

Government response to Breaking the Cycle consultation and the Legal Aid, Sentencing and Punishment of Offenders Bill

INTRODUCTION

Clinks very much welcomes the proposals in the Legal Aid, Sentencing and Punishment of Offenders Bill that bring greater flexibility to community sentences and restrict the use of remand, and these are explored further in this paper. However, the Government's response to the *Breaking the Cycle* consultation also marks a disappointing retreat from some of the more radical proposals outlined in the Green Paper earlier this year, and makes minimal reference to many of the themes that it explored.

This submission firstly comments on the perceived u-turn on criminal justice reform implied in the Government response to the Green Paper consultation. It then discusses the benefits and risks of the proposed reforms outlined in the response and reiterates some of the points that the Clinks consultation raised. Finally, we identify some issues that are largely absent from the Government response but that Clinks believes should be at the forefront of any reforms seeking to improve rehabilitative outcomes. For example, resourcing the VCS and addressing the distinct needs of offenders.

Clinks' response to *Breaking the Cycle* drew on an extensive consultation with our members and the wider Voluntary and Community Sector (VCS) on all the proposals and questions that it set out, and provided detailed commentary on these from a VCS perspective¹. We are aware that many other VCS organisations made equally comprehensive submissions. The Ministry of Justice (MoJ) has not yet published a summary of the consultation responses that it received and we would urge it to do so.

THE CONTEXT

We are disappointed by the statement in the foreword to the Government Response, which explicitly states that the Government is "not aiming to cut the prison population". The Sentencing Bill is looking for a reduction of only 2,650 prison places, as compared with the 6,000 prisons places that the Green Paper was designed to save. This gives rise to much concern over where the required savings of £130 million will now be made, with many fearing that the money will be siphoned from essential rehabilitation services, many of which are provided by the VCS.

Clinks would like to register its concern that the focus on rehabilitation in *Breaking the Cycle* has been replaced with a more punishment focused approach. We regret this change in language, which echoes the punitive tone of the last two decades. The 'rehabilitation revolution' is entirely absent from the Government's Response but our consultations revealed a strong commitment from the VCS to help deliver the visionary *Breaking the Cycle* agenda. We believe that the rehabilitation revolution presents a real opportunity to capitalise on the commitment and creativity of those working in the CJS in order to achieve lasting change in our communities.

¹Available online:

<http://www.clinks.org/assets/files/PDFs/Clinks%20response%20to%20Breaking%20the%20Cycle.pdf>

THE GOVERNMENT RESPONSE

PUNISHMENT AND PAYBACK

Working prisons

Clinks broadly welcomes the ambition to transform prisons to deliver meaningful and purposeful experiences for prisoners. Too often work in prison is mundane and meaningless with no future potential or relevance to the external job market. However, we have concerns about whether the commitment to create a 40 hour week for prisoners is realistic, given operational funding cuts. The Prison Officers Association has voiced concerns that the proposed working week is impractical given impending staffing cuts:

“Further cuts are now being imposed on the prison service which will cut the number of frontline staff, lead to more and more time that prisoners will spend locked in their cells and less and less time on rehabilitation, literacy and skills for work activities.”²

Moreover, vocational work should not be seen as a wholesale solution. There are many other important interventions provided by the VCS within prisons to help offenders to address their offending behaviour and that needs to be preserved. For example, there is a risk of neglecting therapeutic or arts based interventions and activities, for which there is considerable evidence of rehabilitative impact.

Notwithstanding these qualifications, the VCS is well positioned to provide or broker meaningful work placements that are tailored to individual offenders. The proposals to open up prisons to the VCS and social enterprises will help to generate opportunities for prisoners.

Delegates at the Clinks consultation events stressed the need for ‘real wages’ for prisoners, particularly in light of the proposals to make pay deductions. A real wage, support and advice on money management and a chance to provide resources for families of offenders are all key motivating factors for offenders to work, as well as providing crucial learning experiences equipping them to lead responsible lives on release.

Community sentences

Clinks welcomes the commitment to make community sentences more credible and to give greater discretion over breach. Community sentences should be preferred to short custodial sentences. The latest MoJ Compendium of Re-offending Statistics³ found that custodial sentences of less than twelve months were less effective at reducing re-offending than both community orders and suspended sentence orders, when outcomes were compared in matched samples of offenders. However, we would urge the MoJ to consider a number of caveats to financial penalties and curfews.

² NAPO et al. 2011. *Criminal justice in meltdown*. Online: <http://www.napo.org.uk/about/Justice.cfm>

³ Online: <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/2011-compendium-reoffending-stats-analysis.pdf>

Increased use of financial penalties and compensation orders

The proposals to bring in measures to increase the use of fines and compensation orders are welcome. The option of a fine for breach of a community sentence provides the opportunity for a more proportionate response in many cases. However, great care is required in implementation. Many participants at our consultation events identified the importance of recognising the levels of poverty experienced by many offenders. There is a danger that sentencers may impose custodial sentences in cases where an offender clearly has insufficient means to pay a fine. It is critical that convicted offenders' struggle to desist from offending is not undermined by financial difficulties and debt accrued from disproportionate fines.

