

## **Prison Reform Trust response to the Ministry of Justice consultation, Punishment and reform: effective community sentences**

The Prison Reform Trust 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's main objectives are:

1. reducing unnecessary imprisonment and promoting community solutions to crime
2. improving treatment and conditions for prisoners and their families

We welcome the opportunity to respond to the consultation, Punishment and reform: effective community sentences. A series of public opinion polls, commissioned by the Prison Reform Trust and conducted by ICM, on how best to reduce offending indicate that there is public confidence in a reparative approach, making amends to victims, as well as specific work with vulnerable women and young people and recognition of the important role of public health measures such as treatment for addictions and mental healthcare. What is needed now is clear political leadership to drive and promote community solutions to crime. Our main points in response to the consultation are:

- The consultation is an opportunity to build on the success of community sentences which are now outperforming short prison sentences and are 8.3 % more effective in reducing re-offending rates.<sup>1</sup> The best way to do so is to identify the elements that work particularly well: intensive supervision, community payback, restorative justice, developing personal responsibility, and dealing with support needs such as housing, employment, addictions, mental health and learning disabilities and difficulties.
- We welcome the proposal that the Ministry of Justice will build on the good work of the Intensive Alternative to Custody (IAC) pilots by making them available to courts in every area. We believe the IAC pilots have demonstrated the value of focussing these orders on young adult offenders.

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<sup>1</sup> Ministry of Justice (2011) Compendium of reoffending statistics and analysis 2011, London: Ministry of Justice

- We are concerned that an emphasis on making community sentences more “punitive” could undermine their success at reducing reoffending and damage, rather than reinforce, public and court confidence in community provision. Loading additional punitive measures onto community orders is almost bound to lead to an increase in technical breach, especially by young people and those with particular support needs such as mental health problems, learning disabilities and difficulties and substance misuse problems.
- The balance of punishment, reparation and rehabilitation within an order should continue to be decided by court, within the guidelines set by the Sentencing Council, based on the facts and circumstances of each case and an assessment of the offender’s particular needs and vulnerabilities.
- Sentencing requirements should take into consideration the abilities and support needs of offenders to avoid unreasonable or unrealistic expectations being imposed without appropriate support and other reasonable adjustments also being put in place.
- Electronic monitoring can offer a robust sanction while avoiding the disruptive effects of a prison sentence, but its use must be carefully monitored and not replace the importance of face to face contact with probation.
- Extending powers to seize assets to offenders other than those involved in organised crime, who make substantial profits from criminal activity, is likely to exacerbate the existing financial exclusion of many offenders, forcing them further into debt and increasing the likelihood of their reoffending.
- We welcome the government’s strategy to develop the use of restorative justice as part of a community sentence and for people who receive a prison sentence. The Prison Reform Trust, the Restorative Justice Council and the Criminal Justice Alliance advocate the need for a robust legislative framework to ensure victims have the opportunity of access to a restorative approach at each stage of the criminal justice process.

## **1. What should be the core elements of Intensive Community Punishment?**

The Prison Reform Trust welcomes the proposal in paragraph 31 that the Ministry of Justice will build on the good work of the Intensive Alternative to Custody (IAC) pilots by making them available to courts in every area. The core elements of these orders should continue to be the requirements currently available (see para 37) under the 2003 Act, but the more important aspect is their intensive nature. For example, the tailored interventions for each offender and enhanced monitoring have been effective in securing increased compliance, while the curfews and community payback within a package of 30 hours per week activity make it more difficult for those on an IAC to drift back into a pattern of offending behaviour. In the interests of public understanding, we would, however, encourage ministers to describe these new sentences as Intensive Community Orders.

## **2. Which offenders would Intensive Community Punishment be suitable for?**

We fully appreciate the resource constraints on Probation Trusts and recognise that it is probably necessary to focus these orders on a particular group of offenders in the first instance. Our own view is that the IAC pilots in Greater Manchester and West Yorkshire have demonstrated the value of focussing these orders on young adult offenders. While the Ministry of Justice has not yet completed the impact evaluation of the IACs, the early indications are that re-offending rates in these two areas are significantly lower and many of the young men engaged have been helped into education, training and employment, which are widely acknowledged as being crucial to successful rehabilitation.

A focus on young adult offenders would also dovetail neatly with the very successful recent work by the Youth Justice Board and individual youth offending teams to reduce the number of children in custody by around 30%. While pockets of good practice do exist, reoffending rates on release from custody are very poor for young adults, especially those serving short sentences. Her Majesty's Chief Inspector of Prisons has specifically raised concerns about young adults sentenced to detention in a Young Offender Institution (YOI), describing his impression of "young men sleeping through their sentences" in HMYOI Rochester<sup>2</sup> and a lack of engagement in work, education and training opportunities across the YOI estate.<sup>3</sup>

We note that the Final Report of the Riots Communities and Victims Panel identified weaknesses in the transition of under 18 year olds into the adult criminal justice system, and

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<sup>2</sup> Report of an announced inspection of HMYOI Rochester, HMCIP (June 2011)  
<sup>3</sup> HM Chief Inspector of Prisons – Annual Report 2010/11

recommended that all probation trusts take a specialist approach to dealing with young adults within the next two years. It also highlighted the good work being carried out in Greater Manchester and proposed that “probation trusts and their partners develop intensive alternatives to custody schemes for young adults across the country, with roll-out in those areas which experience the highest levels of reoffending within two years.”<sup>4</sup> Focussing provision on young adults should enable the government to meet this objective.

In addition to focussing on young adults, the new orders should be aimed at people over the custody threshold and offered as a genuine alternative to a sentence of imprisonment. The existing IACs and ISS for under 18s have demonstrated their effectiveness with offenders who would otherwise have been likely to have receive a short prison sentence. Focussing on this group would avoid the danger of offenders who have committed minor offences, who would not normally receive a custodial sentence, being up-tariffed to the intensive order.

**3. Do you agree that every offender who receives a community order should be subject to a sanction which is aimed primarily at the punishment of the offender ('a punitive element')?**

The Prison Reform Trust acknowledges that community sentences need to be robust and demanding in order both to challenge offenders, while recognising and meeting their support needs, and ensure they gain the confidence of the public. However, we are concerned that an emphasis on making community sentences more “punitive” could undermine their success at reducing reoffending and damage, rather than reinforce, public and court confidence in community provision. Every requirement is punitive to the extent that it involves an element of coercion and / or deprivation of the liberty of the offender. It is unhelpful and misleading to attempt to separate the punitive and non-punitive elements of an order and could limit judicial discretion in setting an appropriate sentence based on the particular facts and circumstances of the individual case.

The Ministry of Justice’s impact assessment of the proposals acknowledges that, “given a limit on the overall level of resources available for probation services, and the need for sentences to remain proportionate to the seriousness of the offending, delivering top end community orders may cause a number of primarily rehabilitative requirements to be substituted for primarily punitive ones.”<sup>5</sup> This is despite the finding of the Justice Select

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<sup>4</sup> The Riots and Communities Panel (2012), After the Riots – the Final Report of the Riots Communities & Victims Panel, London: The Riots and Communities Panel

<sup>5</sup> Ministry of Justice (2012), Impact assessment: Consultation on sentences in the community and the future shape of probation services, London: Ministry of Justice

Committee that making sentences more punitive does not mean that they will necessarily be more effective in protecting the public by reducing re-offending.<sup>6</sup>

Ministry of Justice research, comparing similar offenders and similar offences, shows that community sentences are now outperforming short prison sentences and are 8.3 % more effective in reducing re-offending rates.<sup>7</sup> The challenge is to promote the effectiveness of community sentences to the public rather than add punitive elements which could undermine their success. Polling evidence suggests that the public increasingly recognised the effectiveness of community sentences at reducing reoffending. In an ICM poll commissioned one month after the riots last summer, 76% of the 1,000 people surveyed thought unpaid community work was effective at preventing crime and disorder.<sup>8</sup> Better mental health care (80%), making amends to victims (79%) and treatment to tackle drug addiction (74%) also received strong support.

Community payback successfully combines rigour and restrictions on liberty with reparation and rehabilitation. Schemes such as the impressive intensive alternative to custody run by probation and police in Manchester, and intensive offender management in Avon and Somerset, continue to cut crime. Youth conferencing has successfully placed restorative justice at the heart of the youth justice system in Northern Ireland, and there is scope for mainstreaming its use throughout the justice system as a whole.

It makes social and economic sense to capitalise on these successes. The best way to do so is to identify the elements that work particularly well: intensive supervision, community payback, restorative justice, developing personal responsibility, and dealing with support needs such as housing, employment, addictions, mental health and learning disabilities and difficulties. The Prison Reform Trust supports the generic community order in so far as it gives discretion to sentencers and offender managers. Consideration could be given to the creation of a number of substantive orders, such as an unpaid work order, curfew order, alcohol and drug treatment and testing order, attendance centre order and a probation order. This would allow the various disposals to be evaluated and promoted.

