

**Response to ‘Breaking the Cycle:
Effective Punishment, Rehabilitation
and Sentencing of Offenders’**

March 2011

About the Criminal Justice Alliance

The Criminal Justice Alliance (CJA) is a coalition of 54 organisations - including campaigning charities, voluntary sector service providers, research institutions, staff associations and trade unions - involved in policy and practice across the criminal justice system. The CJA's current member organisations are: Action for Prisoners' Families; Adullam Homes Housing Association; the Apex Charitable Trust; the Association of Black Probation Officers; the Association of Members of Independent Monitoring Boards; Bindman and Partners; Birth Companions; Catch22; the Centre for Crime and Justice Studies; the Centre for Mental Health; Chance UK; the Children's Society; the Churches' Criminal Justice Forum; Circles UK; Clean Break; Clinks; DrugScope; the Fawcett Society; the Griffins Society; Gwalia Care and Support; Hafal; INQUEST; the Institute for Criminal Policy Research; JUSTICE; Leap; Nacro; the National Appropriate Adult Network; the New Bridge Foundation; Pact; Penal Reform International; the Police Foundation; the Prison Officers' Association; the Prison Reform Trust; Prisoners Abroad; Prisoners' Advice Service; the Prisoners Education Trust; the Prisoners Families and Friends Service; the Public and Commercial Services Union; the Quaker Crime, Community and Justice Group; RAPT; Release; the Restorative Justice Council; Rethink; Revolving Doors Agency; the RSA Prison Learning Network; SOVA; the St Giles Trust; Transform Drug Policy Foundation; UNLOCK; Women in Prison; Women's Breakout; Working Chance; the Young Foundation; and Young Minds.¹ The Criminal Justice Alliance works to establish a fairer and more effective criminal justice system.

Introduction

The CJA is pleased to have the opportunity to respond to this consultation. We support, overall, the proposals set out in 'Breaking the Cycle', and believe that they put forward a welcome agenda for positive reform. In particular, we are pleased to see an emphasis on rehabilitation through the increased use of meaningful work in the criminal justice system, wider availability of restorative justice, greater use of diversion for offenders with mental health problems, a recognition of the multiple needs of many offenders and the need for a joined-up approach to tackle these problems, and a clear focus on community sentences as credible and effective alternatives to custody. We also welcome the sentencing reforms proposed, and in particular the restrictions to be placed on the use of indeterminate sentence of imprisonment for public protection and remand, which will contribute to a clearer and fairer sentencing framework and should help to alleviate pressure on the overburdened prison estate. This, in turn, should enable prisons to develop more constructive and effective regimes. We would, however, stress that a sustained and concentrated effort will be needed to successfully address prison overcrowding, which is among the most significant problems that the prison estate currently faces.

We support the shift of focus from processes to outcomes that underpins the move towards payment by results, but would emphasise that the implementation of this model needs to be given careful consideration to ensure that it is effective in meeting the needs of all offenders and allows a diverse range of providers to participate in the delivery of services, including smaller voluntary sector organisations. We would also highlight the importance of recognising the specific needs of minority groups within the criminal justice system, including women, those from black and minority ethnic communities, those with learning disabilities and difficulties, and young adults. Prisoners' families are, in addition, another group whose needs are often overlooked.

Published alongside major new strategies for mental health and drug support and treatment, 'Breaking the Cycle' presents a significant opportunity to encourage joint working across sectors, which will be a key part of ensuring the success of rehabilitative

¹ Although the CJA works closely with its members, this consultation response should not be seen to represent the views or policy positions of each individual member organisation.

efforts. It will, however, also be essential that sufficient resources are made available if the proposals set out are to be fully and successfully realised. These issues are examined in more detail in our response to the consultation questions set out below.

Response to the consultation questions

We have responded to the consultation questions on which we have a view below.

Question 1

How should we achieve our aims for making prisons places of hard work and discipline?

The CJA supports the proposals to make work a central part of the prison regime. It has long been acknowledged that employment plays a significant part in reducing reoffending², and we welcome the recognition that work in prisons should enable offenders to learn vocational skills that will increase their chances of securing employment in the community. Indeed, providing opportunities that allow prisoners to develop skills and acquire experience of real value will be integral to the success of the proposals. A focus on low-skilled labour is unlikely to enable prisoners to improve their chances of finding work upon release, particularly at a time of job losses and increased competition in the labour market. As such, we would emphasise that creating an ethos of hard work and industry in prisons needs to be achieved through the provision of meaningful, skilled activity.

Additionally, overcrowding, which remains a significant problem in the prison estate, will need to be addressed. At the end of January 2011, the prison population in England and Wales was 109% of the CNA level, and 76 of the 137 prisons in England and Wales (55%) were overcrowded.³ Overcrowded prisons will not have the resources or space available to put work at the centre of the regime, and ‘churn’, an inevitable consequence of an overcrowded estate, will prevent prisoners from engaging with a particular type of work for long enough to develop solid skills and experience. *Prisons with a Purpose*, the Conservative Party’s 2008 criminal justice policy document, stated that “overcrowding is the key cause of failure in the current prison system. By overburdening the prison estate, it inhibits the process of rehabilitation and attempts to reduce reoffending”.⁴ Addressing overcrowding must therefore be a priority, and following through on proposals that are likely to reduce the prison population, such as reduced use of remand and diversion from the criminal justice system for those with mental health problems, will be crucial.

Placing work at the heart of prison regimes should include allowing suitable prisoners to work in the community, and encouraging employers to offer opportunities that extend beyond the prison gate, so that those leaving custody are able to resettle successfully in the community. To ensure that local workers and industries are not undercut, it is also important that prisoners’ wages are not limited to the minimum wage, and that prisoners are paid at the appropriate level for the work that they are doing. This will, additionally, ensure that prisoners are not exploited and are treated fairly, as will enabling them to access the money they have legitimately earned upon release - we have been concerned by suggestions that prisoners will only be entitled to receive the full amount they have earned if they do not reoffend within a set period. Whilst we fully recognise the importance of prisoners making reparation to their victims, we would urge that deductions imposed on wages are set at a level that allows prisoners to earn a fair wage and provide financial support to their families, many of whom currently suffer financial difficulties when a family member is imprisoned; this can be a result of a reduced income if the breadwinner of the family is imprisoned or the disruption caused by transferring to

² Social Exclusion Unit (2002) *Reducing re-offending by ex-prisoners*, London: Office of the Deputy Prime Minister.

³ http://www.hmprisonservice.gov.uk/assets/documents/10004C44pop_bull_jan_11.doc

⁴ p.33: Conservative Party (2008) *Prisons with a purpose: Our sentencing and rehabilitation revolution to break the cycle of crime*, London: Conservative Party.

different benefits, as well as increased outgoings, often because of the cost of travelling to visit someone who is imprisoned.⁵ We would also recommend that the practicalities of prisoners saving the money that they earn whilst in custody should be considered. A recent report by the Prison Reform Trust and UNLOCK, both of whom are members of the CJA, has highlighted the difficulties many prisoners face opening and maintaining bank accounts, and while progress has made in this area, a continued focus is needed if work is to become a central part of prison regimes.⁶

Education and training courses in prison may be another way to enable prisoners to gain vocational skills and improve their employment opportunities. However, we would stress that this should not come at the expense of fundamental elements such as basic skills education. There are high levels of illiteracy and innumeracy among the prison population, and addressing basic skills needs is also an integral part of rehabilitation and reducing reoffending.⁷ Moreover, we support the recommendation made by the Prisoners Education Trust (a member of the CJA) in their submission to this consultation, that education in prisons should take account of prisoners' interests as well as the needs of the local labour market. Learning can, in itself, form an important part of the rehabilitation process, helping prisoners to gain confidence, self-esteem and motivation, and it is important that opportunities beyond the purely vocational are available, including those that are more creatively focused. Learning at a broad range of levels, including degree level, also needs to be available, so that prisoners are encouraged to aspire to high levels of educational attainment. Access to distance learning is particularly important in this context, and as such we welcome the proposals to roll out a 'virtual campus' across the prison estate, which will increase the availability of IT facilities. There is, finally, a need for a continuing focus on the improvement of the quality of prison education. The most recent annual report by HM Chief Inspector of Prisons highlighted that, whilst the overall quality of provision is improving, fewer than half of young adult establishments inspected were performing sufficiently well in activities, and only one of these was performing well.⁸

In developing the 'working prison', it will also be important that a broad range of employment opportunities are available for both male and female prisoners, and that the types of activity available in women's prisons is not limited to stereotypically 'feminine' work. In addition, as Birth Companions (a member of the CJA) and others have argued, women who give birth while in custody should be given access to maternity leave from any paid employment that they are undertaking in prison, in line with the entitlements available in the community. While this group may be a very small minority, they are extremely vulnerable and their specific needs should not be overlooked. For some women who are primary carers of children, securing employment upon release may not, in fact, be their first priority, and the development of a work regime within prisons should not mean a lack of access to support and learning around parenting and healthy relationships. It also needs to be recognised that for some prisoners, doing a forty-hour working week will simply not be appropriate. For those prisoners who have drug and alcohol dependencies, and those with mental health problems, effective treatment and support should be the priority.

In considering the development of prison regimes and the focus on rehabilitation identified elsewhere in the Green Paper, the Ministry of Justice should also consider the

⁵ Smith, R., Grimshaw, R., Romeo, R. and Knapp, M. (2007) *Poverty and disadvantage among prisoners' families*, York: Joseph Rowntree Foundation.

⁶ Bath, C. and Edgar, K. (2010) *Time is money: Financial responsibility after prison*, London: Prison Reform Trust.

⁷ Social Exclusion Unit (2002) *Reducing re-offending by ex-prisoners*, London: Office of the Deputy Prime Minister.

⁸ HM Chief Inspector of Prisons for England and Wales (2010) *Annual Report 2008-9*, London: The Stationery Office.

role of the prison officer, following the enquiry on this issue by the House of Commons Justice Committee.⁹ This issue is not discussed in the Green Paper, but the role of prison staff is clearly central to the delivery of effective prison regimes. However, they too often face considerable difficulties in trying to have a positive impact in the current prison system. The Justice Committee's report concludes that "reducing the ratio of officers to prisoners in pursuit of short-term economic savings will damage long-term re-offending rates, creating more victims, more fear of crime and all the social and financial damage that arises from criminality", and its recommendations around recruitment, training, and development should be revisited.

Question 3

How can we make it possible for more prisoners to make reparation, including to victims and communities?

As set out above, whilst we fully recognise the importance of prisoners making direct reparation to their victims, we would urge that deductions imposed on prisoners' wages are set at a level that allows them to earn a fair wage and provide financial support to their families. For offenders who are not imprisoned, we believe that compensation orders can be an effective disposal in themselves for a range of offences. When imposing such orders, however, it is important that courts take account of the offender's financial circumstances, as allowed for under section 130(4) of the Powers of Criminal Courts (Sentencing) Act 2000: "compensation ... shall be of such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the accused or the prosecutor". Many offenders have low incomes - more than 70% of prisoners, for instance, are in receipt on benefits before they go into prison¹⁰ - and imposing a compensation order that is beyond their means will make payment of it unlikely, and can make it more difficult for them to turn away from offending behaviour. Imposing unrealistic fines that offenders are unable to pay can also damage the confidence of sentencers and the public in such sanctions. The publication of a report by the Public Accounts Committee in January 2011, which revealed that the gross amount of fines and penalties outstanding and over six months old stood at £1.5 billion¹¹, prompted widespread denigration in the media.¹²

The CJA strongly welcomes proposals for increased use of restorative justice (RJ) throughout the criminal justice system, and believes that wider implementation of RJ would allow many more offenders make reparation to their victims, and indeed to the community. Restorative justice produces high victim satisfaction rates, and improves victims' experiences of the criminal justice process. Research published by the Ministry of Justice found that 85% of victims said they were very or quite satisfied with the RJ conferencing they experienced, and almost 80% would recommend it to others.¹³ In addition, as a report by Victim Support highlights, RJ can help victims to feel a sense of closure, and can be effective in alleviating post-traumatic stress symptoms for victims of

⁹ House of Commons Justice Committee (2009) *Role of the Prison Officer, Twelfth Report of Session 2008-09*, London: The Stationery Office Limited.

¹⁰ Social Exclusion Unit (2002) *Reducing re-offending by ex-prisoners*, London: Office of the Deputy Prime Minister.

¹¹ House of Commons Public Accounts Committee (2011) *Ministry of Justice Financial Management*, Sixteenth report of session 2010-11, London: The Stationery Office.

¹² See, for instance, 'Offenders not paid £1.5 billion in court penalties', *Telegraph*, 25 January 2011 - <http://www.telegraph.co.uk/news/uknews/law-and-order/8278817/Offenders-not-paid-1.5-billion-in-court-penalties.html>; 'As prisons close, Ministry of Justice fails to collect £1.5bn in criminals' unpaid fines', *Daily Mail*, 25 January 2011 - <http://www.dailymail.co.uk/news/article-1350191/Ministry-Justice-fails-collect-1-5bn-criminals-unpaid-fines.html#ixzz1C2We7tHQ>

¹³ Shapland, J. et al (2007) *Restorative Justice: The views of victims and offenders*, London: Ministry of Justice.

serious crime.¹⁴ There is also solid evidence that it reduces reoffending. As the evidence report published alongside 'Breaking the Cycle' documents, analysis of the Ministry of Justice research data found that RJ reduced the frequency of reoffending by around 14%; according to further analysis by some experts, the best programmes within the Ministry of Justice pilots demonstrated a 27% drop in the frequency of reoffending.¹⁵ Moreover, a 2007 review of research on RJ in the UK and abroad found that it can be effective for a range of offences, including property offences and violent crime.¹⁶ Finally, increased use of RJ could result in significant savings for the criminal justice system. Analysis conducted by Victim Support and the Restorative Justice Council, which is a member of the CJA, has found that providing restorative justice in 75,000 cases involving adult offenders would deliver cost savings of £185 million over two years as a result of a reduction in reconviction rates.¹⁷

In addition to the proposals set out in 'Breaking the Cycle', the CJA believes that, in cases where offenders only accept responsibility or are only willing to participate following sentencing, or where victims only choose to participate at this stage, post-sentence restorative justice should be offered. We would also recommend that when RJ is used for low-level offences, or as part of an out-of-court disposal such as a conditional caution, safeguards are in place to ensure due process, so that offenders are dealt with fairly and consistently. Finally, we would support the recommendations made by Clinks, a member of the CJA, in their response to this consultation that there should be proper training of staff as professional delivery will be key to ensuring the success of a wider roll-out of RJ, and that it is also important that RJ initiatives are racially and culturally sensitive, which may include providing translation facilities to ensure full participation in the process.

Question 4

How do we target tough curfew orders to maximise their effectiveness?

The CJA is concerned by the proposals set out to extend the maximum hours of curfew, and strongly believes that this will not increase the effectiveness of curfew orders. As 'Breaking the Cycle' rightly recognises, employment has a significant part to play in reducing reoffending. However, as highlighted in a 2006 report by the National Audit Office, curfew orders of up to twelve hours can limit the employment opportunities available to offenders¹⁸; curfew orders of up to sixteen hours will have an even more constraining effect, and could pose a real barrier to finding work. Extended curfew hours could also have a severe impact on offenders who have caring responsibilities, and may put them in the position of having to breach their order so that they are able to fulfil their responsibilities. Since many of those who are primary carers, such as lone parents, are women, such a measure could have a disproportionate impact upon female offenders. We are, moreover, concerned by plans to use curfew orders with extended hours as a way of tackling prolific offending. For prolific offenders, many of whom have multiple and interrelating needs including drug or alcohol dependency or mental health problems, such an order may actually prove an obstacle to changing their behaviour by preventing them,

¹⁴ Victim Support (2010) *Victims' justice? What victims and witnesses really want from sentencing*, London: Victim Support.

¹⁵ Restorative Justice Council (2010), 'Ministry of Justice research into restorative justice' - available at http://www.restorativejustice.org.uk/assets/_ugc/fetch.php?file=3za5_rjc_summary_of_ministry_justice_research_into_restorative_justice.pdf

¹⁶ Sherman, L. and Strang, H. (2007) *Restorative justice: The evidence*, London: The Smith Institute.

