

'Breaking the Cycle – effective punishment, rehabilitation and sentencing'

January 2011

Introduction

This briefing is intended to assist Clinks members and other Voluntary and Community Sector (VCS) organisations working in the Criminal Justice System to address the key themes and issues contained in the Government's Green Paper, 'Breaking the Cycle - Effective Punishment, Rehabilitation and Sentencing'¹.

Clinks consultation events

Clinks is organising a number of opportunities for organisations to respond to the Green Paper. These include:

London – 20th January 2011

Dorset – 27th January 2011

Cornwall – 28th January 2011

Gloucestershire – 31st January 2011

Birmingham – 1st February 2011

Manchester – 2nd February 2011

Newcastle – 3rd February 2011

Information about all these events and how to register can be found at:

<http://www.clinks.org/training/events>

Written submissions

Clinks would welcome any written responses to the Green Paper as these will help to inform our submission to the Ministry of Justice about the key issues for the sector. These should be sent to: Clare Hayes, Policy Researcher, Clinks | email: clare.hayes@clinks.org

The deadline for responding to the Green Paper is 4 March 2011. If you wish your views to be included in Clinks' submission, please send them to us by 26 February 2011.

¹ <http://www.justice.gov.uk/consultations/docs/breaking-the-cycle.pdf>

Overview of Green Paper

The Green Paper is wide-ranging and includes proposals in relation to sentencing, delivery of services, and commissioning of interventions. Taken as a whole, this is a progressive set of proposals and policy positions including:

- a positive message about the benefits of diversion away from the CJS where appropriate;
- support for greater local decision-making about where CJS resources should be directed;
- more appropriate and proportionate use of custodial remand,
- removal of minimum sentences and arbitrarily punitive sentencing guidance;
- greater autonomy for professionals especially in respect of enforcement;
- a clear and continuing commitment to greater involvement of the VCS in delivering interventions; and
- an early and explicit recognition of the complex problems faced by offenders, especially prisoners.

Prisons

There is a commitment to change prison regimes to make them much more productive environments — ‘working prisons’ To achieve this, there will be opportunities for the voluntary and private sectors to take on some of the roles and functions currently held by ‘prison industries’.

There are proposals for implementing incentives for greater delivery by external partners including profit sharing and setting a percentage target for delivery from outside the prison by VCS and private sector organisations.

Curfews and Tagging

There is a clear commitment to increase the use of curfews and electronic monitoring (tagging) as a strategy to reduce the use of custody and increase compliance of court orders. It is proposed to extend the current maximum daily length of a curfew order from 12 hours to 16 hours, and the overall length of a curfew order from 6 months to one year²

² detailed information about curfew orders and how they work can be found on p.17 of the Green Paper

Restorative Justice

Reparation and Restorative Justice (RJ) feature throughout the Green Paper and there are proposals for using RJ and reparation at every stage of the criminal justice process, including:

- prisoners' wages being used to fund victim services and perhaps to repay individual victims;
- recommendation for increasing number of compensation orders imposed either as standalone sentences or alongside other sentences;
- RJ as a vehicle for diverting adults, as well as juveniles, from formal criminal justice processes;
- successful participation in RJ during the pre-sentence period could be reported to sentencers and be taken into account when imposing sentence.³

Community Payback

Community Payback is the 'flagship' of community sentencing and there are proposals for 'tougher', more rigorous and intensive delivery, more physical kinds of work, and the increased use of competition to drive down costs, etc.

The Green Paper proposes to link the delivery of Community Payback to the role of Citizen's Panels which were established by the previous government in September 2008. These are similar to Neighbourhood Panels and would inform decisions about what kind of projects would be suitable for work undertaken by offenders on Community Payback orders. Residents associations could also be involved in this process, and there is scope for Local Infrastructure Organisations to contribute knowledge and expertise about local needs and capacity in communities.

Rehabilitation

There is a welcome acknowledgment about the often uneven and difficult offender journey to rehabilitation. In fact, the Green Paper specifically states that there are usually instances of 'relapse' in offenders' efforts to address their offending behaviour. This is further implicitly reinforced by criticisms later in the Green Paper about the unnecessarily high rates of breach for 'technical' violations of orders and licenses.