It would also potentially lengthen the path to custody for a number of offenders and lead to desistance from crime, allowing the courts to consider matching different community penalties to particular offences and circumstances, rather than yielding to the temptation to

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<sup>6</sup> Justice Committee (2011) *The role of the Probation Service*, London: The Stationery Office

<sup>7</sup> Ministry of Justice (2011) *Compendium of reoffending statistics and analysis 2011*, London: Ministry of Justice

<sup>8</sup> Prison Reform Trust (2011) *Public want offenders to make amends* briefing paper, London: Prison Reform Trust

consider that, because one experience of a community order has ended in failure, a custodial sentence is inevitable. As the Magistrates Association has previously suggested, much more use could be made of attendance centres if they were revitalised and available to every court as a constructive, relatively cheap community penalty.<sup>9</sup>

Above all, community sentences require proper investment and strong, consistent political backing for public and court confidence to increase and be sustained. Loading extra punitive requirements onto community orders, such as extended curfews or other complex, additional restrictions, are almost bound to lead to an increase in technical breach, especially by young people and those with particular support needs such as mental health problems, learning disabilities and difficulties, substance misuse and people with primary care responsibilities. Data published for the calendar year 2009 show that 3,996 people were received into prison establishments in England and Wales for breach of a community sentence.<sup>10</sup> Prison has a poor record at reducing reoffending with 47% of adults reconvicted within one year of being released, rising to 57% for those serving sentences of less than 12 months.<sup>11</sup> A more “punitive” approach could result in the expensive failure of people ending up in prison instead of going straight in the community.

#### **4. Which requirements of the community order do you regard as punitive?**

As we outline in our response to question 3, every requirement is punitive to the extent that it involves an element of coercion and / or deprivation of the liberty of the offender. It is unhelpful and misleading to attempt to separate the punitive and non-punitive elements of an order and could limit judicial discretion in setting an appropriate sentence based on the particular facts and circumstances of the individual case.

#### **5. Are there some classes of offenders for whom (or particular circumstances in which) a punitive element of a sentence would not be suitable?**

While we do not believe it is possible or helpful to separate the punitive and non-punitive elements of an order, there are some groups of offenders for whom a particular emphasis on punitive punishment would be especially counterproductive. These include:

- Offenders with mental health needs and learning difficulties and disabilities

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<sup>9</sup> Magistrates Association (2010), Sentencing policy and practice committee: community sentences – policy paper, London: Magistrates Association

<sup>10</sup> Table 6.9, Offender Management Caseload Statistics 2009, Ministry of Justice

<sup>11</sup> Table 18a and 19, Ministry of Justice (2011) Proven Reoffending Statistics Quarterly Bulletin July 2009-June 2010, London: Ministry of Justice

- Offender with drug and alcohol addictions
- Young adults with low levels of maturity
- Vulnerable women with complex and multiple needs
- Offenders with primary care responsibilities

We would emphasise, however, that the attempt to divide up the punitive and non-punitive elements of an order is itself misguided and any list will fail to capture the complex nature and circumstances of each individual case. It is essential that courts are able to exercise discretion in sentencing offenders. For this reason, within the guidelines set by Sentencing Council, we believe that the balance of punishment, reparation and rehabilitation within an order should continue to be decided by court, based on the facts and circumstances of each case and an assessment of the offender's particular needs and vulnerabilities.

## 6. How should such offenders be sentenced?

For young people and those with particular support needs such as mental health problems, learning disabilities and difficulties and substance misuse problems, additional punitive requirements are almost bound to lead to an increase in technical breach, and the expensive failure of them ending up in prison instead of going straight in the community. Women tend to have multiple problems relating to their offending, including mental health and substance misuse problems. Men and women with primary care responsibilities are also likely to need additional support in order to successfully complete community orders. For these groups of offenders we recommend the following:

### **Offenders with mental health needs and learning difficulties and disabilities**

For vulnerable offenders, such as those with mental health problems, learning disabilities (and low levels of IQ) and other learning, developmental and behavioural disorders such as autism, attention deficit hyperactive disorder, communication difficulties and dyslexia, it is important that arrangements for liaison and diversion are available at every stage of the criminal justice process. We welcome the coalition government's commitment to roll out a national liaison and diversion scheme by 2014, backed by £50m funding from the Department of Health and working in partnership with Ministry of Justice. The National Federation of Women's Institutes, the WI, is running a *Care not Custody* campaign across England and Wales following the tragic death by suicide in prison of the mentally ill son of a

WI member.<sup>12</sup> The WI and the Prison Reform Trust are leading a coalition of organisations, including the NHS Confederation, the Royal College of Nursing, the POA, the PGA, the Law Society and the Police Federation, representing over one million professional staff, set up to monitor reform and ensure the government keeps its care not custody promise.

A number of potentially useful rehabilitative options already exist but are not being utilised. We already know that the mental health treatment requirement (MHTR) is significantly under-used in community sentencing despite very high levels of mental ill health among the probation caseload<sup>13</sup>. In 2010 only 783 mental health treatment requirements were commenced, constituting less than 1% of all community sentences.<sup>14</sup> Although there will now be new flexibilities around mental health treatment requirements, there are a number of complex factors that contribute to the under-use of mental health treatment requirements.<sup>15</sup> If these barriers, including a lack of confidence among sentencers about the support people will receive as part of this requirement, are not addressed people will not be able to access the treatment and support they need.

Sentencers should require and expect the identification and assessment of defendants with particular support needs in order that appropriate action can be taken during court proceedings. For some offenders this might mean diversion away from the criminal justice system and into healthcare; however for many, it will mean ensuring special measures and other reasonable adjustments, as required under equalities law and existing judicial guidance to ensure effective participation in court proceedings, and informed sentencing. It is important that sentencing requirements take into consideration the particular abilities and support needs of individual offenders to avoid unreasonable or unrealistic expectations being imposed. Linked to this is the importance of early identification and information sharing across and between criminal justice and health and social services. Recognising that an individual might have support needs should begin when an individual arrives into police custody; this information should inform the decision to call for an appropriate adult and further screening and assessment, as required. This in turn should inform the offenders 'journey' through the criminal justice system – or diversion away from it – including special measures and other reasonable adjustments during court proceedings and sentencing decisions.

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<sup>12</sup> See <http://www.thewi.org.uk/standard.aspx?id=14999>

<sup>13</sup> Recent evidence suggests that at least a quarter of probation service clients have a mental health condition, more than half use alcohol problematically and one in eight misuse drugs: Brooker C et al 2011 An investigation into the prevalence of mental health disorder and patterns of health service access in a probation population. Available at <http://www.magnacartalincoln.org/cimh/RfPB%20Executive%20Summary.pdf>

<sup>14</sup> Ministry of Justice (2012) Consultation on sentences in the community and the future shape of probation services impact assessment Fig. 1

<sup>15</sup> See Centre for Mental Health (2009) A Missed Opportunity? Community sentences and the Mental Health Treatment Requirement

## **Offenders with drug and alcohol addictions**

For offenders with drug and alcohol addictions, a far greater emphasis should be placed on treatment in the community through the use of appropriate community order requirements. Currently, only around 4.5% of all community orders involve an alcohol treatment requirement.<sup>16</sup> 7.9% of orders involve a drug rehabilitation requirement.<sup>17</sup> This is despite a far higher percentage of offenders having an alcohol or drug misuse problem. A 2009 report by the Centre for Crime and Justice Studies, based on a survey of probation officers' and offenders' experiences of community orders and suspended sentence orders, found a persistent problem with the availability of requirements – especially alcohol and mental health treatment. It also found "a surprising lack of knowledge about whether requirements are locally available or not".<sup>18</sup>

Sentencers should require and expect the identification and assessment of defendants with drug and alcohol addictions and problems in order that appropriate action can be taken during court proceedings. Provision should be made to ensure all courts have available as requirements effective treatment for drug and alcohol addictions and substance misuse in general. Sentencers and probation officers should be made aware of provision in their local areas. The national liaison and diversion service at police stations and courts, due to be established across England by 2014, should include provision for offenders with alcohol and drug abuse problems.

## **Young adults**

The criminal justice system is failing to divert impressionable young men and women from falling into a pattern of offending. As we note in our response to question 2, the independent panel investigating the cause of the riots identified weaknesses in the transition of under 18 year olds into the adult criminal justice system, and recommended that all probation trusts take a specialist approach to dealing with young adults within the next two years. As a first step, the Prison Reform Trust advocates the following reforms:

- Introducing a robust community sentence, tailored to the specific needs of this age group – this could take the form of the intensive alternative to custody (IAC)

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<sup>16</sup> Ministry of Justice (2012), Impact assessment: Consultation on sentences in the community and the future shape of probation services, London: Ministry of Justice

<sup>17</sup> Ibid.