¹⁷ Victim Support (2010) *Victims' justice? What victims and witnesses really want from sentencing*, London: Victim Support

¹⁸ National Audit Office (2006) *The electronic monitoring of adult offenders*, London: The Stationery Office.

through its onerous requirements, from engaging with a range of appropriate support. In addition, since many prolific offenders have chaotic lifestyles, imposing orders with extended curfew hours may be setting them up to fail. We also believe that the proposed extended maximum hours would represent a significant deprivation of liberty that is not appropriate within the context of a community sentence.

Whilst we are not in favour of the proposals to extend the maximum hours of curfew, we believe that curfew orders of up to twelve hours can be an appropriate response to a broad range of offences: their use should not be limited to lower level offences only. Importantly, as the National Audit Office reports sets out, they are more cost-effective than custody.¹⁹ They also offer a punitive and preventative alternative to custody that avoids the disruptive effects of prison sentences, such as loss of housing and separation from family and friends, which can contribute to further offending behaviour. Encouraging more sentencers to consider curfew orders as a viable alternative to custody would help to relieve pressure on the prison estate, and could be achieved in a number of ways.

Ensuring that electronic tags and monitoring equipment are fitted in a timely manner by contractors, as recommended by the National Audit Office²⁰, will enable them to be seen as a credible option. Measures aimed at improving compliance, including sending text message reminders to offenders when their curfew is about to start, as set out in 'Breaking the Cycle', and informing families about the realities of living with an offender on a curfew order²¹, could also help to promote them as a sentencing option. Extending the maximum length of curfew from six months to a year may be another way of encouraging use of curfew orders for offenders who would otherwise receive a prison sentence, although it will be vital that sentencers are provided with guidance to ensure that these are used appropriately, and only for those offences that truly merit them. Ensuring that sentencers are fully informed about curfew orders also has an important role to play in promoting their use.

It is, equally, important that sentencers are aware that it will not be appropriate to impose an order in some instances. In particular, care must be taken to ensure that curfew orders are not imposed on those, the majority of whom are women, subject to abuse and violence in their personal relationships, or offenders who are themselves perpetrators of abuse and violence in family and intimate relationships.

Question 5

What are the best ways of making Community Payback rigorous and demanding?

The CJA welcomes proposals for Community Payback to start sooner after sentencing, which can improve compliance and increase its impact. However, we believe that the proposals set out to make Community Payback more rigorous and demanding focus too narrowly on low-skilled, physically demanding labour which is unlikely to be effective in reducing reoffending. Employment, as 'Breaking the Cycle' recognises, plays an important part in helping offenders to change their behaviour. As we have set out above in relation to work in prisons, if offenders are to increase their chances of finding work, they need the opportunity to engage with meaningful activity that is centred around the development of skills and experience of real worth. Increasing the effectiveness of Community Payback in this way could, we believe, have the advantage of improving public confidence in community sentences. A recent study by Victim Support cites a 2007 survey conducted for the Probation Service which found that 81% of victims of crimes would prefer an offender to receive an effective sentence rather than a harsh one, and reports,

¹⁹ National Audit Office (2006) *The electronic monitoring of adult offenders*, London: The Stationery Office.

²⁰ *Ibid.*

²¹ House of Commons Public Accounts Committee (2006) *The Electronic monitoring of adult offenders*, Sixty-second report of session 2005-6, London: The Stationery Office.

from research it conducted recently, a “common view” amongst victims that the desired outcome of sentencing is that the offender does not commit crime again.²²

An emphasis on work that is considered “rigorous and demanding” purely as a result of its very physical nature will also make Community Payback unsuitable for many, including older offenders, those with disabilities, and some female offenders. The proposals to make those who are unemployed work a total number of hours much closer to a normal working week, while appropriate and beneficial for some offenders, will also exclude offenders with caring responsibilities, the majority of whom will be women. As such, a disposal that could, if developed appropriately, offer real rehabilitative value, may be shut off to a significant number of offenders. Flexibility will therefore be important. In keeping with an ethos of flexibility, women-only Community Payback provision in some areas should also be considered. As a minority on the probation caseload, women offenders - a significant proportion of whom have experienced domestic violence and sexual abuse²³ - can find male-dominated provision, including Community Payback, intimidating and distressing, and offering women-only provision would be a sensitive and appropriate response to this issue.

Question 6

How can communities be more involved in influencing the type of work completed by offenders on Community Payback?

Where possible, use should be made of existing community networks and forums, rather than setting up new structures. This can help to prevent consultation ‘fatigue’, with most people unable to find time to contribute to a range of different local groups and bodies. Working with existing local groups will also make use of established ways of communicating and consulting, and will draw on the experience and input of people with a broad range of interests. This may be most effective with small local groups, with the final report of the Rethinking Crime and Punishment-funded ‘Making Good’ project (which was set up to develop and test out different methods of engaging communities and community organisations in finding and allocating Community Payback to offenders), suggesting that “direct involvement with the community is more likely to be achieved through smaller groups, such as Neighbourhood Action Groups, than through larger bodies”²⁴.

It is, however, important to ensure that all groups within the community are involved in the debate about Community Payback. For example, providers need to ensure that young people (both those under 18 and young adults) and minority ethnic communities are involved in community consultation and engagement. Many of these groups may be less likely to participate in existing criminal justice structures, and efforts should therefore be made to proactively build links with any existing community groups and community leaders that can act as a focal point for engagement. We would also highlight the need to engage offenders and ex-offenders in this debate. As Clinks have noted, service users can play an important role in developing and improving services.²⁵ Offenders and ex-offenders are, moreover, members of their local communities, and it is important that this is recognised.

²² Victim Support (2010) *Victims' justice? What victims and witnesses really want from sentencing*, London: Victim Support.

²³ Corston, J. (2007) *The Corston Report: A report by Baroness Jean Corston of a review of women with particular vulnerabilities in the criminal justice system*, London: Home Office.

²⁴ p.21: Wickham, T. and Allen, R. (2008) *Making good: An assessment of work undertaken by the Thames Valley Partnership 2005-8* - available at <http://www.rethinking.org.uk/PDFs/making-good-report.pdf>

²⁵ Clinks (2008) *Unlocking potential: How offenders, former offenders and their families can contribute to a more effective criminal justice system*, London: Clinks.

In terms of the process, there is a general move towards managing more consultation and citizen-engagement online (as with the Ministry of Justice's work on the Directgov website as part of the 'Justice Seen, Justice Done' initiative and the Youth Justice Board's Making Good initiative), as a cheap and accessible way to gather opinions. However, in this context policy-makers should be aware that there are significant gaps in online access for some people, particularly those from disadvantaged backgrounds. For example research by Catch22, a member of the CJA, has shown that one in five of the young people that they work with (who are likely to be from disadvantaged backgrounds) has no access to the internet, while even for those young people who are able to go online "there are concerns in terms of the ease and availability of access, and the ability to use the internet in a confidential and secure setting"²⁶. This should be considered in developing the mediums that are used to engage with the public.

However, while community engagement is important, community sentences should always develop offenders' skills and promote rehabilitation. It is therefore important that the reform and rehabilitation of the individual offender is given a prominent role in the selection of an appropriate sentence, alongside the community's priorities. Local communities must therefore be made aware of the limitations on the sorts of work that can be proposed and community input must be placed within a professional context of what will work best with the offender. Overall, it is extremely important that both nationally and locally communities are given a clear picture as to the extent to which their input can affect criminal justice outcomes. Otherwise, there is a significant risk that attempts to better engage the community could lead to raised expectations which will then not be met, which will have a negative impact on community confidence and future involvement.

Nevertheless, it is important to note that community engagement and reparation is not inherently contradictory to rehabilitation, with one study suggesting that "there seems no reason in principle why the short-term benefit to the community of the work performed by offenders should be incompatible with the longer-term benefit that the community might derive from the positive impact of that experience on offenders' behaviour"²⁷.

Question 7

How should we seek to deliver Community Payback in partnership with organisations outside government?

In addition to the role that organisations outside government can play in managing Community Payback, it is important that a wide range of organisations are involved in providing suitable placements for people carrying out Community Payback. As we state in response to Questions 5 and 6 (above), there is a need for more imaginative and personalised use of Community Payback than is currently the case, which in turn requires a greater range of available placements that meet the specific abilities and requirements of individual offenders. This will help to ensure that Community Payback is challenging, reparative and beneficial in terms of reducing reoffending, but it will require partnerships between the provider and local organisations from the voluntary and private sectors to identify appropriate opportunities.

A report examining the advantages of justice reinvestment has also envisaged a more prominent role for local authorities than is currently the case, suggesting that there is "the need to explore the more systematic and imaginative identification of Community Payback placements by different local authority departments which might enable more relevant, visible and locally based opportunities for offenders on community orders to

²⁶ p.1: Catch22 (2010) *Young people and the digital divide*, London: Catch22.

²⁷ p.315: Rex, S. and Gelsthorpe, L. (2002) 'The Role of Community Service in Reducing Offending: Evaluating Pathfinder Projects in the UK', *The Howard Journal of Criminal Justice*, Vol 41(4).

make reparation”²⁸. It goes on to note that “such opportunities might also assist offenders to acquire skills capable of enhancing their chances of obtaining further training or permanent employment to fill local skills gaps”²⁹, suggesting that this approach could both better engage local communities and aid in the resettlement and rehabilitation of offenders.

Question 9

How can we incentivise and support the growth of Integrated Offender Management approaches?

The CJA supports the further development of Integrated Offender Management approaches, which can help to co-ordinate activity to reduce reoffending and cut crime. The challenge will be in achieving this at a time when all the agencies and organisations involved will be looking to make savings. This can help to facilitate an integrated approach, with agencies looking to share resources, but can also lead to agencies pulling back from joint working to focus on their core tasks. The Ministry of Justice will need to work across Government to strongly encourage and incentivise providers to take the former approach, while the potential of pooled budgets to ensure more effective commissioning at a local level should be explored. The development of payment by results will also be central to providing appropriate incentives, and the area-based pilots will be an opportunity to examine whether and how payment by results can drive effective partnership working.

Question 10

How can we ensure that providers from the voluntary and community sector can be equal partners in the delivery of this integrated approach?

We welcome the recognition that the voluntary sector has a central role to play in integrated offender management. However, engagement with the voluntary sector on this agenda has been patchy to date, with a study of four pioneer Integrated Offender Management sites finding that there was voluntary sector activity at three out of the four pioneer sites but that the nature of engagement varied.³⁰ The study concluded that the most effective model was where the voluntary sector organisations were full delivery partners, acting as an integral part of the Integrated Offender Management scheme and co-located and co-working with statutory and private sector agencies. This should be the model for the future development of Integrated Offender Management, while logistical issues such as information-sharing and vetting of staff need to be addressed. However, the overriding issue in the current context is likely to be funding, and if the voluntary sector is to be a delivery partner in Integrated Offender Management, commissioning and funding arrangements will need to be developed that facilitate this. While payment by results can play a part in this, there are significant barriers to the voluntary sector’s involvement in this (see our response to Question 31, below) which will need to be addressed if genuine voluntary sector involvement is going to be achieved.

Question 11

How can we use the pilot drug recovery wings to develop a better continuity of care between custody and the community?

The CJA welcomes the recognition that many offenders serving short sentences are unable to access drug treatment services whilst in prison, and believes that, by initially focusing on prisoners serving less than 12 months, the pilot drug recovery wings will go some way to tackling this problem. ‘Through-the-gate’ services will be essential to ensure that there

²⁸ p.30: Allen R., Jallab, K. and Snaith, E. (2007) ‘Justice Reinvestment in Gateshead - the story so far’ in R. Allen and V. Stern (eds.) *Justice Reinvestment: A New Approach to Crime and Justice*, London: International Centre for Prison Studies.

²⁹ *Ibid.*

³⁰ Nacro (2009) *Integrated Offender Management and Third Sector Engagement: Case studies of four pioneer sites*, London: Nacro.

is good continuity of care between custody and the community. Without support to ensure that they are linked in with drug treatment in the community and other services that may be appropriate, such as mental health services, and to help them access stable accommodation and welfare benefits, many offenders will relapse.³¹

However, whilst we support proposals to improve drug services in prison, we believe that prison is not the best setting in which to deliver treatment. Overcrowding in the prison estate means that prisoners are frequently moved from one prison to another, meaning that they are unable to complete programmes.³² Custodial sentences also separate offenders from family and friends, networks that can provide valuable support during the recovery process, and cause disruption, such as loss of accommodation, which can hinder recovery and contribute to relapse. Moreover, prison is, by-and-large, an inappropriate setting in which to deliver drug treatment programmes³³ and while work to provide equivalence of care in prisons with that provided in the community is welcome, the UK Drug Policy Commission has argued that prison drug services frequently fall short of even minimum standards.³⁴ Whilst we recognise that there are some serious offenders for whom a custodial sentence is unavoidable, we believe that, in the majority of cases, the emphasis should be on treatment in the community through the use of appropriate community order requirements.

We also welcome the recognition that alcohol abuse needs to be tackled. A 2010 report by Her Majesty's Inspectorate of Prisons notes that, whilst 19% of prisoners report alcohol problems (rising to 29% in women's prisons and 30% in young offender institutions), there is "considerable unmet need for ongoing treatment and support" in prison. In particular, it reports that CARATs are not funded to provide ongoing support for those with alcohol-only problems, and that very few treatment or offending behaviour programmes have been developed or accredited. As a result, 60% of prisoners reporting an alcohol problem say that they will leave with this.³⁵ The implications of this for reoffending rates are clear. As the same report sets out, a national analysis of OASys prisoner assessments for 2008-9 found that in 43% of all assessments, the index offence had been disinhibited by alcohol and/or that offending behaviour was considered to be linked to alcohol issues. It also highlights that violent offences and heightened risk are disproportionately likely to be associated with alcohol. The British Crime Survey 2008-9 estimated that in 47% of violent incidents the victim considered the perpetrator to be under the influence of alcohol, and the national analysis of OASys prisoner assessments cited above found that offenders whose offending was linked to alcohol use were more likely to be assessed as medium, high or very high risk of harm to others than all other offenders.³⁶

³¹ UK Drug Policy Commission (2008) *Reducing drug use, reducing reoffending: Are programmes for problem drug-using offenders in the UK supported by the evidence?*, London: UK Drug Policy Commission.

³² *Ibid.*

³³ This is not to say that there are not some excellent programmes within the prison system. For example, RAPt's abstinence-based model, developed along 12-Step lines in nine English prisons, has been shown to achieve significant and sustained reductions in drug use and offending. Recent analysis demonstrated that RAPt's programme achieved a 29% reduction in the number of ex-prisoners reoffending and that for every 100 individuals the RAPt programme saves £6.3 million on re-sentencing and re-incarceration.

³⁴ UK Drug Policy Commission (2008) *Reducing Drug Use, Reducing Reoffending: Are programmes for problem drug-using offenders in the UK supported by the evidence?* London: UK Drug Policy Commission.

³⁵ Her Majesty's Inspectorate of Prisons (2010) *Alcohol services in prison: An unmet need*, London: HM Inspectorate of Prisons.

³⁶ *Ibid.*

Alcohol services are also in short supply in the community. A report published this year by the Centre for Mental Health, a member of the CJA, highlights availability of the Alcohol Treatment Requirement as a problem³⁷; so too does a 2009 study by the Centre for Crime and Justice Studies³⁸, also a member of the CJA, and a 2008 report by the National Audit Office.³⁹ We therefore recommend that the inadequate provision of alcohol treatment services in both custody and the community should be addressed as a matter of urgency.

Question 12

What potential opportunities would a payment by results approach bring to supporting drug recovery for offenders?

Payment by results will focus drug treatment on outcomes, which the CJA supports. However, there will need to be careful development of the approach that is implemented to ensure that it meets the needs of a wide range of service users. We therefore welcome the use of pilots to test and develop the payment by results approach; this will allow evidence to be collected that will be invaluable in formulating an effective model for wider roll-out.