³ More information about restorative justice and the work of the Restorative Justice Council can be found at: <http://www.restorativejustice.org.uk/>

Integrated Offender Management (IOM) is strongly endorsed and it is envisaged that local schemes featuring greater co-operation between police, probation, local authorities and the VCS will be rapidly developed, based on current pilots operating in localities around the country⁴.

It is envisaged that there will be a key role for police in managing offenders-indeed it is explicitly stated that the skills developed in routine policing equip police officers to manage offenders and support their rehabilitation. There is also specific endorsement of the innovation that the VCS brings to IOM.

To make IOM work well requires greater flexibility in determining resource allocation and this in turn means less centrally determined targets and priorities for police, probation and prison.⁵

Drug Treatment for offenders

The Green Paper has a strong focus on the importance of drug treatment in supporting offender rehabilitation. There are commitments to establish 'drug free' wings in prisons. This in itself is not new, but the Green Paper proposes to extend this provision to short term prison sentences. The pilots for short term prisoners will be funded and delivered through a 'payments by results' model.

For well-motivated prisoners on longer sentences there will be drug recovery wings with a range of flexible treatments/interventions.

Community based treatment will be categorised into high, medium, and low intensity. The intensive model will be residential (funded by 'new' money from the Department of Health), the medium model will be structured day care possibly at a specific centre, and low intensity provision is an outpatient model.

⁴ However, the language is contradictory and the thinking a bit confused. On the one hand IOM is to be available for non-statutory as well as statutory offenders, yet the statements about enforcement if offenders do not take up the offers of help and return to crime seem to apply to both groups. Clearly, it is not possible to return offenders not subject to supervision unless they are convicted of further offending, yet this seems to be 'glossed over'.

⁵ The Home Office is currently working with Clinks to support local pilots that are exploring what can be achieved by closer working between the VCS and local statutory agencies in delivering IOM. More at: <http://www.clinks.org/services/regional-work/iom>

Women offenders

There is support for 'one-stop-shops' as well as the broad approach embodied in the Corston Report⁶ including the diversion of women from custody.

There is also an interesting statement about applying the model of holistic services to low level male offenders.

Recognition of the unique issues faced by women offenders is reinforced and there is a clear commitment to tackling domestic violence and abuse which often features in the lives of women offenders.

Employment

The Green Paper recognises the generally poor educational and employment record of offenders, and regards employment as a major step in effective rehabilitation.

Employers will be encouraged to engage with prisons to develop training and employment opportunities. Senior business leaders will be recruited to champion the needs of offenders to acquire training and employment. Offenders in the community will be able to access the mainstream provision for all unemployed individuals.

There is an encouraging commitment to review the provisions of the Rehabilitation of Offenders Act to reduce the barriers to offenders gaining employment⁷. This includes:

- broadening the scope of the act;
- reducing the length of rehabilitation periods;
- simplifying the classification periods;
- clarifying and modernising the language

Accommodation

Stable accommodation and access to employment opportunities are strongly linked in the Green Paper. There is renewed commitment to ensure that prison and probation staff provide effective housing assessments that can enhance prevention of homelessness and signposting to relevant services.

⁶ Available to download at: <http://www.clinks.org/links/support/diversity/women>

⁷ For more on this, see Unlock's work at: <http://www.unlock.org.uk/staticpage.aspx?pid=127>

There is particular interest in supporting innovative schemes that access the private rental sector and particular encouragement for the VCS to develop models similar to that run by Crisis⁸.

Mental Health

There is a strong commitment to continue with the proposals in Lord Bradley's⁹ report, including the swift access to assessment and treatment. The national roll out of mental health diversion schemes at police stations and courts will be completed by 2014.

Further work will be undertaken by NOMS and the Department of Health to extend the provision of services for offenders with severe personality disorders, both in prison and in the community.

Payment by Results (PBR)

There is a proposal to tailor the PBR model to different types of offenders, with payments geared to the degree of difficulty in achieving successful reduction in offending, and by the type of sentence they receive.

It is intended to introduce six new PBR projects covering a wide range of offenders.