<sup>18</sup> Mair, G & Mills, H (2009), The Community Order and the Suspended Sentence Order three years on: The views and experiences of probation officers and offenders, London: Centre for Crime and Justice Studies

successfully piloted in Manchester and West Yorkshire supervised by the probation service (see answer to question 2).

- Diverting first-time and low-level offenders out of the criminal justice system through the use of a restorative pre-court disposal similar to the Youth Restorative Disposal.
- Expanding the age-remit of youth offending teams (YOTs) to engage with 18-20 year-olds – this would enable the complex needs and challenges of this age group to be more effectively addressed through the multi-agency structure of YOTs.
- Developing sentencing guidelines specific to young adults – in recognition of their age, maturity, intellectual and emotional capacity. We welcome the recent recognition of immaturity as a mitigating factor in sentencing guidelines.
- Establishing specialist services for young adults both in the community and in prison that reduce alcohol and drug misuse as drivers to crime.
- Ensuring that the new diversion and liaison schemes at police stations and courts are equipped to respond to the particular needs of young men and young women with mental health problems or learning disabilities.

### **Women and offenders with primary care responsibilities**

We welcome the government's recognition in the consultation that women offenders tend to have multiple problems relating to their offending, including mental health and substance misuse problems, as well as education, employment and relationship needs. A large number of women offenders have been victims of domestic violence and sexual abuse. Many women and some men who offend are lone parents and many have child and other care responsibilities. The consultation highlights the importance of ensuring that community sentences "support women in addressing their needs as part of the rehabilitation process." It emphasises the need for "decent non-penal options for offenders with caring responsibilities" and opportunities for women to complete community payback orders in appropriate settings. Child care facilities are an essential adjunct to community sentences to enable people with primary care responsibilities for young children to comply. In addition, we advocate the following reforms in relation to the sentencing of women:

- Sentencing requirements should take into consideration the primary care responsibilities of offenders to avoid unreasonable or unrealistic expectations being imposed without appropriate support and other reasonable adjustments also being put in place;
- Provision should be made to ensure women are able to complete community orders in appropriate settings, including women-only settings where necessary;

- Women should be a designated group within the new national network of mental health and learning disability diversion schemes in police stations and courts, with a specific response required as part of national standards;
- Professional training for staff in criminal justice agencies including police, probation, Parole Board, judiciary and court services, should include specific material on women's offending and effective ways to reduce it;
- Drug and alcohol treatment services for women should be expanded and, wherever possible, treatment provided in a safe, women-only environment with facilities for childcare and all round integrated support;
- Women's community provision should be developed beyond the 45 voluntary organisations that were originally supported to improve availability across the country. New services should be prioritised for London, Greater Manchester, and West Midlands given comparatively high rates of offending and the current limited provision in these areas.

## **All offenders**

It is essential that the vulnerability and needs of all offenders are properly identified and taken into consideration when sentencing. A sentence should not further add to or damage an offender's existing vulnerability or disadvantage anymore than absolutely necessary. For this reason we believe that the introduction of a mandatory punitive element to community orders would be unhelpful. The Prison Reform Trust would like to see the sentencing framework as a broad-based pyramid, starting with the base as follows:

- Diversion, where appropriate, from the criminal justice system of people who suffer from mental illness or learning disabilities;
- Opportunities for restorative justice at all stages in criminal justice proceedings and as an alternative to prosecution as appropriate;
- Cautions for most first offenders and those who have committed minor offences;
- Financial penalties, adjusted to take account of ability to pay or transfer into unpaid work, for the bulk of offenders who appear before the courts with assistance with budgeting;
- Community sentences for more serious offenders, including those who would benefit from supervision and other interventions;
- Greater control and surveillance (including where appropriate electronic monitoring) of persistent offenders using integrated offender management approaches, which include intensive work to reduce reoffending;

- Imprisonment reserved for the most serious and violent adult offenders for whom no other disposal would be proportionate and from whom the public require protection.

**7. How can we best ensure that sentences in the community achieve a balance between all five purposes of sentencing?**

The government should support and strengthen existing, effective measures for informed sentencing instead of introducing proposals which would limit judicial discretion and undermine public confidence.

The Sentencing Council already produce guidelines which set out sentence ranges reflecting different levels of seriousness and, within each range, a starting point for the sentence. The guidelines also provide guidance on factors the court should take into account that may mean a more or less severe sentence should be imposed. They provide a structured approach to determining the appropriate sentence while still allowing for judicial discretion. This allows judges and magistrates in different courts to be consistent in their approach to sentencing, providing greater clarity for victims, defendants and the public.

**Questions 8–14 – Electronic monitoring**

The Prison Reform Trust is a member of the Criminal Justice Alliance (CJA) and we endorse its response to questions 8 – 14. For some groups of offenders electronic monitoring (EM) can be used effectively to enable them to serve their sentences at home instead of in custody. EM offers a robust sanction while avoiding the disruptive effects of prison sentences, such as loss of housing and separation from family and friends, elements that increase the likelihood of desistance from crime and reduces their contact with other offenders. Equally, as the CJA highlights, “we must acknowledge the limitations of EM and recognise the limited research and evidence available on it. Most importantly, EM should not replace the vital human interaction and support needed for most offenders. With pressures on budgets this should not be seen as a cheap option – even if it enhances compliance in the short term, the overwhelming evidence shows more clearly that supportive relationships, family ties, employment, housing and stable finances make a real difference to people’s ability to steer clear of crime.”

We note recent concerns raised by the Chief Inspector of Probation about the management of electronically monitored curfews.<sup>19</sup> Inspectors were concerned that:

- curfews were often unrelated to the offence, and rarely part of a strategy to address offending behaviour;
- the number of cases where a thorough assessment had been completed before the individual was made subject to an electronically monitored curfew had decreased significantly;
- enforcement thresholds fall far short of what people have a right to expect, and should be more rigorous; and
- there were continuing inaccuracies in information conveyed by the courts to the probation service or electronic monitoring provider, which were serious enough to undermine the efficient management of cases.

The government should consider carefully the findings and recommendations of the report before it proceeds with plans to expand the use of EM. The Prison Reform Trust also recommends that the Ministry of Justice draws on learning from the work of the Lucy Faithful Foundation and the success of Circles UK in monitoring and supporting on release from custody those who have committed sexual offences.

## **15. Which offenders or offences could a new power to order the confiscation of assets most usefully be focused on?**

The confiscation of assets would be most usefully focussed on offenders involved in organised crime who make substantial profits from criminal activity. As the consultation highlights, under the Proceeds of Crime Act 2002 courts can already order the seizure of assets that are linked to the proceeds of crime.

We would have serious concerns about extending the use of the power to seize assets, whether as a sanction following the non-payment of a fine or as a punishment in itself. Many offenders are on low incomes, have high levels of debt and rely on benefits for support; the non-payment of a fine may not be wilful but as a result of the lack of ability to pay. The Legal Services Research Centre (LSRC) has highlighted some of the correlations between people who offend and wider social factors. They found that people who had been recently arrested were significantly more likely to report civil law problems concerning, for example, employment (10% v 5%), rented housing (11% v 3%), homelessness (13% v 1%), and

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<sup>19</sup> HMI Probation (2012), It's Complicated: the management of electronically monitored curfews, London: HMI Probation

money/debt (21% v 6%). They were also more likely to have themselves been victims of crime (38% v 20%).<sup>20</sup>

The Social Exclusion Unit's 2002 report, Reducing Re-offending by Ex-Prisoners,<sup>21</sup> recognises the importance of finance, debt and benefits as one of the nine social factors involved in promoting successful resettlement. Research has shown that 54% of prisoners (58 people) had a total household income of less than £10,000 per year before going to prison, compared to 21% of employees surveyed. 40% of prisoners (53 people) were unemployed before going to prison. In comparison, the head of the household in 3% of households in England and Wales was unemployed in 2001.<sup>22</sup>

The seizure of assets is likely to exacerbate the existing financial exclusion of many offenders, forcing them further into debt, making them easy prey for loan sharks and increasing the likelihood of their reoffending. Research by the Prison Reform Trust and UNLOCK found that people in prison were ten times more likely to have borrowed from a loan shark than the average UK household. A third of people in prison did not have a bank account and that more than half had been rejected for a bank loan.<sup>23</sup> Seizure of assets could also have a disproportionate impact on the families of offenders and the families of women offenders in particular. Many women offenders have children or are the primary carer for disabled or elderly dependents. Each year almost 18,000 children are separated from their mothers by imprisonment<sup>24</sup> and at least a fifth of mothers are lone parents before imprisonment, compared to around 9% of the general population.<sup>25</sup>

**16. How could the power to order the confiscation of assets be framed in order to ensure it applied equitably both to offenders with low-value assets and those with high-value assets?**

As we highlight in our answer to question 15, we have serious concerns about extending powers to seize assets from offenders other than those involved in organised crime who make substantial profits from criminal activity.