At the heart of a successful payment by results approach will be the use of appropriate outcome measures. Whilst a binary ‘yes/no’ measure as to whether someone is abstinent may be attractive in its simplicity, it places unrealistic expectations on both service providers and service users, and does not allow recognition of significant achievements in the recovery process, which is often long and complex. The CJA would therefore favour an approach that recognises ‘distance travelled’. Achievements in other areas that are important parts of recovery - for instance, in housing, education and employment - should be considered as part of such an approach. It will also need to be taken into account that some clients are easier to support towards recovery than others, and ways of ensuring that those who are ‘harder to help’ are not simply ‘parked’ will therefore need to be found. Moreover, as a recent UK Drug Policy Commission briefing highlights, since many offenders who require drug treatment have a range of other needs, “it is important that payment by results is set up in a way that encourages and supports collaboration between sectors and services, and is not simply a spur to competition between them.”⁴⁰ It is also vital that payment by results is implemented in a way that ensures diversity of providers and, in particular, allows smaller voluntary sector organisations, many of whom have a wealth of experience and expertise in drug treatment, to fully participate as providers.

Question 13

How best can we support those in the community with a drug treatment need, using a graduated approach to the level of residential support, including a specific approach for women?

We are pleased that the recently published drug strategy recognises that recovery is an individual, person-centred journey, and we believe that the proposals set out for graduated levels of treatment in the community reflects this. We also welcome proposals to deliver treatment using a ‘whole systems approach’: as the drug strategy recognises, recovery is not about drug treatment alone, and there needs to be effective joint working between education, training, employment and housing services, and indeed others, to ensure that effective support is provided. We also believe that is important that women

³⁷ p.2: Fitzpatrick R. and Thorne L. (2011) *A label for exclusion - Support for alcohol-misusing offenders*, London: Centre for Mental Health

³⁸ 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.

³⁹ p.26: National Audit Office (2008) *The National Probation Service: The supervision of community orders in England and Wales*, London: The Stationery Office.

⁴⁰ p.25: Roberts, M. (2011) *By their fruits: Applying payment by results to drugs recovery*, London: UK Drug Policy Commission.

are able to access women-only drug treatment in the community. As we note below, the Corston Report documents that a significant proportion of women offenders have experienced domestic violence and sexual abuse.⁴¹ A report published by the Fawcett Society, which is a member of the CJA, points to a consequent need for women-only provision in the community, in order to foster a sense of safety for women using the services.⁴²

Question 14

In what ways do female offenders differ from male offenders and how can we ensure that our services reflect these gender differences?

A wealth of research has pointed to the differences between male and female offenders, including Baroness Corston's seminal 'Report of a review of women with particular vulnerabilities in the criminal justice system', published in March 2007. As the Corston Report clearly states, "there are fundamental differences between male and female offenders and those at risk of offending", which include: the majority of female offenders have committed non-violent offences and present little risk to the public; a significant number of women in the criminal justice system have histories of violence and abuse - up to 50% of women in prison report having experienced violence at home compared with a quarter of men, and one in three women in prison have suffered sexual abuse compared with just under one in ten men; drug addiction plays a huge part in all offending and this is disproportionately the case with women, with around 70% of women coming into custody requiring clinical detoxification compared with 50% of men; mental health problems are far more prevalent among women in prison than in the male prison population - outside prison men are more likely to commit suicide than women but the position is reversed inside prison, and although women make up about 5% of the prison population, over 50% of the recorded incidents of self-harm take place in the female estate; and women prisoners are far more likely than men to be primary carers of young children, which makes the prison experience significantly different for women than men. As a result of these differences, the report argues for "a different and distinct approach" for women offenders, integral to which is the use of community solutions for the majority of women offenders, and the reservation of custody for serious and violent offenders who pose a significant risk to the public.⁴³

In response to this, the previous government, which accepted 40 of the report's 43 recommendations, allocated £15.6 million over two years to fund the development of a network of women's community projects, of which there are now 44 across England and Wales. As recommended by the Corston Report, these projects use a holistic, one-stop-shop approach to meet the needs of the women referred to them, and to address the causes of their offending behaviour. As well as providing a constructive approach to women's offending, the use of women's community projects avoids the disruptive effects of short custodial sentences, including loss of accommodation - according to the Corston Report, a third of women lose their accommodation whilst in prison⁴⁴ - and separation from children: it is estimated that up to 17,700 children each year are separated from their mothers due to imprisonment.⁴⁵ A report by the New Economics Foundation argues that these projects are, additionally, a more cost-effective option than imprisonment, and highlights their economic and social benefits: according to the report, the investment of

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

⁴² Gelsthorpe, L., Sharpe, G. and Roberts, J. (2007) *Provision for women offenders in the community*, London: The Fawcett Society.

⁴³ Corston, J. (2007) *The Corston Report: A report by Baroness Jean Corston of a review of women with particular vulnerabilities in the criminal justice system*, London: Home Office.

⁴⁴ *Ibid.*

⁴⁵ Smees, S. (2009) *Engendering justice - From policy to practice: Final report of the Commission on Women and the Criminal Justice System*, London: The Fawcett Society.

£1 in such alternatives to prison generates £14 worth of social value to women and their children, victims, and society generally over ten years, and the long-term value of focusing resources and attention on rehabilitation rather than prison is in excess of £100 million over ten years.⁴⁶

There have, recently, been serious concerns about the survival of many of these projects, with the funding allocated by the Ministry of Justice in 2009 due to finish at the end of March 2011. We would emphasise Baroness Corston's recommendation, made in a recently published follow-up report to her 2007 review, that funding must be available if these projects are to continue.⁴⁷ We would also urge careful consideration of the type of funding that is made available to these projects. We are, in particular, concerned about the proposals to apply a payment by results model to all providers by 2015. Women's community projects are small, local organisations with a high level of knowledge and expertise, but without the financial capital to be able to take on payment by results contracts or to compete in this way with larger, private sector providers. As such their continuing existence may be threatened by the blanket application of this model. The importance of ensuring the long-term survival of these projects is matched by the need to improve awareness of them. Training for police, CPS staff, probation staff and sentencers, so that they are fully informed about these projects, has a vital role to play in increasing diversion to them in place of prosecution, or use of them as part of a community sentence. Specialised training for all criminal justice staff on gender awareness and the specific issues facing female offenders is also crucial to ensuring appropriate and effective responses to women's offending.

We welcome the emphasis on diversion from the criminal justice system for those with mental health problems in 'Breaking the Cycle': this will, we believe, have a real impact on women offenders. A policy of diversion should also extend to the significant numbers of female offenders with a drug or alcohol dependency. As we state elsewhere in this response, successful diversion will depend on the adequate provision of services, and on the availability of support to help those diverted to access and engage with them. Additionally, in recognition of the multiple and complex needs of most women offenders, services will also need to work together to provide an integrated and holistic approach. Finally, we support proposals to remove the option of remand for those who are unlikely to receive a custodial sentence. Women are often the primary carers of children, as well as lone parents responsible for the maintenance of the family home, and the overuse of remand - in 2009, one-third of women offenders remanded in custody did not go on to receive a custodial sentence⁴⁸ - results in the needless separation of children from their mothers, and the loss of accommodation.

Question 15

How could we support the Department of Work and Pensions payment by results approach to get more offenders into work?

Research has consistently shown that employment reduces the risk of reoffending by between a third and a half. Enabling former offenders to move into stable employment will consequently be important in reducing reoffending, and the interaction with the Department for Work and Pensions' Work Programme will clearly be central in achieving this. However, people with a criminal record, and former prisoners in particular, are often amongst the most challenging people to move into employment, due to employers' attitudes towards employing people with a criminal record and the relatively high

⁴⁶ New Economics Foundation (2008) *Unlocking Value - How we all benefit from investing in alternatives to prison for women offenders*, London: New Economics Foundation.

⁴⁷ Corston, J. (2011) *Second report on women with particular vulnerabilities in the criminal justice system*, London: APPG on Women in the Penal System.

⁴⁸ Ministry of Justice (2010) *Statistics on women and the criminal justice system* - available at <http://www.justice.gov.uk/statistics-women-cjs-2010.pdf>

proportion of former offenders with very limited educational qualifications and employment experience.

The Ministry of Justice therefore needs to explore with the Department for Work and Pensions how they can best develop additional incentives for organisations delivering the Work Programme to work with former offenders. This would help to prevent offenders being marginalised as ‘too difficult to work with’ in the payment by results process, with providers instead focusing on those cases which are seen as more likely to result in successful outcomes. Lead providers on the Work Programme will also need to be strongly encouraged to work with organisations with specialist expertise in working with former offenders and helping them to move into employment. Otherwise, this important group may not get the support and help they need, which will have costs to the Department for Work and Pension in benefits payments as well as increasing their chances of reoffending. In addition, reform of the *Rehabilitation of Offenders Act 1974* (which the CJA strongly endorses, see Question 17 below) will make it easier for former offenders to move into work, removing in part one of the most significant barriers to employment for ex-offenders.

Whilst the CJA is fully supportive of efforts to help offenders secure employment, it is nevertheless the case that many of those released from prison will not go straight into work - according to a report by the Prison Reform Trust and UNLOCK, 81% of former prisoners claim benefits.⁴⁹ A significant proportion of released prisoners, therefore, may experience the ‘finance gap’, a problem that has been well documented⁵⁰: delays in processing benefits claims means that the only income many prisoners have upon release is a small discharge grant, an amount that may have to last for weeks, and in some cases, months.⁵¹ The problem of the finance gap, which may contribute to further offending, has been well known for years, and should be addressed without any further delay. The blanket ban operated by many major insurers on those with unspent convictions accessing common forms of insurance, including motor, building and contents insurance, also needs to be looked at, as this can prevent access to many types of employment and self-employment, as well as access to mortgages.⁵²

Question 16

What can we do to secure greater commitment from employers in working with us to achieve the outcomes we seek?

Research conducted by Manchester University found that the “keyword” to employers’ concerns about employing ex-offenders is “risk”, stating that “the potential risk an ex-offender might pose to other members of staff and customers, and the safety of the ex-offender concerned topped the list of concerns that were seen as ‘very important’ or

⁴⁹ Bath, C. and Edgar, K. (2010) *Time is money: Financial responsibility after prison*, London: Prison Reform Trust.

⁵⁰ See, for instance, Social Exclusion Unit (2002) *Reducing re-offending by ex-prisoners*, London: Office of the Deputy Prime Minister; Hopwood-Road, F., Maynard, K. and Sandbach, J. (2007) *Locked out: CAB evidence on prisoners and ex-offenders*, London: Citizens Advice; Centre for Social Justice (2009) *Locked up potential: A strategy for reforming prisons and rehabilitating prisoners*, London: Centre for Social Justice; Bird, H., Feasey, S. and Meadows, L. (2010) *Investigating the prisoner finance gap across four prisons in the North East*, Research report no. 715, London: Department for Work and Pensions; and Bath, C. and Edgar, K. (2010) *Time is money: Financial responsibility after prison*, London: Prison Reform Trust.

⁵¹ Bird, H., Feasey, S. and Meadows, L. (2010) *Investigating the prisoner finance gap across four prisons in the North East*, Research report no. 715, London: Department for Work and Pensions.

⁵² Bath, C. and Edgar, K. (2010) *Time is money: Financial responsibility after prison*, London: Prison Reform Trust.

‘important’ in dissuading them from employing an individual with a criminal conviction.”⁵³ The study found that more than half of employers would find guidance on risk assessments and safeguards useful, a finding that is supported by research conducted recently by Business in the Community on behalf of the Barrow Cadbury Trust, which is due to be published soon.

A study by the Chartered Institute of Personnel Development has also highlighted that employers are concerned with the ‘soft skills’ of honesty, reliability and personal behaviour, and that employers with experience of employing ex-offenders reported satisfaction with their performance in these areas.⁵⁴ As such, the CJA believes that, as well as providing guidance to employers on assessing and managing risk, it is also important to ensure that employers are aware of the positive experiences of those who have taken on ex-offenders, and to encourage and reward positive engagement by employers.

The Manchester University study also found that almost two-thirds of employers indicated that the provision of personal support for ex-offenders in employment, such as mentors, would be helpful, and that just under 60% felt that access to a nominated contact person for the employer would be useful.⁵⁵ Similarly, a recent report by the Young Foundation, which is a member of the CJA, has proposed the use of an employment deployer structure, which would provide support to former offenders to help them to secure and maintain employment, as well as to the employer to ensure sustainable outcomes.⁵⁶ The CJA believes that, if implemented widely, such a model could have a significant impact on the high levels of unemployment amongst offenders and ex-offenders.

Question 17

What changes to the Rehabilitation of Offenders Act 1974 would best deliver the balance of rehabilitation and public protection?

The CJA welcomes the recognition that the Rehabilitation of Offenders Act 1974 acts as a barrier to rehabilitation by preventing offenders from securing employment and is in urgent need of reform. In terms of reform of disclosure periods, we believe that, for adult offenders, the proposals set out in the government-sponsored review ‘Breaking the Circle’ (2002) would best deliver the balance of rehabilitation and public protection and should be adopted. This review proposed that the period of disclosure should be the period of the sentence itself, plus a ‘buffer’ period of up to a maximum of two years.⁵⁷

The Change the Record campaign, run by Nacro, which is a member of the CJA, has highlighted that many young people are prevented from entering further education or finding employment as a result of minor criminal convictions⁵⁸, and the CJA strongly supports the approach of ‘wiping the slate clean’ for young offenders when they turn 18 for all but the most serious offences. For those convicted of the most serious offences, we believe that the disclosure periods set out in ‘Breaking the Circle’ are appropriate. In addition, we would recommend that the disclosure periods for 10-17 year olds year should be extended to 18-20 year olds, or that there should at least be a 25% reduction on the

⁵³ p.23: Haslewood-Pócsik, I., Brown, S. and Spencer, J. (2008) ‘A not so well-lit path: Employers’ perspectives on employing ex-offenders’, *The Howard Journal*, vol. 47 no.1.

⁵⁴ Chartered Institute of Personnel and Development (2007) *Employing ex-offenders to capture talent*, London: Chartered Institute of Personnel and Development.

⁵⁵ Haslewood-Pócsik, I., Brown, S. and Spencer, J. (2008) ‘A not so well-lit path: Employers’ perspectives on employing ex-offenders’, *The Howard Journal*, vol. 47 no.1.

⁵⁶ Shelupanov, A. and Ali, R. (2010) *Turning the corner: Beyond incarceration and re-offending*, London: The Young Foundation.

⁵⁷ Home Office (2002) *Breaking the circle: A report of the review of the Rehabilitation of Offenders Act*, London: Home Office.

⁵⁸ <http://www.changetherecord.org/about/>

adult disclosure periods for this age group. As has been highlighted by the Transition to Adulthood Alliance⁵⁹, of which the CJA is a member, young adults in trouble with the law have specific needs that may make them more vulnerable than older offenders, and many exhibit immaturity that may be related to their offending. Research into brain development has identified a range of developmental changes that continue through the young adult age range. Particularly relevant is the finding that young adults potentially face greater difficulties in controlling behaviour, are more prone to risky behaviour and are less able to plan for the future. Or, as one researcher has put it, “the human brain continues to mature until at least the age of twenty-five, particularly in the areas of judgment, reasoning, and impulse control.”⁶⁰ By introducing reduced disclosure periods for 18-20 year olds, the vulnerability, immaturity and ongoing development of this age group would be clearly and fairly recognised. It would also bring policy into line with what we know about desistance from crime, and would help young adults who have committed offences whilst still maturing, but are now law-abiding, to move on with their lives more quickly and effectively than if they were subject to the adult disclosure periods.

The CJA welcomes the measures introduced in the Protection of Freedoms Bill aimed at restricting CRB checks to those working closely and regularly with children and vulnerable adults. We would, additionally, recommend that more information should be provided to employers to help them legally and appropriately use criminal record checks: the 2008 study conducted by Manchester University, cited above, also found that “the long-existing need to improve employers’ awareness of the rules governing the disclosure of criminal convictions still very much exists.”⁶¹

Question 18

How can we better work with the private rented sector to prevent offenders from becoming homeless?

