes of those trials and how—and when—we can roll out the protocol more widely.

Conclusion

It's been a genuine pleasure to be here to address you today. When it comes to the Care Not Custody Coalition I think the clue is in the name – you have come together because you genuinely care about getting the right outcomes in our criminal justice system for some of the most vulnerable people in our society.

I think there is a wider debate to be had about sentencing and the usefulness of short sentences in particular. And I don't think that just applies to vulnerable offenders per se but also female offenders, for whom domestic abuse and rates of self-harm are nearly five times higher than for men in custody.

The rollout of Liaison and Diversion services *is* ensuring that we have the right clinical staff positioned at the right points throughout the criminal justice system, to better identify vulnerable offenders and ensure they receive punishments with the appropriate courses of treatment attached to them.

And with trials of the Community Sentence Treatment Requirement Protocol ongoing, I look forward to us learning the lessons that will mean we can offer tailored treatment to every person with mental health or substance misuse concerns coming through the criminal justice system in the future.

In addition, as part of the government's response to the Lammy Review, we are encouraging more pilots of deferred prosecution models, which can be so crucial in terms of outcomes for vulnerable offenders.

As all that work is ongoing I know the Care Not Custody Coalition will continue to be part of the conversation on the treatment of vulnerable offenders. I welcome the scrutiny I know you will give this government as we continue to redraw the balance in favour of care rather than custody. Ultimately, that's how we will protect vulnerable offenders from the cycle of reoffending and the public from the cycle of crime. Thank you.