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<sup>20</sup> Pleasance, P., (2009b) Criminal Offending, Social and Financial Exclusion and Civil Legal Aid, London: Legal Services Research Centre

<sup>21</sup> Social Exclusion Unit (2002), Reducing Re-offending by Ex-Prisoner, London: Social Exclusion Unit

<sup>22</sup> Buck, A, Tan, T and Fisher, C, (2007) Putting Money Advice Where the Need is: Evaluating the Potential for Advice Provision in Different Outreach Locations, London: Legal Services Research Centre

<sup>23</sup>Bath, C & Edgar, K (2010), Time is Money, London: Prison Reform Trust and UNLOCK

<sup>24</sup> Wilks-Wiffen, S (2011), Voice of a Child, London: Howard League for Penal Reform

<sup>25</sup> Social Exclusion Unit (2002), Reducing Re-offending by Ex-Prisoner, London: Social Exclusion Unit

**17. What safeguards and provisions would an asset confiscation power need in order to deal with third-party property rights?**

Courts must be fully informed about family, dependents and others with third party property rights before exercising powers to confiscate.

**18. What would an appropriate sanction be for breach of an order for asset seizure?**

The high rate of financial exclusion among offenders, outlined above, is likely to make meeting the demands of the order difficult and increase the likelihood of breach. An additional financial penalty would, in many cases, be setting the offender up to fail. A custodial penalty would be disproportionate and come at significant cost to the state and taxpayer – the opposite intention of the original order. Increasing levels of supervision on a community order and translating monies outstanding into an unpaid work requirement would in many cases prove an effective option.

**19. How can compliance with community sentences be improved?**

Sentencing requirements should take into consideration the particular abilities and support needs of individual offenders to avoid unreasonable or unrealistic expectations being imposed without appropriate support and other reasonable adjustments also being put in place. Sentencers should require the identification and assessment of defendants with particular support needs in order that appropriate action can be taken during court proceedings. The government should provide better support and training for sentencers and probation staff on the reasons why people breach backed by an evidence-based approach taking into account the views and experiences of offenders.

According to the Ministry of Justice, it is the degree of offender engagement and the quality of the relationship that makes a difference with offenders and reduces reoffending.<sup>26</sup> By contrast, introducing additional punitive measures or harsh penalties for breach have been shown to have a very minimal effect.<sup>27</sup> Many offenders who breach often live difficult lives, characterized by violence at home, fear of rival gangs, drug and alcohol abuse, and increased instance of mental illness and learning disabilities. These problems can present

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<sup>26</sup> Ministry of Justice written evidence (ev167) to Justice Committee (2011), *The role of the probation service*, London: The Stationery Office

<sup>27</sup> Knight, T et al (2003), *Evaluation of the community sentences and withdrawal of benefits pilots*, London: DWP

severe obstacles to compliance with a court order. Making the order more onerous often simply sets offenders up to fail, as they had proved themselves unable to cope with an order of lower intensity.

The Justice Select Committee, in its report on the Role of the Probation Service, underlined the importance of the relationship between the offender and offender manager for successful compliance. It states: “Encouragement and personal concern can help people to recognise opportunities to change when they occur and boost motivation at times when offenders lose hope in the possibility of changing. Authority and challenge also have their place, but are most effective when the offender recognises the practitioner’s concern for them as a person and a belief in the possibility that they can change. Ex-offenders often speak of the value of a probation officer’s practical help in identifying and resolving obstacles to desistance, but especially emphasise the sense of personal interest and concern, of partnership and cooperation and even of a sense of loyalty and personal commitment to the probation officer that helped them to go straight.”<sup>28</sup>

In its report the Committee raised concerns about an “overly administrative approach” by the Probation Service to engaging with offenders. It cites evidence that in 2008 probation staff spent only 24% of their time in contact with offenders. Of the remainder, 41% of the time was spent engaged in computer activity and 35% in non-computer activity. The report calls on NOMS and individual probation trusts to “take steps to increase the proportion of their time that probation staff spend with offenders” and asked the MOJ and NOMS to “state explicitly whether they support this aspiration”.

The Prison Reform Trust is concerned that the proposed reforms to the probation service could further undermine the degree and quality of the relationship between the offender and offender manager. As we outline in our response to the probation review, proposals to compete the service would lead to massive personnel upheaval at a time when it is already under considerable strain. In addition, the proposed purchaser provider split could undermine the continuity of offender management and create additional bureaucratic obstacles for staff. The Probation Chiefs Association has recommended that the public sector retain the offender management role for all those who are subject to court orders and post-custody licences. This would overcome the problem and would provide the infrastructure for a cohesive service. It would also provide the continuity of supervision that is essential to offender engagement, aiding maturity and desistance from crime.

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<sup>28</sup> Justice Committee (2011), *The role of the probation service*, London: The Stationery Office

In addition, the Home Office evaluation of restorative justice<sup>29</sup> found high rates of completion by the offender (89% of agreements at least partially achieved). Sherman and Strang<sup>30</sup> concluded that one reason RJ achieves higher completion rates than court fines is that it adheres to the UN guidance that, “neither victim nor offender should be coerced, or induced by unfair means, to participate in the process or to accept the outcome”. The evidence suggests that expanding the use of RJ in community sanctions will increase compliance as well as public confidence.

## **20. Would a fixed penalty-type scheme for dealing with failure to comply with the requirements of a community order be likely to promote greater compliance?**

The Prison Reform Trust welcomes greater flexibility in dealing with breaches of community sentences. Under the current arrangements too many people are imprisoned, not for committing criminal or anti-social behaviour, but for failing to keep to the conditions of a previous court order. Data published for the calendar year 2009 show that 3,996 people were received into prison establishments in England and Wales for breach of a community sentence.<sup>31</sup> This is in spite of the fact that there is no evidence that tough enforcement is effective in reducing crime. Prison has a poor record at reducing reoffending with 47% of adults reconvicted within one year of being released, rising to 57% for those serving sentences of less than 12 months.<sup>32</sup>

The use of custody for breach of a community order has a disproportionate impact on vulnerable groups, such as women and children. In 2009, 1,052 women entered prison for breaching a court order. This represents 13% of all women entering prison under an immediate custodial sentence.<sup>33</sup>

The Prison Reform Trust welcomed the provision in the Legal Aid, Sentencing and Punishment of Offenders Act to allow a court increased flexibility in dealing with breaches of community sentences. It introduces the options of, where appropriate, taking no action and fining an offender in relation to a breach. We support the addition of the option of a fixed penalty fine where it has the potential to lead to fewer incidents of breach and with it the number of people being received into custody.

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<sup>29</sup> Shapland, J et al. (2007) Restorative Justice: The views of victims and offenders, Ministry of Justice Research Series 3/07, London: NOMS

<sup>30</sup> Smith Institute (2007) Restorative justice: the evidence, by Lawrence Sherman and Heather Strang, The Smith Institute: London

<sup>31</sup> Table 6.9, Offender Management Caseload Statistics 2009, Ministry of Justice

<sup>32</sup> Table 18a and 19, Ministry of Justice (2011) Proven Re-offending Statistics Quarterly Bulletin July 2009-June 2010, London: Ministry of Justice

<sup>33</sup> Table 6.9, Ministry of Justice (2010) Offender Management Caseload Statistics 2009, London: Ministry of Justice

We would, however, highlight the importance of taking into account the financial circumstances of the offender. As stated in our response to question 15, many offenders are on low incomes, have high levels of debt and rely on benefits for support. It would be counterproductive to impose a fine that the offender is unable to pay and that may reinforce their financial exclusion and likelihood of reoffending. Revolving Doors has highlighted a significant problem with fixed penalty fines. For offenders with multiple needs they represent “a significant financial penalty … the majority of people we interviewed would struggle to pay the fine in the 21 days. These fines may lead people to resort to crime as a means of getting the money to pay the fine. For many people this is the only way they know to get money in a short period of time… can be seen as a fast track into the criminal justice system for vulnerable people if used inappropriately.”<sup>34</sup>

We would also highlight concerns regarding the possible disproportionate impact of a fixed penalty scheme on offenders with learning disabilities and difficulties. It is generally accepted that between 5-10% of adult offenders have learning disabilities, although numbers are imprecise due to a lack of routine screening or assessment. Many people with learning disabilities have limited language ability, comprehension and communication skills, which might mean they have difficulty understanding and responding to questions, difficulty recalling information and take longer to process information.

In the absence of routine screening, the support needs of this group are often left unrecognised and unmet. A review of general offending behaviour programmes<sup>35</sup> in six probation areas found a mismatch between the literacy demands of the programme and the skill level of offenders, which was particularly significant in speaking and listening skills. Programmes are not generally accessible for offenders with an IQ below 80, and very few adapted programmes, such as the Adapted Sex Offender Treatment programme, exist.