The CJA welcomes proposals to increase offenders’ access to the private rented sector. For many offenders, the security provided by stable, affordable accommodation can be a crucial part of the support needed to enable them to address deeply-rooted problems and turn away from offending behaviour. Indeed, it is well established that accommodation is an important factor in reducing reoffending. The Social Exclusion Unit’s 2002 report ‘Reducing reoffending by ex-prisoners’ found that stable accommodation can make a difference of over 20% in terms of reduction in reconviction rates.⁶² Accommodation is also central in enabling prisoners to access other opportunities and services, such as education and employment. For example, prisoners with accommodation arranged on release are more than four times more likely to have education, training or employment in place than those without accommodation.⁶³ This is crucial in reducing reoffending, with Ministry of Justice research showing that 74% of prisoners experiencing problems with accommodation

⁵⁹ For further information, see the Transition to Adulthood Alliance’s website -

<http://www.t2a.org.uk/>

⁶⁰ Caulum, M. (2007) *Postadolescent brain development: A disconnect between neuroscience, emerging adults and the corrections system*, cited in Transition to Adulthood Alliance (2009) *Universities of crime: Young adults, the criminal justice system and social policy*

<http://www.t2a.org.uk/publication-download.php?id=15>

⁶¹ p.26: Haslewood-Pócsik, I., Brown, S. and Spencer, J. (2008) *A not so well-lit path: Employers’ perspectives on employing ex-offenders*, The Howard Journal vol. 47 no.1.

⁶² Social Exclusion Unit (2002) *Reducing re-offending by ex-prisoners*, London: Office of the Deputy Prime Minister.

⁶³ Niven, S. and Stewart, D. (2005) *Resettlement outcomes on release from prison in 2003, Home Office Findings 248*. London: Home Office.

and employment reoffend during the year after custody, compared to 43% of those with no problem with either.⁶⁴

However, offenders and ex-offenders may be prevented from securing and maintaining private accommodation for a number of reasons. It can be difficult for people leaving custody to contact private landlords from within prisons and most prison-based housing advisors do not have links with private sector landlords, while setting up viewings is problematic. Landlords may also be reluctant to offer private tenancies to people leaving prison, due to the risk or perceived risk involved, and housing benefit may not be sufficient to cover the rent required, forcing offenders who are on benefits to make up the shortfall from limited other income.⁶⁵ This problem will be exacerbated when the basis for setting Local Housing Allowance (LHA) rates is changed, and the LHA caps are introduced. Raising the initial deposit or rent in advance may also be an obstacle. Whilst rent deposit schemes may offer a way out of this difficulty for some, not all local authorities offer such assistance, and as Nacro has reported, ex-offenders can find such schemes difficult to access.⁶⁶ Single people under the age of 25 - and from 2012, those under the age of 35 - face an additional barrier to moving into private rented accommodation as a result of Local Housing Allowance rules, as they are only eligible for housing benefit at a level deemed to be appropriate for a bed-sit or one room in shared accommodation. This limits the options that are available to them and can lead to rent arrears building up where the only option available is to move into more expensive accommodation, if that is all that is available, and try to fund the shortfall out of their other income.

Nevertheless, some projects and organisations have had considerable success in moving former offenders into private rented accommodation, and in examining this issue the Ministry of Justice should consider the experience of the St Giles Trust (a member of the CJA), which has built up a considerable network of private landlords, enabling them to refer a large number of clients into the private rented sector. The St Giles Trust has a worker dedicated to creating and maintaining links with private sector landlords and checks in place to make sure that the landlords they refer people to are the most suitable ones. They also work closely with clients to help them to secure any necessary rent or deposit, for example through crisis loans. There are other examples of promising practice, for example the proactive approach taken by HMP Winchester to creating links with private sector landlords, the work of Nacro's Floating Support Scheme in Nottingham (which is able to start resettlement work in HMP Nottingham and then make links into the community), and the work of Stonham to place people on bail or Home Detention Curfew in suitable private rented accommodation.⁶⁷ This shows that ex-offenders can be successfully housed in the private rented sector, but a significant level of support and guidance is likely to be required to find appropriate accommodation and support may be necessary to enable them to maintain the tenancy, particularly for young adults who may have little or no experience of managing their own housing.

In order to make the private sector a more realistic option for offenders, a number of steps should be taken. Improvements are still needed in prison-based housing advice services and links need to be improved between their staff and private sector housing providers. 'Through-the-gate' services are a vital way of helping prisoners to secure accommodation on release, and increased availability of these will be an integral part of any scheme to improve access to the private rented sector. Through such services,

⁶⁴ May, C. Sharma, N. and Stewart, D. (2008) *Factors linked to reoffending: A one-year follow-up of prisoners who took part in the Resettlement Surveys 2001, 2003 and 2004*. London: Ministry of Justice.

⁶⁵ Hughes, A. (2010) *Accessing the Private Rented Sector*, London: Nacro.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

offenders can be supported to find housing that offers stability through a minimum tenancy term, and which is in a suitable condition. Ongoing support once housing has been secured can help offenders to maintain their tenancies by supporting them, for instance, to develop financial and budgeting skills, and to increase their income by finding employment. Additionally, wider provision of rent deposit schemes, bond schemes and Social Fund Crisis Loans would help to remove financial barriers to the private rented sector. We would also support the recommendation made by the St Giles Trust in their submission that better regulation of agents and landlords operating in the private sector needs to be introduced.

The CJA welcomes the funding of £1.5 million, as set out in the Department for Communities and Local Government's consultation paper 'Local decisions: A fairer future for social housing', to improve access to the private rented sector for single homeless people, and would encourage further funding in this area, so that a good level of support can be made more broadly available to offenders. An increased level of funding would prove cost-effective in the longer term, by helping to prevent homelessness and to reduce reoffending. It could, moreover, reduce costs by increasing the numbers of prisoners who are eligible for the Home Detention Curfew (HDC) scheme. Having a suitable address is a key factor in determining eligibility for HDC, but up to 40% of prisoners have no home to go to upon release, and prisoners refused HDC will spend another 11 weeks in prison on average.⁶⁸ According to a 2008 report by Crisis and the London Housing Federation, releasing a prisoner on HDC into private rented sector accommodation with floating support provided is £3,000 cheaper than keeping a prisoner in custody over a 90-day period.⁶⁹

Whilst we support efforts to make private accommodation more accessible, it is also important, however, to acknowledge that the private rented sector may not be suitable for some offenders. For those with complex needs, in particular, accommodation in the social housing sector is likely to be more appropriate. As Revolving Doors, a member of the CJA, put forward in their response to this consultation, it is essential that work with the private rented sector does not come at the expense of specialist and non-specialist housing associations and housing providers who are doing valuable work with offenders, especially those with the most complex needs. As part of this, consideration should be given to how local authorities can be encouraged to safeguard services funded by Supporting People, which may include reintroducing ringfencing of elements of the Supporting People budget.

The CJA also believes that, in addition to improving access to the private rented sector, the continuing use of short prison sentences needs to be addressed to prevent offenders from becoming homeless. Many prisoners serving short sentences lose their housing whilst in prison, as convicted prisoners are unable to continue claiming housing benefit if they are expected to be in prison for more than 13 weeks. This means that rent arrears accrue, which can result in the loss of their accommodation.⁷⁰ The disruption caused by short prison sentences is such that a 2008 Justice Committee report concluded that, as well as not contributing to an offender's rehabilitation, they may actually increase reoffending.⁷¹ The CJA recognises that, in some instances, imposing a short prison sentence will be unavoidable. However, we believe that for many low-level, persistent offenders, a community sentence will be appropriate. We would, therefore, urge that sentencers are

⁶⁸ Luby, J. (2008) *Private access, public gain: The use of private rented sector access schemes to house single homeless people*, London: Crisis and London Housing Federation.

⁶⁹ *Ibid.*

⁷⁰ Social Exclusion Unit (2002) *Reducing Re-offending by Ex-prisoners*, London: Office of the Deputy Prime Minister.

⁷¹ House of Commons Justice Committee (2008) *Towards effective sentencing*, Fifth report of session 2007-8, London: The Stationery Office.

encouraged to use community sentencing through greater awareness and availability of disposals such as the Mental Health Treatment Requirement and the Alcohol Treatment Requirement (see question 37, below).

Question 19

How can we ensure that existing good practice can inform the programme of mental health liaison and diversion pilot projects for adults and young people?

The work of Nacro and others has shown that there are already more than 100 mental health liaison and diversion schemes operating in courts and police stations, with varying levels of quality and funding.⁷² Within these existing projects there is a great deal of existing good practice, and mechanisms now need to be put in place to capture and develop this, in order to form the basis of national guidance on the establishment and operation of mental health liaison and diversion schemes that would underpin the development of new services and the improvement of existing schemes. To do this, this guidance will need to make clear what constitutes a ‘good’ scheme and what the benefits are of a successful scheme. Development of the guidance should closely involve the voluntary sector and should also consider the specific mental health needs of women offenders. Going forward, regional and national networks of schemes should be developed to ensure that best practice is shared and schemes need to be fully embedded into local health and criminal justice structures. The long-term survival of these schemes will rely on these strong local links, as well as a clear understanding of the costs and benefits of these schemes. Children’s services and Child and Adolescent Mental Health Services should also be involved in the development and delivery of liaison and diversion schemes so that they take into account the needs of young people and young adults.

Question 20

How can we best meet our ambition for a national roll-out of the mental health liaison and diversion service?

It is well known that the number of offenders with mental health problems is high - according to Singleton et al’s landmark study, only one in ten prisoners showed no evidence of any of the five disorders (personality disorder, psychosis, neurosis, alcohol misuse and drug dependence) considered in the survey.⁷³ The CJA therefore welcomes the proposals for a national mental health liaison and diversion service, and is pleased that Lord Bradley’s report, which sets out how diversion services can be put in place across the criminal justice system, has been recognised as setting out the right approach.

The CJA believes that a key part of a successful liaison and diversion service must be a focus on diversion from the criminal justice system at the earliest point possible. As the Bradley Report notes, it was recognised as early as 1990 (through the publication of Home Office Circular 66/90) that wherever possible mentally disordered offenders should receive care and treatment from health and social services rather than be dealt with via the criminal justice system.⁷⁴ A broad implementation of this policy will have a significant impact on the number of offenders with mental disorders who end up in prison which, as a recent publication by CJA members the Centre for Mental Health and Rethink, and the Royal College of Psychiatrists points out, is “a high-cost intervention which is

⁷² Nacro Mental Health Unit (2011) *Nacro directory of criminal justice mental health liaison and diversion schemes in England and Wales* - available at <http://www.nacro.org.uk/data/files/ld-directory-83.pdf>

⁷³ Singleton et al (1998) *Psychiatric morbidity among prisoners in England and Wales*, London: Office for National Statistics.

⁷⁴ Bradley, K. (2009) *The Bradley Report: Lord Bradley’s Review of People with Mental Health Problems or Learning Disabilities in the Criminal Justice System*, London: Department of Health.

inappropriate as a setting for mental health care and ineffective in reducing subsequent offending.”⁷⁵

As well as ensuring that liaison and diversion services are available at police stations, there needs to be thorough training to improve awareness of mental health problems amongst all professionals at the ‘entry’ end of the criminal justice system, including police, duty solicitors and CPS staff. Moreover, diversion services cannot simply serve a signposting function; many offenders with mental health problems have poor histories of engagement with services, and so support needs to be provided to help them to access and maintain contact with health services. We also believe that, as set out in a recent report produced for the Department of Health by the National Appropriate Adult Network (NAAN), a member of the CJA, steps need to be taken to improve police identification of mental vulnerability among adults in custody, and to reduce variability in the provision of appropriate adult services across police forces. As NAAN recommends, statutory responsibility could be given to local authorities to ensure the availability of appropriate adult services.⁷⁶ In their response to this consultation, NAAN also highlights the anomalous position of 17 year olds held in police custody; under PACE, they are classed as and treated as adults, meaning that they are not entitled to the support of an appropriate adult. We fully support NAAN’s recommendation that the Ministry of Justice should work with the Home Office to address this.

For early diversion from the criminal justice system to be successful, appropriate health care services must, of course, be available. We welcome the proposals set out in the mental health strategy ‘No health without mental health’ to make mental health a key priority for Directors of Public Health, as well as the commitment to expand provision of psychological therapies. Directors of Public Health will have an important role to play in ensuring that there are strong links between liaison and diversion services and local mental health services, and that these local services recognise and are able to meet the needs of offenders. Indeed, we echo the recommendation made by Revolving Doors that there should be a statutory duty for Directors of Public Health and Police and Crime Commissioners to work together in order to develop and commission services that best meet the needs of the local area. We would, in addition, emphasise the importance of joint working between mental health and substance misuse services, in order to address the complex needs that many offenders have. As Sir Keith Pearson, Chair of the National Advisory Group for Health and Criminal Justice, has recently observed, the often complex needs of offenders “are best served by a collective response from services and professionals, not by working in silos. It is ineffective and expensive to deal only with mental ill health and not the co-existing drug or alcohol dependency”.⁷⁷

The CJA recognises that not all offenders with mental health problems will be diverted from criminal justice proceedings. It is therefore imperative not only that liaison and diversion services are available at courts, and that court staff - including probation staff, defence and prosecution solicitors, and sentencers - receive training to ensure that they have a good awareness of mental health problems, but also that appropriate community disposals such as the Mental Health Treatment requirement are available, and that sentencers are aware of this (see Question 37, below). We also believe that the

⁷⁵ p.1: Centre for Mental Health, Rethink and the Royal College of Psychiatrists (2011) *Diversion: The business case for action* - available at http://www.centreformentalhealth.org.uk/pdfs/Diversion_business_case.pdf

⁷⁶ Perks, M. (2010) *Appropriate adult provision in England and Wales*, London: National Appropriate Adult Network - available at <http://www.appropriateadult.org.uk/Text/1273587966852-6106/uploadedFiles/1294311851790-3470.pdf>

⁷⁷ Centre for Mental Health annual lecture, 15 February 2011 - http://www.centreformentalhealth.org.uk/pdfs/Centre_lecture_transcript_150211.pdf

introduction of a generic health treatment requirement could be an effective way of responding to those with complex needs in the community (see Question 38, below). For offenders with mental health problems who receive a custodial sentence, diversion needs to remain an option. All prison staff should receive thorough training on mental health problems, and the 14 day minimum target for transfer of acutely mentally unwell prisoners to hospital, as recommended by the Bradley report, should be implemented promptly.

The successful implementation of a national liaison and diversion service will, finally, depend on some central and overarching elements. Whilst it has long been recognised that diversion from the criminal justice system for offenders with mental health problems is desirable, the implementation of this has, historically, been problematic. It is therefore crucial that a clear vision of a national liaison and diversion service is set out. It is also important that the service is accessible to offenders with a wide range of mental health problems, and not just those with a diagnosable severe psychiatric illness. As such, we suggest that the broad definition used by the Bradley Report for offenders with mental health problems is adopted: “Those who come into contact with the criminal justice system because they have committed, or are suspected of committing, a criminal offence, and who may be acutely or chronically mentally ill... It also includes those in whom a degree of mental disturbance is recognised, even though it may not be severe enough to bring it within the criteria laid down by the Mental Health Act 1983 (now 2007).”⁷⁸ Clear structures will, moreover, need to be put in place to ensure effective delivery, accountability and partnership working, including local partnership boards, as recommended by Lord Bradley. We would also support his recommendation for agreed common elements across the service, including core minimum standards for each team, and inspection and regulation of the service by the Care Quality Commission in partnership with inspectors and regulators involved in the criminal justice system.

In addition, though there has been a rising level of unfit to plead findings in the past two decades, the numbers remain low, and in 2008 there were just 104 findings.⁷⁹ This represents a tiny proportion of those defendants who may, in fact, be unfit to participate in a criminal trial. According to a 1999 study cited in the Bradley Report, approximately 2% of those making their first appearance in magistrates’ courts - about 17,000 people - have a serious mental illness⁸⁰; and according to Singleton et al’s study of psychiatric morbidity among prisoners, 5% of male sentenced prisoners - approximately 2,340 based on the prison population of the time - scored in the lowest classification on the Quick Test of intellectual functioning, 25 and below, which is the approximate equivalent of 65 on the IQ scale.⁸¹ The CJA believes that the current arrangements are failing to prevent many unfit defendants from ending up in the penal system, and would urge that, when the Law Commission publishes its recommendations for reform in this area, these are carefully considered.

The CJA is, finally, concerned that no specific mention is made of those with learning disabilities in the proposals for a national liaison and diversion service. The No One Knows programme, run by the Prison Reform Trust, estimates that that 20%-30% of offenders have learning disabilities or difficulties that interfere with their ability to cope within the

⁷⁸ p.17: Bradley, K. (2009) *The Bradley Report: Lord Bradley’s Review of People with Mental Health Problems or Learning Disabilities in the Criminal Justice System*, London: Department of Health.