The model for commissioning the delivery of community sentences will involve one set of payments for actually delivering the requirements of the sentence and another for the outcomes in relation to reducing offending.

For those offenders serving sentences longer than 12 months it is proposed that the probation service is the 'provider' and will access PBR payments. For those offenders serving less than 12 months, it is proposed that the prison will be the provider that will be paid for any reductions in re-offending.

A further PBR model is proposed that will incentivise local partners to identify local crime priorities, work together to jointly commission services to reduce re-offending, and then share in any criminal justice savings.

⁸ <http://www.privaterentedsector.org.uk/toolkit.asp>

⁹ Download at:
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_098694

Sentencing Reform

There is lengthy and detailed discussion about a range of issues related to sentencing reform and implementation of sentences. The key proposals are:

- Increase the flexibility and discretion of professionals supervising offenders including the combination of different requirements, the timing and sequencing of requirements, timing of undertaking on-going risk assessments, and decisions about enforcement (see above);
- Restrict the use of Indeterminate Sentence for Public Protection (IPP) to those offenders whose offences would have attracted sentences of 10 years or more;
- Increase the length of suspended sentences;
- Increase the use of financial penalties;
- Increase the 'discount' for early guilty pleas;
- Simplify the framework of 'out of court disposals';
- Restrict the use of custodial remand to those more likely to receive a custodial sentence (see above).

The cumulative effect of all these proposals should be to reduce the numbers of offenders entering prison and also reverse the increase in the time some longer term offenders spend in custody.

Youth Justice

The Green Paper has a strong focus on the prevention of youth offending, including providing support for parents through joint work with the Department of Education.

There are also proposals to encourage more flexibility and a simplification of the framework for 'out of court disposals' to try to keep young people out of more formal justice processes. When young people do appear in court and plead guilty there will be greater flexibility in sentencing for first offences. The role of restorative justice will be strengthened and additional training given to referral order panel members.

Youth sentencing will be reformed to reduce the numbers of young offenders unnecessarily sent to custody. This includes restricting the use of custodial remand (similar to the proposals for adult offenders) with future plans to increase local authorities' responsibility for funding custodial remand. For those young offenders subject to community orders there will be a

system of 'compliance panels' to help ensure that they adhere to the requirements of their order.

A system of payment by results will be introduced for Youth Offending Teams and providers of secure accommodation. There will also be financial incentives for local areas to work together to reduce the use of custody in order to increase financial transparency in the Youth Justice System. There will be a small number of pilots set up to test this approach.

Working with communities and supporting effective courts

The potential for problem-solving approaches to dealing with low level offending, and for particular types of offence and offenders, is highlighted and there is continued support for domestic violence courts, dedicated drug courts, and the Community Justice model¹⁰.

There is also a clear commitment to remove a range of central performance targets to allow local areas to focus on issues relevant to them.

Volunteering is given surprisingly little attention in the Green Paper other than in a single paragraph referring to magistrates, referral order panel members, Independent Monitoring Board members, and special constables. Volunteering and mentoring with offenders is mentioned briefly. Nevertheless, volunteering generally is seen as an important way for the community to participate more fully in the Criminal Justice System.

Conclusion

Breaking the Cycle is informed by the ethos of the Big Society. The recommendations and proposals focus on greater decentralisation of delivery and accountability, a greater role for the voluntary sector in providing interventions, removal of constraints on professional decision making, and a greater role for citizen involvement in the criminal justice system.

There is a strong reparative theme running throughout including support for use of Restorative Justice for both youth justice and adult offenders, extended use of compensation orders, increased use of fines, and renewed support for Community Payback.

¹⁰ For Clinks' work on this, see Big Judges at: <http://www.clinks.org/publications/briefings>

The sentencing proposals remove some of the key requirements that have driven up the prison population including amendments to the Indeterminate Sentence for Public Protection, and liberalisation of expectations regarding custodial remand.

Most importantly for the VCS, there are significant opportunities to stake out territory in relation to preventative and rehabilitation work with offenders and their families, joint work with statutory agencies, and providing the brokerage and links to local communities including 'hard to reach' groups.

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