The lack of routine screening or effective provision for people with learning disabilities means they are more likely to face difficulties meeting the requirements of community orders. This in turn makes them more likely to be subject to breach proceedings and, under the proposed new arrangements, could make them more liable to a fine. The support needs of individual offenders should be recognised and met so they are able to participate effectively in the programmes they are required to undertake. Provision should be made to

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<sup>34</sup> Pratt, E. and Jones, S. (2009) Hand to mouth: The impact of poverty and financial exclusion on adults with multiple needs, London: Revolving Doors.

<sup>35</sup> These were: Think First, Enhanced Thinking Skills and Reasoning and Rehabilitation

ensure the impact of an offender's learning disabilities or difficulties on their ability to meet the requirements of an order is taken into account before action is taken against them.

**21. Would a fixed penalty-type scheme for dealing with failure to comply with the requirements of a community order be appropriate for administration by offender managers?**

We share concerns raised by the Magistrates' Association in its response to the consultation regarding this proposal that "the supervising officer, having issued a fixed penalty would then have to motivate the offender to pay it, alongside all the other things they are trying to achieve with the offender. It is doubtful if it would be conducive to a constructive and productive relationship."

As an alternative, the Magistrates Association outlines a number of more cost effective and quicker options than the current procedure of a summons to the court. One is for a single sentencer to deal with cases on probation premises using a menu of sanctions for a first breach. Another is for more discretion to be given to probation officers but within the parameters set by the court – and working alongside sentencers to review the progress of offenders. Sanctions would be fixed in advance by the court so probation's discretion was limited to whether they decided to use the power and if so to choose the most appropriate one. A prescribed limited set of fixed penalties could include X hours of unpaid work, a specified activity of Y days, or an attendance centre for Z days as well as a financial penalty. This way a breach could be recorded and a sanction imposed so that if the order is to continue there is the shortest possible delay.

**22. What practical issues do we need to consider further in respect of a fixed penalty-type scheme for dealing with compliance with community order requirements?**

See answers to questions 20 and 21.

**23. How can pre-sentence report writers be supported to advise courts on the use of fines and other non-community order disposals?**

In part this is a matter of prioritising report writing by probation to make sure that the courts receive the clear, timely information they need prior to making sentencing decisions. In par

things could be improved by ensuring that good quality training in report writing is widely available.

**24. How else could more flexible use of fines alongside, or instead of, community orders be encouraged?**

The Prison Reform Trust is a member of the Criminal Justice Alliance and we endorse its response to question 24:

If implemented with regard to people's ability to pay and their circumstances, then fines can often provide a proportionate and sensible response to the offending behaviour. We agree there is no reason why courts should not consider imposing a high-value fine rather than – or as well as – a community order.

In order to encourage the use of fines the CJA feels strongly that magistrates must build up a greater degree of confidence in them. A report prepared by the Magistrates' Association declared that they feel there is a real step down between community penalties and fines. They also felt that by imposing a fine rather than a more obvious punitive sentence the system may be seen to be bringing in one law for the rich etc. which cannot generally be justified. It must be demonstrated to them that fines should be seen as being on the same level as many community orders.

Research has shown that sentencers have avoided the use of fines in the past due to the problem of collection. Many people who appear before the magistrates courts are serial offenders, who come back to court every few months for a variety of minor offences and have rarely cleared one fine before the next is imposed. To assist in this, periodic court reviews could be instigated which would hopefully avoid offenders suddenly stopping their payments and subsequently finding themselves at a Fines Enforcement Court. Whilst we currently have Fines Enforcement Officers a better system might be to introduce regular review courts in much the same way as the currently piloted Community Courts.

Fines are entirely punitive, and therefore there may be occasions when sentencers feel that the best way to stop someone offending would be to provide them with support from the Probation Service. The CJA believes that, although this may produce positive results, there is evidence that there are occasions where issuing a

positive intervention for rehabilitative reasons actually produces negative results and a fine would have been a more productive sentence.

## **25. How can we better incentivise offenders to give accurate information about their financial circumstances to the courts in a timely manner?**

It is important that the financial circumstances of an offender are taken into account by the court when a financial penalty is being considered. In order to incentivise offenders, the provision of accurate and timely information could count towards mitigation in sentencing. Offenders should be told of the possibility of obtaining free, independent information and advice from Citizens Advice or Shelter for example. The court should be careful not to penalise offenders with mental health needs or learning disabilities and difficulties who may not be in a position to make an assessment of their own financial capability. As we outline in our answer to question 6, sentencers should recognise and state the need to identify when a person has a mental health need or learning disabilities in order that appropriate action can be taken.

## **26. How can we establish a better evidence base for pre-sentence RJ?**

Whilst the government's commitment to further study is welcome, we believe that there is already strong evidence that pre-sentence restorative justice is effective. Half the cases in the Home Office and Ministry of Justice's seven-year restorative justice research trials took place pre-sentence. The research showed that, for adult offenders and serious offences (robbery, burglary and violent offences):

- The majority of victims chose to participate in a face to face meeting with the offender, when offered by a trained restorative justice facilitator;
- 85% of victims said they were satisfied with the process;
- Participation in restorative justice, pre- or post-sentence, reduced the frequency of re-offending by 14%. <sup>36</sup>

Victim Support and the Restorative Justice Council have estimated that using restorative justice pre-sentence, with 70,000 adult offenders convicted of burglary, robbery and violence, would produce cost-savings to the Criminal Justice System of £185 million from reductions in re-offending alone.

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<sup>36</sup> Breaking the Cycle Evidence Report, Ministry of Justice (December 2010)

During the research trials, restorative justice was offered to victims where offenders pleaded guilty at first appearance in the Crown Courts in London, for offences of burglary, robbery and violence. Victims participating in the trials said that restorative justice was offered to them at “about the right time”. The judges liked pre-sentence restorative justice as they were able to factor the report from the restorative process into their sentencing decision, including evidence whether or not the offender was remorseful and prepared to make amends.

As the Restorative Justice Council highlights in its response to the consultation, restorative justice is offered pre-sentence in a number of jurisdictions internationally. In Northern Ireland, restorative youth conferences take place both as an alternative to prosecution and by order of the Court following conviction for an offence.<sup>37</sup> As a fully integrated part of the youth justice system, a conference is held with the young person, an appropriate adult, a police officer and the youth conference co-ordinator. A victim attended 70% of conferences in 2010-11 with 100% of victims reporting satisfaction with the process.<sup>38</sup> At the conference the participants agree a plan of activities, restrictions and reparation which is submitted to the court for approval, amendment or rejection. The Independent Commission on Youth Crime and Antisocial Behaviour recommended that a youth conferencing service, based on the Northern Ireland model, becomes the centrepiece of responses to offences committed by young people in England and Wales.

In addition, polling evidence suggests that increased use of restorative justice has the potential to increase rates of the public confidence in the criminal justice system. In the aftermath of the recent disturbances, the Prison Reform Trust commissioned ICM to conduct a public opinion poll which would elicit people’s views on dealing with theft and vandalism and effective ways to prevent crime and disorder. ICM interviewed a random sample of 1,000 adults. An overwhelming majority of respondents (94%) agreed that people who have committed offences such as theft or vandalism should be required to do unpaid work in the community as part of their sentence to pay back for what they have done. Nearly nine out of ten people (88%) believed that victims of theft or vandalism should be given the opportunity to inform offenders of the harm and distress they have caused. Almost three quarters (71%) believed victims should have a say in how the offender can best make amends for the harm they have caused.

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<sup>37</sup> Gibbs, P & Jacobson, J (2009), *Making Amends*, London: Prison Reform Trust  
<sup>38</sup> Youth Justice Agency (2011) Annual Report 2010-11, Belfast: YJA

**27. What are the benefits and risks of pre-sentence RJ?**

**28. How can we look to mitigate any risks and maximise any benefits of pre-sentence RJ?**

We believe it is appropriate to answer questions 27 and 28 together. It is our view that offering restorative justice to victims pre-sentence would bring the following benefits:

- The potential to improve victim satisfaction and public confidence in the justice system;
- The Ministry of Justice-commissioned Shapland research suggested that offenders who said they particularly wanted to meet their victim at a conference were less likely to be re-convicted and had lower frequency and cost of reconvictions;
- The research suggests victims feel that this is a good point after the crime for restorative justice to take place;
- Pre-sentence restorative justice has the support of the judiciary because it provides additional information to better inform their sentencing decision.

Any potential risks can be mitigated by the following:

- The final decision regarding the appropriate sentence should remain with the judge;
- Restorative justice must always remain voluntary for the victims of crime; offenders are only offered this process once they have pleaded guilty;
- The process can only then go ahead if a trained facilitator has assessed all potential participants and the process can be managed safely;
- For victims for whom the pre-sentence point is too early in their recovery from the crime – but who might wish to participate in restorative justice later on – restorative justice can be made a specified activity requirement of a community sentence.