⁷⁹ Law Commission (2010) *Unfitness to plead: A consultation paper*, London: The Law Commission.

⁸⁰ Bradley, K. (2009) *The Bradley Report: Lord Bradley’s Review of People with Mental Health Problems or Learning Disabilities in the Criminal Justice System*, London: Department of Health.

⁸¹ Peay, J. (2011) *Mental health and crime*, London: Routledge.

criminal justice system.⁸² Research by the Prison Reform Trust has also highlighted the particular difficulties that those with learning disabilities or learning difficulties are likely to face in custody: they may find it hard to understand and adjust to the rules and regimes; they are vulnerable to targeting by other prisoners; and they may respond to their distress by lashing out at others or by isolating themselves, or being isolated by prison staff for their own protection, which in turn increases their vulnerability to problems such as mental distress and suicide.⁸³ It is crucial that, in implementing a national liaison and diversion service, sufficient attention is paid to learning disabilities and difficulties, so that offenders do not fall through the net and fail to receive the help and support they need.

Question 22

Do you agree that the best way of commissioning payment by results for community sentences is to integrate it within a wider contract which includes ensuring the delivery of the sentence?

If payment by results is to be introduced in the delivery of community sentences, then it is essential that the delivery of the different components of the sentence is co-ordinated to ensure that there is an integrated approach to reducing reoffending. One way to achieve this would be to contract with one provider to deliver the overall community sentence. However, the Government will need to ensure that the provider has sufficient expertise to effectively manage all elements of the sentence, even if parts of the delivery will be subcontracted, and that there is sufficient oversight and accountability to ensure that sentences, and the offenders serving them, are being managed appropriately.

'Breaking the Cycle' is also unclear about the exact future role of the public sector probation service in this configuration. We anticipate that they will be required to write pre-sentence reports and provide any other relevant information to the courts, but this could provide a potential conflict of interest if they are also successful in winning the contract to deliver the sentence. This would, however, only in effect replicate the existing situation and should therefore be acceptable, as long as the necessary oversight structures are in place. The future role of public sector probation services is in general unclear in the Green Paper. While they could bid for payment by results contracts, the Green Paper does not address what impact their involvement would have on the incentives that payment by results is intended to create, given that they are not profit-making or able to borrow or otherwise raise additional finance in the same way as private sector providers. This could potentially limit their involvement, and the possible impacts of this need to be considered by the Ministry of Justice.

Question 23

What is the best way of reflecting the contribution of different providers within a payment by results approach for those offenders sentenced to custodial sentences and released on licence?

The CJA supports the proposal in Paragraph 134 that the provider of probation services may be best-placed to manage the services designed to reduce reoffending. It is essential that services that are intended to reduce reoffending are delivered seamlessly through the prison gate. The organisation that will be best-placed to achieve this is generally a community-based provider that will be linked in with local healthcare services, housing providers, employers and other mainstream service providers. However, this approach does present a number of challenges. Firstly, the provider of probation services will need to develop a strong working link with the prison that the offender is held in. This will require prisons to co-operate with the provider of probation services in the design and delivery of their regimes. Secondly, prisoners are likely to serve their sentence in a

⁸² Loucks, N. (2007) *No One Knows: Offenders with Learning Difficulties and Learning Disabilities - Review of Prevalence and Associated Needs*, London: Prison Reform Trust.

⁸³ *Ibid.*

number of institutions and may not be based geographically near to the area that they intend to resettle into, given the distance that many prisoners are held from home. This will make it difficult for providers to maintain strong links with prisoners, and would require them to work closely with a large number of prisons.

Question 25

Do you agree that high risk offenders and those who are less likely to reoffend should be excluded from the payment by results approach?

We support the current Multi-Agency Public Protection Arrangements, which effectively bring together the relevant statutory partners to manage risk. We therefore welcome the decision to remove these offenders from the payment by results proposals. However, while we recognise the reasons given for excluding low-risk offenders from payment by results projects, it is not clear whether this would be beneficial. Firstly, it is difficult to see how this assessment would be made objectively. The type of community order given would be a blunt measure for assessing risk, and could lead to offenders who would benefit from additional support being effectively excluded from receiving it. While offenders are already assessed using OASys, it is not designed to be used to segment the offender population for this purpose and only predicts reoffending moderately well. As a result, as a recent study noted, “there is little support for using it as a robust method of population segmentation”.⁸⁴ In addition, a focus on less serious offenders could prevent them progressing onto more serious offending. This could save additional resources in the future.

Question 26

What measurement method provides the best fit with the principles we have set out for payment by results?

The shift of focus from processes to outcomes that underpins the move towards payment by results is welcome. Payment by results could also help providers to improve their practice, including by examining what has not been successful in reducing reoffending and what could be done better. It can drive innovation and can arguably cut costs. However, there is a risk that payment by results could instead lead to conservatism in delivery, with providers focusing on a narrow range of services that are known to produce acceptable results, rather than innovating at the risk of failure and little or no payment as a result.

Payment by results will also increase competition between providers and this may make providers less likely to share learning with their competitors, which will slow down the transfer of policy lessons. At the same time, much of the criminal justice system’s supporting infrastructure is being removed, with the abolition of the Youth Justice Board and the National Policing Improvement Agency, the removal of the regional tier of offender management, cuts in the Ministry of Justice, and the devolution of responsibility to the local level. This may drive innovation at a local level, but there is a risk that it will also make it harder for agencies to share learning and to build on the work of others.

In the initial stages, at least, it is therefore essential that there is an open culture across the development of payment by results. Data must be openly available, and not retained by individual providers, and research and assessment on what works must also be openly available to allow providers to learn from each other. There should also be rigorous assessment by the Ministry of Justice of the contents of proposals ahead of contracts being awarded that ensures that what is being proposed is consistent with what existing evidence shows to work in reducing recidivism. While flexibility must be retained to allow innovation, this need not allow potential providers to pursue approaches that have already been demonstrated not to be beneficial in reducing reoffending. In this context, proposals

⁸⁴ p.22: Dicker, J. (2011) *Payment-by-Outcome in Offender Management*, London: 2020 Public Services Trust.

for a UK Centre for Justice Innovation⁸⁵ or a NICE-equivalent for criminal justice⁸⁶ should be re-examined to assess whether an independent body to assess the evidence in support of different approaches could have benefits in driving good practice.

We also welcome the Ministry of Justice's intention to pilot new payment by results processes before rolling them out more widely. This is a very significant change in the structure of the delivery of criminal justice services and has been described as a "world first"⁸⁷ by the Government. We therefore do not yet know whether, or how, it will work in practice and rigorously-assessed and evaluated pilots are consequently essential. However, we are concerned that the Government's statement in the Green Paper that "By 2015 we will have applied the principles of this approach [payment by results] to all providers" suggests that there will not be time to properly assess the effectiveness of the pilots before broader roll-out begins. We agree with a recent policy paper published by KPMG where it states, with regards to payment by results, that there may be "a 'bleeding edge' in getting it right, as both the customer and the provider explore how to manage complex risks and rewards and the boundaries of cross-government and multi-year spending are transcended"⁸⁸. CentreForum have similarly warned that "to seek to move quickly to a full payment by results approach risks discrediting the policy by running the risk of failure of providers, poor value for money for the public sector and frustrating the development of a diverse range of providers"⁸⁹. There is therefore the need for a managed programme of proper pilots to judge whether payment by results can work, and if so to devise how it can best be designed to maximise positive outcomes.

The use of pilots will also be an opportunity for providers to build up the evidence base as to the likely costs and effectiveness of different approaches and interventions, which would allow them to better price their bids and therefore lead to better value for money.⁹⁰ It would also allow the Ministry of Justice to begin to assess the extent to which payment by results will be able to be funded by savings in the system caused by reduced reoffending. It is possible to argue that if the police are not using time and resources arresting one individual as a result of their not having reoffended, then that will free up their time to arrest another person who they would not have otherwise have been able to come into contact with. This would have many broader benefits, but would not result in savings, as the 'replacement' would require the same, or similar, resources from across the criminal justice system. More flexibility in the prison estate will also be required if a reduction in the number of prisoners is to allow prisons to close, which is necessary for significant cost savings to be made.

In addition, pilots will allow the Ministry of Justice to explore any perverse incentives or unintended consequences that may be created by the development of payment by results and look at how they can be addressed, before the approach is rolled out. This will be particularly important due to the possibility that providers will, intentionally or unintentionally, feed into unintended consequences. There are risks that the offenders most likely not to reoffend will be 'cherry-picked' (or 'cream-skimmed'), while those that

⁸⁵ p.70: Shelapanov, A. and Ali, R. (2010) *Turning the Corner: Beyond incarceration and reoffending*, London: The Young Foundation.

⁸⁶ Howarth, D. (2009) 'NICE for justice? Putting the evidence into criminal justice policy' in Collins, J. and Siddiqui, S. (eds.) *Transforming Justice: New approaches to the criminal justice system*, London: Criminal Justice Alliance.

⁸⁷ Herbert, N. (2010) *Speech on Government plans for prison reform*, 22 October, available at: <http://www.justice.gov.uk/news/sp221010a.htm>

⁸⁸ p.13: Downey, A., Kirby, P. and Sherlock, N. (2010) *Payment for Success: How to shift power from Whitehall to public service customers*, London: KPMG.

⁸⁹ p.6: Nicholson, C. (2011) *Rehabilitation Works: Ensuring payment by results cuts reoffending*, London: CentreForum.

⁹⁰ *Ibid.*, p.6.

providers feel are least likely to avoid reconviction are ‘parked’ with little or no access to support services. To address this, the CBI has recommended that “payment incentives should be increased incrementally as reoffending is cut by larger amounts” in order to ensure that “providers are encouraged to help those who are harder to reach”⁹¹, while the Social Market Foundation has suggested a ‘payment escalator’, which would operate in a similar way.⁹²

In terms of measurement, it will be important to ensure that the data used for baselines is robust and reliable, and that metrics are not susceptible to changes in the external environment (for example changes in the employment environment or the availability of housing) and national or local policy changes (such as new crimes being legislated for or changes in policing priorities; the latter may be particularly prevalent following the introduction of Policing and Crime Commissioners), or at least that the impacts of these changes are recognised and minimised.⁹³ This will be important in ensuring that we get a genuine picture of what is working and should therefore be replicated, as well as ensuring that the payment system is fair.

Within this, we recognise the centrality of reducing reoffending, which will focus providers on rehabilitation and supporting offenders to turn their lives around. However, a great deal is also known about the broader changes in people’s lives - like moving into employment or housing and maintaining family relations, as well as the development of human capital - that can help to facilitate reductions in reoffending. These can be important steps towards desistance, and even where people go on to reoffend, there is a case for rewarding providers for helping them to take the steps that may have helped to reduce the frequency and severity of reoffending and will over time help them to stop offending. As a result, we think that the Ministry of Justice should examine whether it could set up a mechanism that, alongside rewarding providers for reducing reoffending, also incentivises moving offenders along some of the stepping stones to desistance, for example obtaining employment and stable housing.

In doing this, the Ministry of Justice could draw on the work of the London Youth Reducing Reoffending Programme (also known as Project Daedalus), which is based on payment by results principles. This model, based on resettlement ‘brokers’ working with young people in London, takes into account the achievement of positive steps, with graded payments triggered by the achievement of a set of outcomes (including securing education or training, securing work, and maintaining work for six months). This graded approach could be more effective in working with offenders and could also encourage the involvement of voluntary sector organisations (who deliver the resettlement work of Project Daedalus). However, the Ministry of Justice should also be aware that this sort of approach may limit the extent to which providers can innovate. As a result some providers could be enabled to focus solely on reoffending, subject to providing a clear and evidence-based proposal for taking a different approach.

The Ministry of Justice should also consider whether there may be a need for local variations in the measurement mechanisms and tariffs, to reflect different local circumstances. It may, for example, be easier to move an offender into housing or employment in some areas than others, which will have an impact on reoffending rates. Varying tariffs locally would reflect this and incentivise providers to work in the most challenging and disadvantaged areas. There is also a lack of clarity about how different

⁹¹ p.6: CBI (2011) *Action in the Community: Reforming probation services to reduce reoffending*, London: CBI.

⁹² p.71: Mulheirn, I., Gough, B. and Menne, V. (2010) *Prison Break: Tackling recidivism, reducing costs*, London: Social Market Foundation.

⁹³ p.69: Shelapanov, A. and Ali, R. (2010) *Turning the Corner: Beyond incarceration and reoffending*, London: The Young Foundation.

payment by results systems (for example the rehabilitative services proposed in this Green Paper and the Work Programme) will interact with each other where they are working towards related outcomes, and which provider will take the credit in achieving outcomes that may relate to more than one service.

Question 27

What is the best option for measuring reoffending and success to support a payment by results approach?

It is not possible to effectively measure reoffending in its entirety. Many crimes are never reported to the police, and of those that are only a minority lead to a detection (in 2009/10 the sanction detection rate was 27.8%⁹⁴). While self-report studies can provide a fuller picture of reoffending, they rely on offenders accurately recalling and relating potentially self-incriminating evidence. Collecting sufficient data would also be expensive and complex.⁹⁵ Reconviction rates are therefore the most widely-accepted proxy for reoffending for this purpose, although their limitations should be understood.

Consideration should also be given to different ways of looking at reconviction rates, including measuring reconviction for offenders on community orders from the date of completion of the order, rather than from the date of commencement, as is currently done.

In measuring reconviction rates, the length of the follow-period will affect the proportion of people who are reconvicted. For example, Ministry of Justice research has showed that 75% of offenders are convicted of a further offence within nine years, compared to 43% within one year.⁹⁶ Using a longer follow-up period would therefore give a fuller picture of reoffending. However, a very long follow-up period is likely to be difficult to administer and unrealistic in terms of paying the provider, so a balance between the two is necessary. Given that of those who are convicted of a further offence within two years, 78% are within the first year⁹⁷, there is a strong case for using a one-year follow up period. This would make the process more manageable for providers, and would also limit the impact of other factors outside the providers' control, like rising unemployment or changing housing or welfare policies.

In terms of measuring the level of reconviction rates, a binary 'yes/no' measure is the most straightforward to understand and apply. However, for many offenders desisting from crime can be a slow process, with progress made initially in reducing the frequency of reoffending. This can be an important process, and providers should be recognised for their contribution towards it. In addition, the use of a 'yes/no' measure would be more likely to lead to those most likely to reoffend being 'parked' without access to services, while the provider focuses on those that they think are most likely to desist with the appropriate support (known as 'cherry-picking' or 'cream-skimming'). A 'yes/no' measure could also lead to a provider 'parking' somebody if they reoffend once, as they would no longer be eligible to trigger any further payment, even if this increased their risk of committing numerous further offences. This would clearly be the wrong approach.

We would therefore support an approach that focuses on frequency of reoffending during the follow-up period. However, this will cause further problems, as if an offender commits a further offence and is imprisoned, they will be unable to reoffend for at least some of the follow-up period, which might slow the frequency of their reoffending over the whole

⁹⁴ p.150: Flatley, J., Kershaw, C., Smith, K., Chaplin, R. and Moon, D. (eds.) (2010) *Crime in England and Wales 2009/10*, London: Home Office.

⁹⁵ Dicker, J. (2011) *Payment-by-Outcome in Offender Management*, London: 2020 Public Services Trust.

⁹⁶ Ministry of Justice (2010) *Compendium of reoffending statistics and analysis*, London: Ministry of Justice.

⁹⁷ *Ibid.*

period but would clearly not be a desirable outcome. One potential solution would be for the follow-up period to be frozen while the individual was in custody, but this would make measurement extremely complicated and bureaucratic.⁹⁸ In addition, using a measure of frequency of reconviction will make it more difficult to develop a 'predicted' rate as a comparison, meaning that it will be more difficult to control for other factors and the work of other agencies (for example, the same individual could be the subject of a payment by results contract as part of the Ministry of Justice's remit and as part of the Work Programme, making it difficult to establish who take credit if somebody gets into a job and desists from crime). Nonetheless, in terms of measuring reoffending, frequency of reconviction still seems to be the best available measure.

Question 28

Is there a case for taking a tailored approach with any specific type of offender?