To support effective delivery of pre-sentence restorative justice, the courts and the Sentencing Council, along with the Restorative Justice Council, will need to:

- Provide information and guidance to the Courts on which cases might be most suitable for restorative justice (and therefore be suitable for remanding so that the offer be made). In particular, offences with identifiable personal victims, where the offender has pleaded guilty, should be remanded for this purpose;
- Make clear that the offer of restorative justice to victims (and offenders) must be made by properly trained and accredited practitioners, as this leads to the highest levels of victim confidence, take up and satisfaction with the process;

- Provide guidance to restorative justice services on what information should be recorded and go back to the Court about the restorative justice process (and what should be kept confidential to the participants);
- Provide guidance on how the Court might weigh the information received about the restorative process along with other factors in making sentencing decisions.

## **29. Is there more we can do to strengthen and support the role of victims in RJ?**

The role of victims is crucial to the success of restorative justice. Victims' participation must always be voluntary and made with informed consent. Provision should be made to ensure that they are supported by trained professionals at every stage of the process. While for some victims the pre-sentence point may be too early in their recovery from the crime, they might wish to participate in restorative justice at a later stage. Therefore, restorative justice should be available as an option for victims at all stages of the process, including the pre- and post-sentence stage. A Victim Support survey found that, while a number of victims of crime would have been prepared to engage in a restorative process, only 1% had had the opportunity to do so.

Practitioners should work to the National Occupational Standards (2010) and Restorative Justice Council Best Practice Guidance (2011). These are the foundation of quality standards in restorative practice and form the basis for national occupational standards and accreditation of restorative practitioners, as well as underpinning the standards for training as set out in the RJC's Trainers Code of Practice. The Best Practice Guidance (2011) is endorsed by the Ministry of Justice and Victim Support. Maintaining and enforcing these standards is the best way of ensuring the safety of victims in restorative justice.

## **30. Are there existing practices for victim engagement in RJ that we can learn from?**

Experience from Northern Ireland and the government's own research shows that good, professional practice combined with well-trained and supported facilitators are important to the success of victims' engagement and confidence in the restorative justice process.<sup>39</sup>

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<sup>39</sup> Breaking the Cycle Evidence Report, Ministry of Justice (December 2010)

### **31. Are these the right approaches? What more can we do to help enable areas to build capacity and capability for restorative justice at local levels?**

The Prison Reform Trust, the Restorative Justice Council and the Criminal Justice Alliance advocate the need for a robust legislative framework to ensure victims have the opportunity of access to a restorative approach at each stage of the criminal justice process, including pre-sentence. We support the government's strategy to develop the use of RJ as part of a community sentence and for people who receive a prison sentence. The government voiced its commitment to pre-sentence restorative justice in *Breaking the Cycle* and its victims' consultation has promised a "step-change in restorative justice". The community sentence review further promises to build capacity and capability for restorative justice.

We believe legislation would reinforce the government's commitment to integrate restorative justice with sentencing and the criminal justice process as a whole. Without being unnecessarily prescriptive and taking into account available resources, it would provide sufficient leverage at the local level to increase capacity and capability for restorative justice. The Prison Reform Trust, the Restorative Justice Council and the Criminal Justice Alliance are currently working on a draft legislative framework for restorative justice, which we will provide for consideration by ministers and officials.

Despite its welcome commitment to making more use of RJ, the government has so far resisted the possibility of legislating for restorative justice. The consultation states that "whilst we are committed to making more use of RJ, we do not want to do so in a way that is over prescriptive or places unnecessary restrictions or burdens upon the system." In the Parliamentary debate on the Legal Aid, Sentencing and Punishment of Offenders Bill, the Parliamentary Under-Secretary of State at the Ministry of Justice, Crispin Blunt MP highlighted three key reasons why the government was opposed to legislation:

- The government's commitment to localism
- The view that the development of restorative justice in criminal justice requires culture change, rather than legislation
- The lack of resources available to support delivery of a legislative requirement to offer restorative justice to victims.

Taking these points and issues in turn, we would stress that:

- While legislation exists to allow restorative justice to be part of a community sentence, its current use is confined to Thames Valley and a couple of other areas.

Pre-sentence RJ, although technically possible under existing legislation, has not once taken place since the Metropolitan Police restorative justice trials closed, eight years ago in 2004. It is therefore extremely unlikely to develop further without a clear statutory basis and guidance to sentencers as to how to take restorative justice into consideration in sentencing;

- A power to offer restorative justice to victims at the earliest possible opportunity, when the offender pleads guilty to an offence, would extend access to restorative justice to all victims of crime. The current postcode lottery would be overcome, but localism would be maintained through allowing local areas to build on existing partnerships and arrangements to deliver restorative justice;
- We would argue that culture change is often brought about and can be encouraged through legislation, rather than legislation following culture change. Legislation would strongly signal to the public, the judiciary, and victims themselves the government's seriousness of intent to ensure that restorative justice should be integral, not an add-on, to justice;
- We recognise the resource constraints, and that the training the government has provided in NOMS will roll out over three years. Legislation could be worded to ensure the Court only remands for referral to restorative justice where capacity to deliver restorative justice already exists.

### **Restorative justice post-sentence**

We welcome the recognition in the consultation of the potential to increase capacity and capability for restorative justice post-sentence. A robust legislative framework would ensure victims have the opportunity of access to a restorative approach at each stage of the criminal justice process, including pre- and post-sentence. The government has invested in training and the development of guidance materials for NOMS, and restorative justice now features in both the NOMS commissioning framework and the new proposed Victims Code. These will both help to drive the development of provision post-sentence.

In addition, to support these measures, we endorse the recommendations the Restorative Justice Council made in its response to the consultation:

- The need for specific guidance to governors on the provision of restorative justice in custody;
- Following the example of Belgium, explore the potential for the use of restorative justice pre-release, as part of/alongside parole decisions;

- Specific training/awareness raising for both probation areas and magistrates/sentencers on the potential for the use of existing legislation – the CJ Act 2003 – to deliver restorative justice post-sentence in the community;
- Continued support for practitioner accreditation and registration with RJC – whether practitioners are working in the voluntary, statutory or private sector – so as to maintain the safety of all participants in the process, as well as public and commissioner confidence in restorative justice.

There is much greater scope for expanding restorative justice in prisons, as well as in the community. First, prisons can do more to facilitate restorative work with crime victims. Currently, only about 1% of victims of adult offenders have a chance of benefitting from restorative justice. Programmes such as SORI in HMP Cardiff facilitate dialogue between victims and prisoners so they can learn more about the impact of crime. Victim-offender mediation is more ad hoc, but when led by an experienced mediator can help the victim to resolve enduring problems arising from their victimisation.

The second strand open to further development is the use of restorative practices in the management of prisons. A few prisons have experimented with mediation as a response to racist incidents, or restorative conferences following fights between prisoners. But these initiatives have not had a widespread influence on the way prisons are run. Restorative practices have proven benefits in resolving conflicts, restoring victims and raising the awareness of offenders of the full consequences of their actions. Thus, challenges which are central to running prisons - working through conflicts, addressing harm, and fostering personal responsibility – should be tackled using restorative practices.<sup>40</sup>

### **32. What more can we do to boost a cultural change for RJ?**

There is already strong public, judicial and victim support for restorative justice. What is needed is strong political leadership and direction from government to achieve a “step change” in its use. As we suggest in our answer to question 31, culture change is often brought about, and can be encouraged through, legislation, rather than legislation following culture change. Legislation would strongly signal to the public, the judiciary, and victims themselves the government’s seriousness of intent to ensure that restorative justice should be integral, not an add-on, to justice.

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<sup>40</sup> See Newell T & Edgar K (2006), Restorative Justice in Prison: A guide to making it happen, Waterside Press.

### **36. How else could our proposals on community sentences help the particular needs of women offenders?**

Baroness Corston recommended that “community provision for nonviolent women offenders should be the norm”.<sup>41</sup> The community sentences consultation is an opportunity to put this recommendation into effect. We welcome the government’s recognition in the consultation that women offenders tend to have multiple problems relating to their offending, including mental health and substance misuse problems, as well as education, employment and relationship needs. The consultation highlights the importance of ensuring that community sentences “support women in addressing their needs as part of the rehabilitation process.” It emphasises the need for “decent non-penal options for offenders with caring responsibilities” and opportunities for women to complete community payback orders in appropriate settings.