We welcome the Ministry of Justice's recognition that some groups of the offenders may require a distinct approach.

Firstly, it is important to recognise the need for a gender-specific approach to working with women offenders in the design of payment by results. Women offenders are in a minority throughout the criminal justice system, and as a consequence there is a risk that if payment by results is developed on a generic basis, women's outcomes will be marginalised as there will not be enough women in any one area for their outcomes to be a priority. As Women in Prison, a member of the CJA, has argued, "designing and delivering services for women would be disincentivised because it would not yield statistically big enough results to qualify for payment"⁹⁹. A women-specific approach is therefore necessary, and this should include ensuring that organisations with existing experience of working specifically with women offenders are able to deliver services and, crucially, be involved in designing the service and the mechanism for measuring outcomes. Many of these organisations are small, local organisations and it is essential that they are supported in the work that they are currently doing to reduce reoffending by women rather than supplanted by new, generic services.

In designing women-specific services, the Ministry of Justice should also consider a wider set of outcomes than simply reducing reoffending, building on what we know about women's offending and desistance. The outcomes measured, for example, could include rebuilding family relationships, and in particular successfully stabilising relationships between women leaving prison and their children. In addition to reducing reoffending, this would save considerable future costs associated with the children's needs. Overall, outcome measures that measure improvements in women's general wellbeing would both reduce reoffending and result in broader social and societal benefits.

The Ministry of Justice should also consider how best to incorporate specific measures related to young adults in the development of payment by results. The work of the Transition to Adulthood Alliance, which the Criminal Justice Alliance has contributed to, has set out the economic, social and structural factors that specifically affect young adults, and the impact that maturity can have on offending behaviour. Young adults are disproportionately involved in the criminal justice system and there are currently high reoffending rates for this group, demonstrating that an approach that is targeted to addressing their specific needs could have a significant impact on improving the effectiveness of the criminal justice system. This approach should be proportionate to their maturity and responsive to their specific circumstances, incorporating what we know about young adult offenders, the causes of their offending behaviour and what can be

⁹⁸ p.19: Dicker, J. (2011) *Payment-by-Outcome in Offender Management*, London: 2020 Public Services Trust.

⁹⁹ See

<http://www.womeninprison.org.uk/userfiles/file/Green%20Paper%20OPEN%20Briefing.doc>

done to encourage desistance. This is set out in detail in the Transition to Adulthood Alliance's response to this consultation, which we support.

As 'Breaking the Cycle' recognises, there may also be a need to prioritise working with offenders from minority ethnic groups. More people from ethnic minority communities now enter the criminal justice system and stay in it for longer than ever before. People from ethnic minority communities are consequently overrepresented across the criminal justice system, and account for 27% of the prison population even though they constitute only 9% of the overall population in England and Wales. There is an urgent need to address this by examining and addressing the causes of this disproportionality both within and outside the criminal justice system and by developing and promoting services within the criminal justice system that better support the resettlement and rehabilitation of ethnic minority offenders. Payment by results could be an important route to achieving this, but organisations with particular expertise in working with people from ethnic minority communities must be involved in designing payment by results systems and mechanisms, to ensure that their expertise and experience are considered. All providers should also be required to work closely with organisations with particular expertise in working with people from ethnic minority communities in the delivery of services to ensure that the specific needs of this group are met. Indeed, there is insufficient attention throughout the Green Paper on race issues, and more should be done to address this.

Question 31

How do we involve smaller voluntary organisations as well as the larger national ones?

The model of payment by results that is developed will be central to enabling the involvement of the voluntary sector in delivering criminal justice services in the new environment proposed in the Green Paper. It is clear that voluntary sector organisations, even larger national voluntary sector organisations, will not be able to carry the financial risk of a payment by results model that requires all payment to be deferred and based on results, either due to a lack of available funding or the limits placed on the use of reserves by charity law. Even if a basic payment is made up front, with an additional payment made based on results, it is unlikely that voluntary sector organisations would be able to carry the financial risk, with concerns emerging from the Department for Work and Pensions' Work Programme bidding process that voluntary sector organisations that are hoping to get contracts may be particularly vulnerable to suffering financially or even being forced to close down as a result of their involvement in the scheme.¹⁰⁰ If this happens in a criminal justice context, it will weaken the market and damage the credibility of the scheme.

One way to address this is for social investors to fund the work and carry the risk, as is the case with the pilot project at HMP Peterborough, but there are questions about whether this is scalable across the criminal justice system and it also puts the financial risk onto the investors rather than the provider, potentially weakening incentives (although the reputational risk may still be considerable). Another potential route would be for voluntary sector organisations to be subcontractors to larger prime providers. This could be facilitated by compelling prime providers to subcontract a set proportion of the work to the voluntary sector, as a condition of being granted the contract. However, this could be overly prescriptive and inflexible, and might fail to ensure that the most appropriate delivery organisation is in place. A better solution, as has been the case with the contracting for the Work Programme, might be for Government ministers to require prime providers, if that model is used, to work closely with the voluntary sector as subcontractors, wherever appropriate, in the design and delivery of services. This could incorporate a version of the Merlin Standard, which the Department for Work and Pensions has set up to ensure subcontractors, including third sector organisations, are treated fairly.

¹⁰⁰ <http://www.bbc.co.uk/news/uk-politics-12476342>

However, subcontracting poses significant risks to the autonomy of voluntary sector organisations and may cause considerable problems if there are contradictions between the strategic objectives or operating practices of the (probably private-sector) prime provider and a small voluntary sector subcontractor. In addition, a recent report by CentreForum argues that the lessons learnt from the development of PBR mechanisms in welfare to work suggest that large prime contractors will still pass risk and the working capital requirements down to their subcontractors.¹⁰¹ Whether the systems set up to support the new Work Programme will address this remains to be seen, but unless a solution is found within a criminal justice context then payment by results could have the effect of locking out all but the largest providers.

The measurements used will also have an impact on the role of the voluntary sector. As Clinks, which is a member of the CJA, has stated, “for much of the [voluntary sector], particularly the most localised, ‘reducing reoffending’ is not their single or necessarily even one of their core objectives.”¹⁰² It will be important to quantify the broader impact that the voluntary sector can have on an individual’s multiple needs, including in delivering ‘soft’ outcomes (such as improved self-esteem) that can have an impact on reducing reoffending. Otherwise, the introduction of payment-by-results could marginalise this valuable work.

To facilitate greater levels of involvement from voluntary sector, an element of the payment will need to be guaranteed, to ensure that third sector organisations are able to provide basic services to offenders without having to borrow capital (with little capital likely to be available anyway from sources other than social finance until there is a successful track record for payment by results schemes in the criminal justice system). One way of developing this would be to consider the merits of phasing in outcome-based payment mechanisms by initially basing payments on activity measures such as the number of people worked with. This would be a step towards payment by results that the voluntary sector might be better placed to engage with (and this gradualist approach has also been suggested in a recent briefing on applying payment by results to drugs services¹⁰³ and by CentreForum¹⁰⁴).

The Ministry of Justice should also consider the merits of system of staged payments, to ease cash flow problems and lower the level of risk to providers, as it would allow them to be paid in parts for milestones reached. This would build on the methodology underpinning Project Daedalus, which is delivered by the voluntary sector. Different payments could also made for working with higher risk offenders, or offenders with multiple and complex needs, which might be better-suited to the more holistic approach traditionally offered by the voluntary sector. Different payment levels and mechanisms for different groups of offenders would also help to prevent ‘cream-skimming’ and ‘parking’ of offenders.¹⁰⁵

Finally, we recommend that it should be clearly articulated to the voluntary and community sector what commissioning structures will be in place until 2015 when, as ‘Breaking the Cycle’ sets out, the payment by results principle will be applied to all providers.

¹⁰¹ p.6: Nicholson, C. (2011) *Rehabilitation Works: Ensuring payment by results cuts reoffending*, London: CentreForum.

¹⁰² Hayes, C. (2010) *Payment by Results: What does it mean for voluntary organisations working with offenders?*, London: Clinks.

¹⁰³ p.3: Roberts, M. (2011) *By their fruits: Applying payment by results to drugs recovery*, London: UK Drug Policy Commission.

¹⁰⁴ p.7: Nicholson, C. (2011) *Rehabilitation Works: Ensuring payment by results cuts reoffending*, London: CentreForum.

¹⁰⁵ *Ibid.*, p.6.

Question 32

What are the best ways to simplify the sentencing framework?

We support the proposals for simplification of the sentencing framework set out in 'Breaking the Cycle', including reforming Schedule 21 of the Criminal Justice Act 2003 by making it less prescriptive, and repealing unimplemented legislation. We also fully support the proposal to limit remand to those offenders who are likely to receive a custodial sentence. This is logical, and will contribute to a clearer and more sensible approach, as will the proposal to release those who have been recalled to prison, and who pose no risk to the public, after a fixed period. Whilst the CJA would have preferred the abolition of the indeterminate sentence of imprisonment for public protection (IPP), we nevertheless welcome plans to reform it by restricting its use to those whose offence deserves a determinate sentence of at least ten years. The IPP is a flawed sentence that has been vastly overused, and many IPP prisoners have served sentences well in excess of their tariff; according to a report published by the Prison Reform Trust in June 2010, just 4% of all prisoners who had completed their tariffs had, by this point, been released.¹⁰⁶ We are also pleased to see proposals that should provide for the timely release of those who have already served sentences in excess of their tariff. We would, additionally, recommend that an impartial review should be commissioned in the near future, to assess the use of IPPs by sentencers, their place within the sentencing framework, and their long-term future.

Question 33

What should be the requirements on the courts to explain the sentence?

The CJA agrees that requirements on the courts to explain sentences should be focused on ensuring that both victims and offenders understand why a particular sentence has been passed, and we therefore welcome efforts to simplify the current requirements. However, we would also emphasise that it is important to provide guidance, and where necessary training, to achieve consistency across the courts, and to ensure that sentencers are communicating what is important. This is particularly important given the high numbers of offenders with mental health problems and/or learning disabilities or difficulties.

Question 34

How can we better explain sentencing to the public?

Under section 129 of the Coroners and Justice Act 2009, one of the duties of the Sentencing Council is to promote awareness amongst the public of sentencing, a function that the CJA fully supports. Indeed, the first draft guideline produced by the Sentencing Council, on assault offences, demonstrated a clear commitment to making the sentencing process clear and comprehensible; this is, we believe, an integral part of ensuring that sentencing is better understood by the public.

Question 35

How best can we increase understanding of prison sentences?

As a recent report by Victim Support highlights, public knowledge and understanding of how sentences, including prison sentences, operate in practice is limited.¹⁰⁷ The CJA believes that one way of improving understanding of prison sentences is to limit the use of IPPs, and we welcome the proposals to do this. The IPP sentence is extremely confusing; the Prison Reform Trust has identified a lack of understanding of the sentence even among many prison staff.¹⁰⁸ As 'Breaking the Cycle' recognises, widespread use of IPPs can undermine public confidence since the court, the victim and the public have no means of

¹⁰⁶ Hough, M. and Jacobson, J. (2010) *Unjust deserts: Imprisonment for public protection*, London: Prison Reform Trust.

¹⁰⁷ Victim Support (2010) *Victims' justice? What victims and witnesses really want from sentencing*, London: Victim Support.

¹⁰⁸ Hough, M. and Jacobson, J. (2010) *Unjust deserts: Imprisonment for public protection*, London: Prison Reform Trust.

knowing how long an individual will spend in custody. Restricting the usage of IPPs, therefore, will help to re-focus prison sentences on determinate periods, which are easier for victims, the public, and the offender to understand. We would also reiterate the need for clear communication and explanation of sentences by magistrates and judges in the courts, and the role of the Sentencing Council in increasing public understanding of sentences and the sentencing process. As well as publishing clear guidelines, it has an important role to play in improving the media's understanding and communication of sentences imposed by the courts, particularly in relation to high profile cases.

Question 36

Should we provide the courts with more flexibility in how they use suspended sentences, including by extending them to periods of longer than 12 months, and providing a choice about whether to use requirements?

The CJA supports the proposals set out to reform suspended sentences. Research by the Centre for Crime and Justice Studies shows that since the introduction of the new Community Order (CO) and the Suspended Sentence Order (SSO) in April 2005, the boundaries between the two orders have become "ever more blurred".¹⁰⁹ It highlights that in 2007, for instance, half of the SSOs passed in magistrates' courts were for summary offences, "which implies that these are not acting as alternatives to custody"¹¹⁰ but are being imposed inappropriately in response to lesser offences. The CJA believes that providing a choice for sentencers about imposing community requirements recognises that the threat of custody imposed by SSOs is a significant punishment in itself, and that adding a community requirement may be an unnecessary addition. In doing so, it may draw a useful distinction for sentencers that will encourage them to impose SSOs more appropriately. We would also echo the recommendation made by the Centre for Crime and Justice Studies' report that guidelines on the use of the SSO should be developed; this too would facilitate more appropriate use of the order.

We also believe that the threat of custody imposed by the SSO makes it a proportionate disposal for more serious offences, and we therefore support the plan to allow courts to impose SSOs for a custodial period of longer than twelve months. Implementation of this reform, however, would make it all the more important that a clear distinction is drawn between the CO and the SSO, so that SSOs for periods of more than twelve months are only imposed in cases where the offence truly merits a custodial sentence of this length, and not in instances where a community order would be more appropriate.

Question 37

How can we make community sentencing most effective in preventing persistent offending?

The CJA believes that an integral part of making community sentencing more effective is ensuring that requirements such as the Mental Health Treatment Requirement (MHTR) and the Alcohol Treatment Requirement (ATR), which address problems frequently associated with persistent offending, are available and being used by sentencers. As 'Breaking the Cycle' rightly recognises, despite the high prevalence of mental health problems among offenders, use of the MHTR has been infrequent since its introduction in 2005. Although 40% of offenders on community orders are thought to have a diagnosable mental health problem¹¹¹, in 2009, just 809 MHTRs commenced out of a total of 231,444 requirements

¹⁰⁹ p.8: 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.

¹¹⁰ *Ibid.*, p.15.

¹¹¹ Khanom, H., Samele, C. and Rutherford, M. (2009) *A Missed Opportunity? Community Sentences and the Mental Health Treatment Requirement*, London: Centre for Mental Health.

issued with community orders.¹¹² The number of requirements for alcohol treatment commencing in the same period was significantly more, at 6,485.¹¹³ However, when it is considered that almost half of probation clients are recorded as having an alcohol problem,¹¹⁴ the relative underuse of the ATR is also clear - it accounted for just 3% of all requirements commenced in 2009.¹¹⁵

The CJA agrees that the underuse of the MHTR may in part be due to a full psychiatric report being needed before it can be imposed - indeed, a report by the Centre for Mental Health has identified this requirement as “the biggest barrier to the creation of an MHTR”¹¹⁶ - and we support the proposal to take a more flexible approach to assessment. In addition, we believe that there are further reasons for the low numbers of MHTRs and ATRs imposed that need to be addressed. A 2008 survey by the Centre for Crime and Justice Studies identified amongst sentencers a clear lack of knowledge about the availability of community order requirements in their local areas.¹¹⁷ It also identified actual availability of requirements as a problem, as have other studies. A 2008 report by the National Audit Office noted that alcohol treatment “varies greatly in availability”¹¹⁸ and a 2009 survey of probation officers, also by the Centre for Crime and Justice Studies, revealed particular problems with the availability of alcohol and mental health treatment.¹¹⁹ As noted earlier, a report published this year by the Centre for Mental Health identifies inadequate provision of alcohol interventions across both general health care and offender specific-settings, and notes that “demand for all types of intervention and treatment exceeds supply”.¹²⁰ Both knowledge of the availability of MHTRs and ATRs amongst sentencers and actual availability of these requirements therefore need to be addressed if persistent offending is to be tackled effectively through community sentencing.

The Centre for Mental Health also identified a lack of awareness amongst magistrates and probation officers about mental health problems, and a lack of understanding of the criteria for the MHTR amongst a range of criminal justice staff. As such, we support their recommendation that judges, magistrates, legal advisors, solicitors and probation officers should have training and information on mental health awareness and sentencing options, which would include a clear articulation of the inclusion and exclusion criteria for the MHTR.¹²¹ We would also emphasise the importance of the proposals set out in ‘Breaking the Cycle’ to allow probation officers more discretion when dealing with breaches of community orders, and in deciding when to use enforcement action, in relation to offenders with mental health problems and drug or alcohol dependencies. Many of these

¹¹² Ministry of Justice (2010) *Offender Management Caseload Statistics 2009* - available at <http://www.justice.gov.uk/publications/docs/omcs-2009-complete-210710a.pdf>

¹¹³ *Ibid.*

¹¹⁴ Fitzpatrick R. and Thorne L. (2011) *A label for exclusion - Support for alcohol-misusing offenders*, London: Centre for Mental Health.

¹¹⁵ Ministry of Justice (2010) *Offender Management Caseload Statistics 2009* - <http://www.justice.gov.uk/publications/docs/omcs-2009-complete-210710a.pdf>

¹¹⁶ p.5: Khanom, H., Samele, C. and Rutherford, M. (2009) *A Missed Opportunity? Community Sentences and the Mental Health Treatment Requirement*, London: Centre for Mental Health.

¹¹⁷ Mair, G., Cross, N. and Taylor, S. (2008) *The Community Order and the Suspended Sentence Order: The Views and Attitudes of Sentencers*, London: Centre for Crime and Justice Studies.

¹¹⁸ p.26: National Audit Office (2008) *The National Probation Service: The supervision of community orders in England and Wales*, London: The Stationery Office.

¹¹⁹ 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.

¹²⁰ p.2: Fitzpatrick R. and Thorne L. (2011) *A label for exclusion - Support for alcohol-misusing offenders*, London: Centre for Mental Health

¹²¹ Khanom, H., Samele, C. and Rutherford, M. (2009) *A Missed Opportunity? Community Sentences and the Mental Health Treatment Requirement*, London: Centre for Mental Health.

offenders have chaotic lifestyles, and an important part of working constructively with them is allowing room for individual, professional judgment on whether there may be a more effective way of dealing with non-compliance than returning them immediately to court.

Question 38

Would a generic health treatment community order requirement add value in increasing the numbers of offenders being successfully treated?

The CJA believes that, for those offenders with a dual diagnosis of mental health problems co-occurring with substance misuse, a generic health treatment requirement could prove to be a very useful response to their offending behaviour. Research by the Centre for Mental Health has found that offenders with a dual diagnosis of mental health problems and drug dependency are typically dealt with through the use of the Drug Rehabilitation Requirement (DRR), partly because it is felt that the imposition of a DRR and an MHTR would be too onerous.¹²² However, this could mean that mental health problems are left untreated. The CJA believes that the implementation of a generic health treatment requirement would address this problem by integrating, for instance, drug treatment and mental health support into one disposal. It would also mean that, rather than being treated as discrete problems that are independent of one another, substance misuse and mental health problems could be addressed appropriately as interlinked issues. Successful implementation of a generic health requirement will depend on several key factors. Clear criteria for inclusion and exclusion will need to be outlined (as set out above, confusion around criteria for use has played a part in the underuse of the MHTR); clear guidance for professionals involved in the imposition and implementation of the requirement will also need to be developed; positive relationships between the different agencies involved in its delivery will need to be firmly in place; and appropriate treatment will need to be available in the community.

Question 39

How important is the ability to breach offenders for not attending treatment in tackling their drug, alcohol or mental health needs?

As we have argued above, offenders with mental health problems and/or drug or alcohol dependencies often have chaotic lifestyles, and a rigid system for dealing with failures to comply with the requirements of a Community Order is not, consequently, a constructive approach to take. As such, we fully support the proposals to afford probation officers more discretion, and to allow them to exercise their professional judgment as to whether it is necessary to breach an offender or not. We acknowledge that, in some cases, breaching the offender may be the only possible course of action; however, we believe that probation officers working directly with individual offenders are best placed to decide when this is the case.

Question 40

What steps can we take to allow professionals greater discretion in managing offenders in the community, while enforcing compliance more effectively?

The CJA welcomes the recognition in 'Breaking the Cycle' that the current arrangements for dealing with failures to comply with community sentences are restrictive, and allow little room for professional judgment. Research by the Centre for Crime and Justice Studies published in 2008 found that there were concerns among probation staff about offenders being breached for quite minor infringements as a result of National Standards, and being given more onerous requirements or being re-sentenced, when continuing with the order would, in fact, be the better course of action. Moreover, in addition to being costly, it was suggested by some sentencers that this process was 'setting people up to

¹²² Khanom, H., Samele, C. and Rutherford, M. (2009) *A Missed Opportunity? Community Sentences and the Mental Health Treatment Requirement*, London: Centre for Mental Health.

fail', since it leads to the imposition of even more onerous requirements on offenders who are struggling to cope with the demands of the original order.¹²³

The CJA believes that the constraints of National Standards in relation to failures to comply with a community order should be removed, and that probation officers should be allowed the discretion to decide if breach action is necessary, or if another course of action, such as issuing a warning, would be more appropriate. This will mean that needless formal enforcement action, which is time-consuming and costly, can be avoided. By allowing probation officers to exercise their judgment, rather than forcing them to adhere to a restrictive and unforgiving system, it may also allow them to forge positive and trusting relationships with even the most challenging offenders which could, in turn, contribute to improved compliance. The CJA also believes that the plans to allow probation officers to terminate orders early if an offender has "earned" this through good progress could also play an important part in improving compliance, through the provision of a clear incentive. However, whilst we support removing the restrictions of National Standards, and encouraging the use of personal discretion and judgment, we would also suggest that some guidance will be needed to guard against unfairness and inconsistency, and to preserve accountability. This will be particularly important as the payment by results model is more widely rolled out, and multiple providers become increasingly involved in the delivery of probation services.

Question 41

How might we target community sentences better so that they can help rehabilitate offenders before they reach custody?

As we have set out above, we believe that more widespread use of the MHTR and the ATR needs to be facilitated so that offenders with mental health and substance misuse problems can receive effective support in the community. In addition, as we have also set out, community payback needs to be centred on meaningful activities that will allow offenders to develop skills and experience that will improve their chances of finding employment.

The CJA also believes that attention should be focussed on ensuring proportionality in sentencing, so that only those offenders who commit offences serious enough to warrant a community sentence are given one, as set out in s. 148(1) Criminal Justice Act 2003. Research has documented the increasingly punitive sentencing of offenders since the early 1990s, which has led to more extensive use of community penalties, and the declining use of fines.¹²⁴ 'Uptariffing' can also be the result of rather more benevolent impulses, with sentencers wanting to address the social and welfare problems that many offenders face, even though the offence committed may only merit a fine. A report published by the Prison Reform Trust notes the consequence of this: "if offenders now receive community penalties earlier in their criminal careers than 10 years ago, they will exhaust the alternatives to imprisonment more rapidly than previously."¹²⁵ The CJA would, therefore, advocate that steps are taken to ensure that probation staff and sentencers are fully aware of proportionality requirements. We also fully support the proposals to promote a greater use of financial penalties set out in 'Breaking the Cycle', and believe that this will also help to ensure that community sentences are more appropriately targeted.

As stated previously, we support the proposals to divert those with mental health problems from the criminal justice system, and we also believe that a more widespread use of diversion should be applied to those with drug and alcohol dependencies, so that

¹²³ Mair, G., Cross, N. and Taylor, S. (2008) *The Community Order and the Suspended Sentence Order: The Views and Attitudes of Sentencers*, London: Centre for Crime and Justice Studies.

¹²⁴ Hough, M., Jacobson, J. and Millie, A. (2003) *The Decision to Imprison: Sentencing and the Prison Population*, London: Prison Reform Trust.

¹²⁵ *Ibid.*, p.21.

less serious offenders can receive the treatment they need outside of the criminal justice system. Increasing the capacity of community treatment services - particularly those that address alcohol dependency, which are struggling to cope with the current level of demand¹²⁶ - will be essential to achieving this.

Question 42

How should we increase the use of fines and of compensation orders so as to pay back to victims for the harm done to them?

The CJA supports the proposals to increase the use of fines. We believe that fines can be an appropriate response in itself in cases where the offence is not serious enough to merit a community order, and we also agree that fines could be used to fulfil the punitive element of a community order for offences that are serious enough to warrant this level of disposal. The CJA would, however, emphasise the importance of sentencers enquiring into the financial circumstances of the offender, as set out in s. 164(1) of the Criminal Justice Act 2003, and taking these circumstances into account when fixing the amount of the fine, as stipulated in s. 164(3) of the same Act. As we have stated earlier, many offenders have low incomes, with a significant proportion in receipt of benefits. Imposing a fine that is beyond their means will make payment of it unlikely, and may also make it more difficult for them to turn away from offending behaviour.

We would also highlight the problematic nature of financial penalties that are not linked to an individual's income and ability to pay, in particular Penalty Notices for Disorder (PNDs). A report published by Revolving Doors concludes that, for those with multiple needs (and therefore a significant proportion of offenders), PNDs are "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. PNDs can be seen as a fast track into the criminal justice system for vulnerable people if used inappropriately."¹²⁷ As such, we concur with Revolving Doors' recommendation that the use of non-means tested financial penalties should be firmly limited.

As we have recognised above, compensation orders can be an important way of offenders making direct reparation to victims. However, we would question the need to create a positive duty for courts to consider imposing a compensation order: under s. 130(1) of the Powers of Criminal Courts (Sentencing) Act 2000 a court may make an order for the offender to pay compensation to the victim for any personal injury, loss or damage resulting from the offence, and under s. 130 (3), it is required to give reasons if it does not issue a compensation order in a case where it has the power to do so.

Question 43

Are there particular types of offender for whom seizing assets would be an effective punishment?

The CJA believes that seizing assets is unlikely to be an effective punishment, and has serious concerns about the use of such a measure, whether as a sanction following non-payment of a fine or as a punishment in itself. As stated above, many offenders have low incomes, and the non-payment of a fine is not necessarily 'wilful' but rather a result of their difficult financial circumstances. In addition, many offenders are also in debt, which will further hinder their ability to pay: a report by Citizens Advice, for instance, has documented the widespread nature of this problem amongst prisoners. The same report also highlights that, among prisoners, a significant proportion of debts are arrears on

¹²⁶ Fitzpatrick R. and Thorne L. (2011) *A label for exclusion - Support for alcohol-misusing offenders*, London: Centre for Mental Health

¹²⁷ Pratt, E. and Jones, S. (2009) *Hand to mouth: The impact of poverty and financial exclusion on adults with multiple needs*, London: Revolving Doors.

credit cards or unsecured loans.¹²⁸ As such, the CJA would question the idea that there are offenders who are cash poor but who are able to pay through their assets. In many cases, assets will have been purchased using credit cards and high-interest loans, and cannot, therefore, truly be said to reflect an ability to pay. The CJA also believes that the seizure of assets will have a disproportionate impact, with the punishment effected through this extending to the families of offenders. Asset seizure is, moreover, likely to have a particular effect on the families of women offenders, many of whom have dependants, and many of whom may be the sole carer for these. 66% of women prisoners, for instance, are mothers with dependent children under 18¹²⁹, and at least one third of women offenders are lone parents prior to being imprisoned.¹³⁰

Question 44

How can we better incentivise people who are guilty to enter that plea at the earliest opportunity?

The CJA recognises the importance of encouraging offenders to plead guilty at the earliest opportunity. However, we are concerned that many sentencers may consider 50% too great a discount, even for those who plead guilty from the very outset, and may compensate for this by imposing inflated sentences. It is also possible that the CPS may overcharge to make up for the increased level of sentence reduction available. We are, finally, concerned that, particularly as widespread cuts to legal aid are implemented, some offenders may find themselves under great pressure to plead guilty to secure a reduced sentence, even when they are not guilty. We therefore think that any change in this area should be implemented with care and in consultation with sentencers and the CPS. The Ministry of Justice should also consider what impact the introduction of a 50% discount for an early guilty plea would have on public confidence in the criminal justice system.

Question 45

Should we give the police powers to authorise conditional cautions without referral to the Crown Prosecution Service, in line with their charging powers?

While we recognise the benefits of the conditional caution as a disposal, and would welcome an increase in its use in the place of more serious disposals, we recommend that the Crown Prosecution Service should retain the power to authorise a conditional caution. Given that conditional cautions can result in onerous conditions, the oversight of the Crown Prosecution Service is appropriate, to ensure that the conditions are proportionate and achievable. In addition, giving the police powers to authorise conditional cautions would increase the bureaucratic burden on the police, at a time when they are trying to reduce costs and bureaucracy. This could therefore lead to less use of the conditional caution, or less time and focus given to ensuring that the conditions are appropriate and will be effective. We therefore think that the police should not be given powers to authorise conditional cautions without referral to the Crown Prosecution Service. In addition, with relation to conditional cautions, the CJA strongly supports the use of restorative justice as part of the conditional caution, and the Crown Prosecution Service should be encouraged to ensure that it is used wherever appropriate.

¹²⁸ Citizens Advice (2007) *Locked out: CAB evidence on prisoners and ex-offenders*- available at http://www.citizensadvice.org.uk/locked_out_full_report_text_final-2.pdf

¹²⁹ The Fawcett Society (2009) 'Women and the criminal justice system: The facts' - available at <http://www.fawcettsociety.org.uk/index.asp?PageID=432>

¹³⁰ Smee, S. (2009) *Engendering Justice - From Policy to Practice*, London: The Fawcett Society.

Question 46

Should a simple caution for an indictable only offence be made subject to Crown Prosecution Service consent?

Crown Prosecution Service consent for the use of a simple caution for an indictable only offence could help to ensure that offenders are aware of the impact of a caution, and in particular the fact that it may affect their employment opportunities in the future (as it will appear on an enhanced criminal record check). In addition, it would help to ensure that offenders are not accepting simple cautions where it is not appropriate for them to do so. However, implementing this would require the Crown Prosecution Service to devote resources to providing consent as quickly as possible, to ensure that simple cautions could still be given in a timely way. Given that Crown Prosecution Service resources are extremely limited, it might be better to initially work to ensure that police practice incorporates effective communication with offenders as to the consequences of accepting a simple caution.

Question 47

Should we continue to make punitive conditional cautions available or should we get rid of them?

It is not clear to us that punitive conditional cautions are a useful or necessary sanction. Given that they can require the payment of a financial penalty and Community Payback for a period of up to 20 hours, it seems that these cases may be better dealt with, if appropriate, in the magistrates' court. If the case is not serious enough to go to court, then a simple caution or (non-punitive) conditional caution should suffice. However, if punitive conditional cautions are going to be used, then a mechanism should be put in place to make sure that they are not being issued to people who would otherwise have received a lesser sanction, but are instead acting as a genuine diversionary disposal for individuals who would otherwise have received more onerous punitive sanctions at court.

Question 48

How can we simplify the out of court disposal framework for young people?

The CJA, which primarily focuses on the adult criminal justice system, nonetheless welcomes proposals contained in the Green Paper to simplify and widen the use of out of court disposals for young people. In doing this, the focus should be on diverting young people out of the formal criminal justice system wherever it is possible to safely do so. To enable this, more flexibility should be introduced into the cautioning system, with no limit to the maximum number of cautions that can be given to any one offender, replacing the current process whereby the use of reprimands and then final warnings creates a 'two strikes and you're out' process. In addition, wherever appropriate the use of restorative justice should be incorporated into out of court disposals, in line with the ambitions set out elsewhere in the Green Paper to mainstream the use of restorative approaches.

Question 49

How can we best use restorative justice approaches to prevent offending by young people and ensure they make amends?