Effective community provision can have a beneficial impact on women and their offending behaviour and has the support and confidence of the public. An ICM public opinion poll commissioned by SmartJustice in 2007 found that, of 1,006 respondents across the UK, 86% supported the development of local centres for women to address the causes of their reoffending. Over two thirds (67%) said that prison was not likely to reduce reoffending.<sup>42</sup> Despite this, as the consultation highlights, women are less likely than their male counterparts to receive a community sentence despite women achieving more positive outcomes and better rates of compliance and reconviction than men. In 2010, just 10% of women received a community sentence compared to 16% of men.<sup>43</sup>

Over the last 15 years, there has been a 114 per cent increase in women’s prison numbers.<sup>44</sup> Most women serve short sentences for non-violent crime and for those serving less than 12 months, almost two thirds are reconvicted within a year of release. In 2009 two thirds of all women sentenced to custody were serving sentences of six months or less.<sup>45</sup> Over a third are serving sentences for theft and handling stolen goods.<sup>46</sup> Many women offenders have themselves been victims of serious crime, domestic violence and sustained abuse. Despite representing just 5% of the total prison population, in 2010 women accounted for 47% of all incidents of self-harm in prison.<sup>47</sup>

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<sup>41</sup> Corston, J (2007) The Corston Report: A report by Baroness Corston of a review of women with particular vulnerabilities in the criminal justice system, London: Home Office

<sup>42</sup> SmartJustice (2007), Public say: stop locking up so many women, London: Prison Reform Trust

<sup>43</sup> Ministry of Justice (2012) Punishment and Reform: effective community sentences, London: Ministry of Justice

<sup>44</sup> Table A1.2, Ministry of Justice (2011) Offender Management Caseload Statistics 2010, London: Ministry of Justice

<sup>45</sup> Table 6.1, Ministry of Justice (2010) Offender Management Caseload Statistics 2009, London Ministry of Justice

<sup>46</sup> Ibid.

<sup>47</sup> Table 1, Ministry of Justice (2011) Safety in Custody Statistics 2010, London: Ministry of Justice

Many women offenders have children or are the primary carer for disabled or elderly dependents. Each year almost 18,000 children are separated from their mothers by imprisonment.<sup>48</sup> Just 5% stay in their own homes when their mum goes to jail. Imprisonment will cause a third of women to lose their homes, reducing future chances of employment and shattering family ties.<sup>49</sup> Women's custody is not only ineffective in many cases; it is also expensive. The average cost of a women's prison place is £56,415 a year.<sup>50</sup> By contrast, an intensive community order or a women's centre placement costs less than £15,000.

The Women's Justice Taskforce was established in 2010 by the Prison Reform Trust, supported by the Bromley Trust, to map out for policy-makers the most effective structure and mechanism for prioritising vulnerable women in the justice system. Chaired by Fiona Cannon OBE, Diversity and Inclusion Director at Lloyds Banking Group, Taskforce members include senior representatives from the Magistrates' Association, the Association of Chief Police Officers, probation, prisons, women's centres, politics, business, the media and former offenders.

The Taskforce report, *Reforming Women's Justice* (2011),<sup>51</sup> includes an economic analysis by Dr James Robertson, former chief economist at the National Audit Office. It demonstrates that there is "an overall net advantage for society from community based intervention for women offenders, compared to custodial sentences." Recognising that many of the solutions to women's offending lie outside of the justice system, the report calls for a cross-government strategy for women's justice with accountability built into relevant roles within government departments and local authorities.

The government has committed to developing a strategy for women's justice which it will publish as a live document on the Ministry of Justice website. It has promised £3.5m funding for 30 Women's Community Services in 2012/2013; to develop four women-only intensive, treatment-based alternatives to custody to tackle drug and mental health problems; and improved training for staff who work with women offenders who are victims of domestic violence or involved in sex work. It states that "responsibility for providing gender specific and holistic services" will be "built into the fabric of every probation trust as part of comprehensive service delivery." In addition, the equality impact assessment acknowledges concern was raised during the 'Breaking the Cycle' consultation that the seizure of assets

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<sup>48</sup> Wilks-Wiffen, S (2011), *Voice of a Child*, London: Howard League for Penal Reform

<sup>49</sup> Wedderburn, D. (2000) *Justice for Women: The Need for Reform*, London: Prison Reform Trust

<sup>50</sup> Hansard HC, 4 April 2011, c642w

<sup>51</sup> Women's Justice Taskforce (2011), *Reforming Women's Justice*, London: Prison Reform Trust

could have a differential impact on families of women offenders, many of whom may be the sole carer of dependant children.

While we welcome these commitments we believe the government could do more to prioritise women's community provision. The Taskforce made the following recommendations which are relevant to the consultation:

- Community-based services for women offenders should be funded through a mainstream national offender management service commissioning round for women, integrated with health and local authority support. This would place provision on a sustainable basis and enable services to secure the confidence of sentencers as viable alternatives to custody.
- The new national network of mental health and learning disability diversion schemes in police stations and courts should take account of the particular needs of women.
- Professional training for staff in criminal justice agencies including police, probation, Parole Board, judiciary and court services, should include specific material on women's offending and effective ways to reduce it.
- The government should ensure that the new health and wellbeing boards, probation trusts, local police authorities and forthcoming police and crime commissioners work effectively within national commissioning arrangements to enable a more coordinated, multi-disciplinary approach to working with women who offend, informed by gender equality guidance.
- The Ministry of Justice should take account of the particular needs and characteristics of women as it develops the payment by results model.
- The Ministry of Justice should expand the justice reinvestment pathfinder initiative pilots to include adult women. These should be piloted in three high custody areas, London, Greater Manchester and the West Midlands.
- As with youth justice, the government should explore giving an additional freedom to local authorities to oversee pooled criminal justice and community safety budgets for women offenders, including the cost of commissioning prison places.
- Based on a review of the women's prison estate, the closure of a women's prison should be accelerated and the money reinvested to support services for women offenders and vulnerable women in the community.
- Women's community provision should be developed beyond the 45 voluntary organisations that were originally supported to improve availability across the country. New services should be prioritised for London, Greater Manchester, and West Midlands given the current limited provision in these areas.

- Women's services should be an integral part of all future reducing reoffending contracts. Providers should develop interventions tailored to the needs of vulnerable women, either directly or through the sub-contracting of specific women's services.
- Further research needs to be undertaken on the effectiveness of women's community provision. Voluntary and statutory research funders should seek proposals to evaluate the impact and cost-effectiveness of the different models of work with women in the community.
- The Ministry of Justice should develop a clear set of evaluation tools to enable women's centres to demonstrate outcomes.

### **37. What is the practitioner view of implementing enforced sobriety requirements?**

The Prison Reform Trust is a member of the Criminal Justice Alliance (CJA) and we draw substantially on its submission for answers to questions 37 – 40. We agree with the CJA that sobriety orders should be seen as a priority for tackling the alcohol misuse issues of offenders. Existing community orders and programmes for tackling alcohol misuse are in vital need of increased attention. The introduction of a new and untested order could detract from these services and potentially lead to net widening, high levels of breach, and therefore higher custody rates.

Currently alcohol services are in short supply in the community. Research by the Centre for Mental Health, the Centre for Crime and Justice Studies<sup>52</sup> and the National Audit Office highlight particular concerns over the availability of the Alcohol Treatment Requirement. Roughly 3% of all community orders involve this requirement. This is despite a far higher percentage of offenders having an alcohol misuse problem. These programmes seek to deal with the reasons for the alcohol misuse, why it led to offending behaviour and how to help the individual address the problem.

The CJA, Addaction and Alcohol Concern have argued that targeting the right individuals and ensuring that adequate community services that address the underlying causes of drinking will be important as these orders will not be able to tackle the problem of alcohol misuse and offending on their own. They also expressed apprehension that the new focus on abstention could take attention away from counselling and therapy and possibly be used to deal solely with alcoholics and not those who have committed offences.<sup>53</sup>

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<sup>52</sup> Mair, G. and Mills, H. (2009) The Community Order and the Suspended Sentence Order Three Years On: The Views and Experiences of Probation Officers and Offenders, London: Centre for Crime and Justice Studies.

<sup>53</sup> CJA (2012), CJA Briefing Note: Sobriety Orders, London: CJA

The chief executive of Alcohol Concern Eric Appleby has expressed concern about the limitations of an abstinence approach to tackling alcohol misuse. Commenting on the sobriety scheme to be piloted in London, he said: "I think it's a populist measure; the important thing about this is that it shouldn't just be seen as a punitive measure. The use of the testing must be part of a wider regime to actually help the person address their drinking as a process of rehabilitation. Just simply to stop them drinking is not going to help anyone much."

### **38. Who would compulsory sobriety be appropriate for?**

Evidence from America suggests that enforced sobriety appears to have the greatest impact on individuals who have committed several incidents of drunken driving. There is no research evidence available which demonstrates its likely success with other groups of offenders. Furthermore, the government's own research suggests that plans to introduce sobriety orders for individuals involved in violent offending, or those in urban centres on binges, may not prove successful. A Home Office analysis of the alcohol arrest referral scheme found that the majority of those arrested within the night-time economy are not prolific offenders<sup>54</sup>. According to the report, its findings "raises questions about whether an offender-centred approach is the most effective way of tackling night-time economy-related crime and disorder if this is not a prolific group of offenders."