As 'Breaking the Cycle' acknowledges, reoffending rates for young people released from custody, and also for those who serve community sentences, are extremely high. We believe that placing restorative justice approaches at the heart of the youth justice system would be an effective way of addressing this. Research conducted by the Prison Reform Trust on the use of restorative justice conferencing for young offenders in Northern Ireland, through the introduction of the Youth Conference Service, has demonstrated its significant impact on reoffending rates: in 2006, the reoffending rate for youth conferencing was 37.7%, compared with 52.1% for community sentences, and 70.7% for custodial sentences. The mainstreaming of restorative justice conferencing has led to a significant drop in the number of children sentenced to immediate custody, from 139 in

2003 to 89 in 2006. As well as reducing reoffending rates, conferencing has demonstrated its ability to help young offenders make amends. Victims were present in two-thirds of all conferences held in 2008-9, and of these, 89% expressed satisfaction with the conference outcome, and 90% said they would recommend it to a friend.¹³¹

The CJA supports the recommendations of 'Time for a new hearing', a report by CJA members JUSTICE and the Police Foundation, that restorative youth conferences should replace court appearances in most cases of admitted offending or antisocial behaviour by young offenders. Youth courts would be retained to deal with trials in contested criminal cases and sentencing in cases where restorative youth conferencing was unsuccessful or inappropriate. Children and young people would no longer appear in the Crown Court: very serious cases would instead be heard by a modified youth court.¹³² In general, the CJA endorses the findings of the Independent Commission on Youth Crime and Antisocial Behaviour, which was managed by the Police Foundation and recommended a significant increase in the use of restorative justice across the youth justice system, and encourages the Ministry of Justice to further examine its findings with a view to implementing its recommendations.¹³³

Question 50

How can we increase the effective enforcement of youth sentencing?

While we recognise the importance of compliance with community orders, we are concerned that the compliance panels proposed in the Green Paper could be an overly-bureaucratic way to address this issue, and may result in young people being breached unnecessarily. More discretion should instead be given to practitioners, working within a framework of appropriate accountability, to use their professional judgement as to the most appropriate response to breaches. Compliance panels could then be used where the practitioner judges that it is appropriate, limiting their use and putting more control into the hands of the practitioner with the most direct experience of working with the young person. This would allow the individual circumstances of the offender to be better taken into account, which is important in recognising the causes of breaches and what can best be done to address them.

In enforcing youth sentencing, it is also important that an appropriate sentence is given in the first place, rather than an overly-onerous set of requirements setting up the young person to fail. Sentencing guidelines can play an important part in this, as can efforts to improve sentencers' knowledge and understanding of community disposals. Overall, it is important that both in the original sentence passed and in subsequent decisions around compliance, the primary focus is on supporting the young person to reduce their offending. Any decision made with regards to breach should therefore consider what would be most likely to build on any progress already made.

Question 51

How can we succeed in reducing the need for custodial remand for young people?

The CJA welcomes the proposal to reduce the use of custodial remand for young people by prohibiting the use of remand in custody unless there is a significant chance that the young person will receive a custodial sentence. However, given the problems for courts in assessing whether a young person would receive a custodial sentence at the time when the decision about bail is being made, we would encourage the Government to go further, by ensuring that custodial remand is only used where there would be a significant risk of a

¹³¹ Gibbs, P. and Jacobson, J. (2009) *Making amends: Restorative youth justice in Northern Ireland*, London: Prison Reform Trust.

¹³² Evans, E., Hickson, S. and Ireland, S. (2010) *Time for a new hearing: A comparative study of alternative criminal proceedings for children and young people*, London: JUSTICE and the Police Foundation.

¹³³ The final report of the inquiry is available at <http://www.youthcrimecommission.org.uk/>

further serious offence if bail were to be granted. This should further reduce the unnecessary use of bail, while ensuring that the risk of serious further harm is minimised.

Question 55

How can the functions of the Youth Justice Board best be delivered by the Ministry of Justice?

The CJA has two main concerns about absorption of the Youth Justice Board's (YJB) responsibilities into the Ministry of Justice. Firstly, there has, in recent years, been a significant and welcome decline in the number of under-18s dealt with using a formal criminal justice disposal, and the number of children sentenced to custody. The YJB's contribution to this achievement has been considerable, and it is important that momentum is not lost when the YJB ceases to exist - the Ministry of Justice must continue to pay considerable attention to this area. Secondly, the YJB's responsibility for commissioning all child custody places means that it has been able "to take a strategic view of the places needed, to tailor the placement offered to the individual child and to ensure minimum standards across the estate".¹³⁴ The CJA is concerned that, if this function is taken over by NOMS following the abolition of the Board, the emphasis on and understanding of the specific needs of children will be lost within an organisation whose primary role is to supervise adult offenders. Careful thought, therefore, will need to be given to how this can be avoided. More positively, however, bringing the YJB's responsibilities into the Ministry of Justice presents an important opportunity for the youth and adult justice systems to be better co-ordinated in order to manage the transition between the two for young adults more effectively.

Question 56

What sort of offences and offenders should Neighbourhood Justice Panels deal with and how could these panels complement existing criminal justice processes?

The CJA strongly supports the use of restorative justice across the criminal justice system. If used properly and built on restorative justice principles, Neighbourhood Justice Panels could help to contribute to this. However, there is a risk that Neighbourhood Justice Panels will have a net-widening effect, dealing with issues that would otherwise have been dealt with informally and therefore unnecessarily pulling more people into formal justice structures. Neighbourhood Justice Panels should therefore only be used to address offences and incidents that would otherwise have led to a formal criminal justice response. They would therefore act as a form of pre-court diversion, where the Crown Prosecution Service and the offender are satisfied that this is an appropriate approach. The role of criminal justice professionals and of volunteers will need to be carefully defined, and volunteers will also need proper training and ongoing support.

Question 58

What more can be done to support family relationships in order to reduce reoffending and prevent intergenerational crime?

Research has shown that the maintenance of family relationships has a significant impact on the successful resettlement of, and likelihood of reoffending by, ex-prisoners.¹³⁵ Indeed, Home Office research has shown that having family or partner visits during a custodial sentence makes it more likely that a prisoner will have education, training or employment and accommodation arranged on release,¹³⁶ both of which, as we have stated elsewhere in this response, can play a significant role in desistance from crime. As such, it is vital that families are encouraged and supported to maintain contact during a custodial sentence.

¹³⁴ Gibbs, P. (2011) 'RIP the Youth Justice Board', *The Barrister*, Issue 47.

¹³⁵ Social Exclusion Unit (2002) *Reducing re-offending by ex-prisoners*, London: Office of the Deputy Prime Minister.

¹³⁶ Niven, S. and Stewart, D. (2005) *Resettlement outcomes on release from prison in 2003*, Home Office Findings 248. London: Home Office.

The Assisted Prison Visits scheme provides much needed financial support to help families on a low income to cover the financial costs of prison visits, since prisoners are often held significant distances from the family home. However, there are a number of areas in which improvements clearly need to be made. HM Chief Inspector of Prisons' Annual Report 2008-9 found that around 40% of prisoners in closed prisons reported difficulties with sending or receiving mail, and a third of those in male local prisons reported difficulties with accessing phones.¹³⁷ In addition, although the cost of phone calls from prison payphones was reduced in May 2010, charges are still prohibitively high: the cost of calls to landlines has only dropped from 11p to 9p per minute on weekdays and 8p per minute on weekends. The cost of calls to mobiles during the day on weekdays is currently 20p per minute, and 13p per minute on weekends.¹³⁸

Booking visits in some prisons can also be problematic, with relatives unable to get through to busy prison telephone booking lines which are only open at limited times of the day, and the report found that there were difficulties with this in 16 prisons. It also found that there had been a rise in the number of prisons employing family support workers, with 18 now doing this¹³⁹; however, we would support the recommendation made by CJA members Action for Prisoners' Families, Clinks, pact and the Prison Reform Trust, that every prison should have a suitably trained and qualified family contact worker to support families with information, advice and guidance needs and concerns regarding prisoner welfare.¹⁴⁰ There are, moreover, variable standards among visitors' centres and prison visit halls, which should be addressed to ensure that family members, including children, are able to wait and make their visits in comfort and security.¹⁴¹ As recommended by Action for Prisoners' Families in their submission to this consultation, families should also be actively engaged in sentence planning, so that practitioners can benefit from the insight family members have into offenders and their circumstances.

The imprisonment of a family member can have a significant impact on families and children. A report published by the Joseph Rowntree Foundation has documented that families of prisoners are vulnerable to financial instability, poverty and debt and potential housing disruption.¹⁴² Many prisoners' partners experience stress-related conditions such as anxiety and depression; in one survey, almost three-quarters of spouses, partners and mothers attributed health problems directly to the imprisonment of a family member.¹⁴³ The effect of the imprisonment of a parent is, for children, particularly damaging, and yet about 160,000 children a year have a parent sent to custody and 7% of all children will see a parent imprisoned during their school years.¹⁴⁴ A study by Action for Prisoners' Families found that, following the imprisonment of a parent, children can become withdrawn or secretive; they may display anger or defiance, as well as attention-seeking or self-

¹³⁷ HM Chief Inspector of Prisons for England and Wales (2010) *Annual report 2008-9*, London: The Stationery Office.

¹³⁸ Prison Reform Trust (2010) *Bromley briefings prison factfile December 2010*, London: Prison Reform Trust.

¹³⁹ HM Chief Inspector of Prisons for England and Wales (2010) *Annual report 2008-9*, London: The Stationery Office.

¹⁴⁰ Action for Prisoners' Families, Clinks, pact and the Prison Reform Trust (2007) 'The children & families of prisoners: Recommendations for government' - available at http://www.prisonersfamilies.org.uk/uploadedFiles/Influencing_Policy/Agenda%20for%20Action%20Final.pdf

¹⁴¹ *Ibid.*

¹⁴² Smith, R., Grimshaw, R., Romeo, R. and Knapp, M. (2007) *Poverty and disadvantage among prisoners' families*, York: Joseph Rowntree Foundation.

¹⁴³ Social Exclusion Unit (2002) *Reducing re-offending by ex-prisoners*, London: Office of the Deputy Prime Minister.

¹⁴⁴ Action for Prisoners' Families, Clinks, pact and the Prison Reform Trust (2007) 'The children & families of prisoners: Recommendations for government'.

destructive behaviour; they can have low self-esteem; and they may perform poorly educationally.¹⁴⁵ Children of prisoners have about three times the risk of developing mental health problems compared to their peers.¹⁴⁶ There is, moreover, strong evidence to suggest that children who have experienced the incarceration of a parent are more likely to become involved in offending themselves.¹⁴⁷ Whilst providing the support and facilities we have outlined above can help children to maintain relationships with imprisoned parents, the CJA would argue, therefore, that one of the best ways to prevent intergenerational crime is to reduce the use of imprisonment.

Question 59

What more can we do to engage people in the justice system, enable and promote volunteering, and make it more transparent and accountable to the public?

The CJA welcomes proposals to make the criminal justice system more open to the public and to increase public understanding of the criminal justice system, as this can have a positive effect on community confidence in the criminal justice system and promote a fairer and more proportionate response to crime. However, communities must be given the opportunity to develop their own approaches to community engagement and involvement. As one study has concluded, “trust and engagement at neighbourhood level cannot be created by a single generalised or uniformly applied strategy”¹⁴⁸. Overall, the focus from the national level should be on putting in place measures to engage communities in a meaningful way which has real impact, while expanding the use of restorative justice, which has proven positive effects, and carrying out a broader examination of the potential benefits of justice reinvestment.

Sentencers can also play an important role on better engaging the public with the criminal justice system. Sentencers should be encouraged to attend meetings of local community groups and other local forums to hear first-hand about community concerns. This should include meetings with young people, both under-18s and young adults aged 18-24, to learn about their concerns. Relationships with under-18s could also be developed by incorporating more information on courts and the criminal justice system in the citizenship curriculum and providing opportunities for local sentencers to contribute in person. The Local Crime Community Sentence project, which aims to increase public knowledge and understanding of community sentences, should also be further extended. Informal meeting with sentencers are also important in engaging the public in criminal justice issues. For example, David Fletcher, the presiding judge at the North Liverpool Community Justice Centre, has said that “while community meetings continue - a key part of my own role is meeting residents on a one to one basis - I spend lots of time out and about in North Liverpool with people as wide ranging as our criminal justice partners, local football clubs, youth groups, schools, community and parents group, and these are the people that help us keep our finger on the pulse of the area.”¹⁴⁹

However, it is important to be realistic about the extent to which engaging people in the justice system can affect community confidence. For example, an initial evaluation of the

¹⁴⁵ Action for Prisoners’ Families (2003) *Exploring the needs of young people with a prisoner in the family*, London: Action for Prisoners’ Families.

¹⁴⁶ Action for Prisoners’ Families, Clinks, pact and the Prison Reform Trust (2007) ‘The children & families of prisoners: Recommendations for government’.

¹⁴⁷ Social Exclusion Unit (2002) *Reducing re-offending by ex-prisoners*, London: Office of the Deputy Prime Minister.

¹⁴⁸ p.5: Farrow, K. and Prior, D. (2006) ‘Togetherness? Tackling anti-social behaviour through community engagement’, *Criminal Justice Matters*, 64, pp.4-5.

¹⁴⁹ Quoted on p.27: All Party Parliamentary Local Government Group (2009) *Primary Justice: An inquiry into justice in communities* - available at <https://member.lgiu.org.uk/whatwedo/Publications/Documents/APPG%20report%20Primary%20Justice.pdf>

North Liverpool project concluded that “the community engagement activity is not yet leading to increased public confidence in the criminal justice system in the area”¹⁵⁰. This may reflect the broader problem with any community engagement activity - that it is only likely to reach a limited proportion of the community and this minority may not be representative of the community as a whole. Overall, it is important to recognise that any benefits will be limited. As the final report of the Rethinking Crime and Punishment-funded ‘Making Good’ project concluded, “an increase in successful local projects worked in collaboration with local community organisations should result in an incremental increase in community confidence about community sentencing and safety, but this is difficult to measure and is likely to be a longer term outcome of continued community involvement”¹⁵¹.

In addition, the provision of as much data as is possible about the operation and performance of the criminal justice system would be a welcome step forward in transparency and accountability. Making data available would allow experts and the public to build up a better picture of how well the justice system is functioning, as well as enabling people outside Government to carry out more of their own research and analysis, which will in turn enable them to make better recommendations for future policy changes.

In relation to volunteering, magistrates already play an important role as volunteers within the criminal justice system. However, magistrates should be drawn from more diverse backgrounds than is currently the case, and reforms to the way that magistrates are ‘recruited’ and the way in which magistrates courts operate should be considered as routes to achieving this. For example, evening or weekend courts should be considered, as people struggle to get time off work during the week to serve as magistrates. Reducing the number of days per year that magistrates have to serve should also be considered, as it is often too much time for younger, working people to commit to. There also needs to be a clearer understanding of what being a magistrate involves and what skills are required (and not required - many people think that only somebody with formal training in law can be a magistrate). These measures could help attract a broader range of people, in particular younger people.

In addition, as much as possible should be done to open up volunteering opportunities to ex-offenders, who may be unnecessarily barred from volunteering due to their criminal records. We support the conclusions of the former volunteering champion Baroness Neuberger, who carried out a review of volunteering in the criminal justice system, that the difficulties that ex-offenders experience are “absurd”¹⁵² and the recommendation of her report on volunteering in the criminal justice system that “all agencies of the CJS should have a strategy to engage the skills and time of ex-offenders”¹⁵³. As the manifesto produced by Clinks, a member of the CJA, in 2010 stated: “Former offenders who have succeeded in turning their lives around often have considerable credibility and should be positively encouraged, trained and supported to be more active in the rehabilitation of offenders”, going on to add that: “The experiences of offenders and ex-offenders about what works in reducing offending should be captured in a structured and consistent manner at every stage of the criminal justice system. This will ensure that scarce resources are allocated towards the most effective interventions.”¹⁵⁴ In the context, we

¹⁵⁰ p.viii: McKenna, K. (2007) *Evaluation of the North Liverpool Community Justice Centre* London: Ministry of Justice.

¹⁵¹ p.45: Wickham, T. and Allen, R. (2008) *Making good: An assessment of work undertaken by the Thames Valley Partnership 2005-8* - available at <http://www.rethinking.org.uk/PDFs/making-good-report.pdf>

¹⁵² p.22: Neuberger, J. (2009) *Volunteering across the criminal justice system*, London: Cabinet Office.

¹⁵³ *Ibid.*, p.28.

¹⁵⁴ p.7: Clinks (2010) *Clinks Manifesto 2010*, York: Clinks.

welcome proposed reforms to the Vetting and Barring Scheme and to criminal record checks contained in the *Protection of Freedoms Bill*, and support proposals set out in this Green Paper to reform the *Rehabilitation of Offenders Act 1974*. We would also encourage the Government to work closely with organisations that have developed expertise in involving service users, in order to engage offenders and ex-offenders in the delivery of a more effective criminal justice system.

Criminal Justice Alliance
4 March 2011

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