We are concerned that the planned pilot of enforced sobriety requirements to be held in Strathclyde no longer appears to be going ahead, as this would have provided valuable evidence on the likely impact of the scheme. Further research is needed on its potential effectiveness before further resources are committed.

### **39. Are enforced sobriety requirements appropriate for use in domestic violence offences?**

The CJA highlights concerns raised by practitioners that use of the requirement could increase domestic offending. By preventing a partner socialising the order could in fact lead to further aggressive behaviour which would be directed at those around them, namely their partners. For this reason we agree with the CJA that "sobriety orders should be used for

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<sup>54</sup> <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/horr60?view=Binary>

those involved in domestic violence and certainly not unless attached to other interventions and programmes that address deeper behavioural issues.”

**40. What additional provisions might need to be in place to support the delivery of enforced sobriety requirements?**

We share the concerns of the CJA and others about the limitations of the requirement as a standalone device for tackling problems of alcohol misuse. The use of testing must be part of a wider regime to help the person address their drinking as a process of rehabilitation. Existing community orders and programmes for tackling alcohol misuse are under-utilized and far more could be done to promote and support their use.

**41. What other areas could be considered to tackle alcohol-related offending by those who misuse alcohol but are not dependent drinkers?**

There are positive examples of use of police discretion in dealing with hazardous drinkers and public health measures on which to draw. Some are cited in the Justice Committee report on Justice Re-investment.<sup>55</sup>

**Questions 42 – 45 – Equality impact assessment**

Each element of any community order needs to be scrutinised in relation to its impact on any of those with protected characteristics. Throughout this consultation response we have tried to indicate where adverse equality impacts can be mitigated and opportunities taken to promote equality of opportunity. For example, in taking proper account of the needs of primary carers.

**Young adults**

The proposals are likely to have a disproportionate impact on young adults (18 – 24 year olds), which could either be positive or negative depending on how the proposals are developed. We welcome the proposal in Paragraph 31 that the Ministry of Justice will build on the good work of the Intensive Alternative to Custody pilots by making them available to courts in every area. As we outline in our answer to question 2, we believe that the intensive alternative to custody (IAC) pilots in Greater Manchester and West Yorkshire have

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<sup>55</sup> Justice Committee (2009), *Cutting crime: the case for justice reinvestment*, London: The Stationery Office

demonstrated the value of focussing these orders on young adult offenders. While the Ministry of Justice has not yet completed the impact evaluation of the IACs, the early indications are that re-offending rates in these two areas are significantly lower and many of the young men engaged have been helped into education, training and employment, which is widely-acknowledged as being crucial to successful rehabilitation.

However, the potentially positive impact of the proposals on this age group could be offset by the recommendation that every community order should contain a punitive element. As the equality impact assessment highlights, the younger age groups are more likely than other age groups to have their community order terminated for negative reasons. For example, the rate for those aged 18-20 was 33% compared to 7% for those aged 60 and over. Loading extra punitive requirements onto community orders, such as extended curfews or other complex, additional restrictions are almost bound to lead to an increase in breach of license requirements, particularly by young people.

The potentially adverse equality impacts of the proposals on young adults could be mitigated by the following:

- Introducing a robust community sentence, tailored to the specific needs of this age group – this could take the form of the intensive alternative to custody (IAC) successfully piloted in Manchester and West Yorkshire supervised by the Probation Service (see answer to question 2).
- Focus on effective and proven measures for improving compliance with community orders
- Avoid loading extra punitive requirements onto community orders, such as extended curfews or other complex, additional restrictions
- Diverting first-time and low-level offenders out of the criminal justice system through the use of a restorative pre-court disposal similar to the Youth Restorative Disposal.
- Expanding the age-remit of youth offending teams (YOTs) to include 18-20 year-olds – this would enable the complex needs and challenges of this age group to be more effectively addressed through the multi-agency structure of YOTs.
- Developing sentencing guidelines specific to young adults – in recognition of their age, maturity, intellectual and emotional capacity. We welcome the recent recognition of immaturity as a mitigating factor in sentencing guidelines.
- Establishing specialist services for young adults both in the community and in prison that reduce alcohol and drug misuse as drivers to crime.

- Ensuring that the new diversion and liaison schemes at police stations and courts are equipped to respond to the particular needs of young men and young women with mental health problems or learning disabilities.

### **Black and minority ethnic groups**

The consultation makes no mention of the needs of offenders from black and ethnic minority backgrounds. This is despite the acknowledgement in the equality impact assessment that this group could be affected disproportionately by the proposals. For instance, the assessment shows that offenders in the mixed, white and black ethnic groups are more likely than other ethnic groups to have their community order terminated for negative reasons (Table 34, Annex A). As a result they may be disproportionately affected by the proposal that every order should contain a punitive element, resulting in higher rates of breach and custody for this group.

A higher proportion of BME offenders were in the lowest household income band, compared to offenders in the White ethnic group. For example, 48% of BME offenders had a household income of less than £5,000 compared to 39% of white offenders. (Table 37, Annex A). As a result they may be disproportionately affected by proposals to increase the financial reparation made by offenders through greater use of fines, compensation orders and asset seizures.

The assessment also indicates that BME groups make up a higher proportion of offenders commencing mental health treatment requirements than any other community order requirement. Mental health and learning disability services already struggle to address the specific needs of people from BME communities.

The potentially adverse equality impacts of the proposals on BME groups could be mitigated by the following:

- Focus on effective and proven measures for improving compliance with community orders;
- Avoid loading extra punitive requirements onto community orders, such as extended curfews or other complex, additional restrictions;
- Sentencers should be required to take into account the offender's ability to pay and impact on their families when considering imposing a financial penalty;

- Provision should be made to ensure courts are provided with accurate information on offender's financial means;
- Services involved in the delivery of treatment requirements or other elements of the community sentence should be properly resourced to support the needs of offenders from BME communities.

## **Women**

See answer to question 36

### **Mental health needs and learning disabilities and difficulties**

The government's proposals have the potential to have both positive and negative impacts on this group, depending on how they are implemented. The Intensive Alternative to Custody (IAC) focus on tailored interventions and enhanced monitoring has the potential to make this sentence especially relevant for offenders with particular support needs; for example, offenders with mental health problems, learning disabilities (and low levels of IQ) and other learning, developmental and behavioural disorders such as autism, attention deficit hyperactive disorder, communication difficulties and dyslexia. Opportunities for IAC should be an option for all offenders, including those with disabilities and other impairments. Tailored interventions should therefore take into account personal support needs and other reasonable adjustments, as required under Equalities law.

The equality impact assessment acknowledges concerns about the potential for negative impacts on people with a learning disability. As the assessment highlights, they "may require increased support to enable them to meet the terms of any community order and the focus should be on ensuring that the additional support is available. This may also be the case for people with mental health, physical or sensory disabilities. Any increase in the use of Community Payback also has the potential to impact on disabled people. Work placements should meet the requirements of people with disabilities. MoJ will consider these issues as it develops these proposals."

High numbers of people who offend have particular support needs, which, if left unmet, might affect their ability to understand and fulfil the requirements of a community sentence. Conditions likely to make support necessary include mental health problems, learning disabilities (and low levels of IQ), and other learning, developmental and behavioural disorders such as autism, attention deficit hyperactive disorder, communication difficulties

and dyslexia. It is important that the particular needs of these offenders are both recognised and met so that community orders can be appropriately tailored to their abilities, and that personalised support and other reasonable adjustments, as required under Equalities law, are put in place. Loading extra punitive requirements onto community orders, such as extended curfews or other complex, additional restrictions are almost bound to lead to an increase in breach of license requirements, particularly for those offenders whose support needs are left unrecognised and unmet.

The consultation paper also does not address the needs of offenders with dual diagnosis in its discussions of alcohol requirements. In the Bradley Report, this group of offenders were identified as being at a particular disadvantage as services are often not designed to support co-occurring substance misuse and mental health conditions. Instead they are often excluded from mental health and substance misuse services and end up falling through the gaps. Given the prevalence of dual diagnosis in the criminal justice system, it is important that effective community services are designed for this group.

The potentially adverse equality impacts of the proposals on people with mental health needs and learning disabilities and difficulties could be mitigated by the following:

- Sentencers should enforce the identification of defendants with particular support needs in order that appropriate action can be taken during court proceedings. For some offenders this might mean diversion away from the criminal justice system and into healthcare. However, for most, it will mean ensuring special measures and other reasonable adjustments, as required under Equalities law, to ensure effective participation in court proceedings, and informed sentencing;
- Sentencing requirements should take into consideration the particular abilities and support needs of individual offenders to avoid unreasonable or unrealistic expectations being imposed without appropriate support and other reasonable adjustments also being put in place;
- Given the prevalence of dual diagnosis in the criminal justice system, effective community services should be designed for this group.

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