Curfews

Clinks does not support the proposed extension of the maximum period of curfew from twelve to sixteen hours. We are concerned that a disproportionately onerous curfew requirement would exacerbate problems for offenders in obtaining and maintaining employment, education or training opportunities. Additionally, a sixteen hour curfew could cause insurmountable difficulties for offenders with caring responsibilities, and would impact disproportionately on women offenders, who commonly face isolation in the home and a high percentage of whom may be at risk of domestic violence.

We are cautiously supportive of an extension of the maximum period of curfew requirement from six to twelve months on the basis that it may be used where offender would otherwise serve a short prison sentence. However there needs to be clear guidance for sentencers to prevent a more punitive approach resulting in longer average community sentences.

PROGRESSION

Clinks strongly supports the Government's commitment to improving rehabilitative outcomes, including addressing alcohol and substance misuse; removing barriers to the use of the Mental Health Treatment Requirement; improving employment outcomes; and reducing the barriers to resettlement.

A serious gap in *Breaking the Cycle* Green Paper, which remains unaddressed in the Government's response, is the absence of any stated recognition of the prevalence of dual diagnosis and multiple needs in the offender population. It is vital that assessment and treatment services for offenders are joined up and that a holistic approach is taken.

Reform of the Rehabilitation of Offenders Act

A conspicuous absence from the Bill is the proposed reform to the Rehabilitation of Offenders Act to reduce unnecessary obstacles to employment for former offenders. Given the cross-party support for Lord Dholakia's Private Members Bill, we hope that the Government will reaffirm its intention to reform the Act, either by amending the Bill or by introducing separate legislation.

Payment by results

Breaking the Cycle raised a number of consultation questions related to the design of the payment by results system. Of particular interest to Clinks members was Q31: *How do we involve the smaller voluntary organisations as well as the larger national ones?* As Centre Forum observes⁴:

“Government needs to think actively about provider market developments so that it does not develop a small oligopoly of providers.”

Experience from the Department of Work and Pensions (DWP) payment by results contracts demonstrates that the market is likely to be dominated by a number of large primes. The recently published Competition Strategy for Offender Services includes some encouraging signs for potential VCS subcontractors, particularly in terms of a code of conduct for ensuring that subs are treated fairly and proportionately.

The VCS are often best placed to provide holistic and personalised services and niche delivery. The VCS will therefore be indispensable to large primes aiming to provide effective services and programmes to a broad cross-section of offenders. The critical requirement is that pricing fairly reflects the level of input required to achieve outcomes. During the recent bidding process for the DWP Work Programme, there was evidence of subcontractors, for example one of Clinks' members St. Giles Trust, walking away from negotiations on the basis of pricing being too low to deliver a tailored package:

“St Giles Trust worked out that the cost of placing a hard to help client - a gang member just out of prison for example - into further education or work was around £3,500. The amount the prime corporates were prepared to pay was nowhere near that sum.”⁵

It is vital that a premium payment is calculated for harder to reach offenders to mitigate for the risks associated with cherry picking.

Neither the Government Response nor the Competition Strategy offers a concrete indication of the outcomes, beyond reducing reoffending, that will be eligible for outcome payments. Clinks members have identified the necessity of taking a needs-based approach to different client groups. A needs-based approach to women offenders, for example, would mean tailoring the outcomes considered valid and payable for that group. For example, improved family ties would be considered an intermediate outcome, as an indicator of readiness to desist from offending. Distance travelled, as well as absolute reductions in reoffending, should be capable of financial reward under payment by results.

⁴ 2011. Rehabilitation works: ensuring Payment by Results cuts reoffending. Online: <http://www.centreforum.org/assets/pubs/payment-by-results.pdf>

⁵ The Guardian. 22.07.2011. *Charities: corporate 'bid candy' for the big society?* Online: <http://www.guardian.co.uk/society/patrick-butler-cuts-blog/2011/jun/22/bid-candy-charities-carved-out-of-work-programme?INTCMP=SRCH>

Restorative Justice

The Sector broadly supports the commitment to extend Restorative Justice (RJ) approaches. However, the definition of RJ offered in *Breaking the Cycle* and the Government response is considered very victim-centred. Clinks would argue that a narrow definition of RJ diminishes the potential impact of RJ, which traditionally includes the victim, the offender and the community. This more holistic view of RJ is reflective of an approach that considers the wider social causes behind offending behaviour and appreciates that many offenders themselves have been victims. Investment will be required to ensure that there are local mediation centres through England and Wales.

RESPONDING MORE EFFECTIVELY TO CRIME

Bail

Clinks welcomes the commitment to restrict the use of remand where there is no real prospect of the defendant receiving a custodial sentence. Even a relatively short period in custody can have a highly disruptive impact, including family breakdown and loss of employment and housing. As highlighted by Women's Justice Taskforce⁶, 60% of women held on remand do not go on to receive a custodial sentence. We also welcome the recognition of children on remand as 'looked after' by local authorities and the provision of more rigorous requirements before under-18s can be remanded into youth detention accommodation.

Custodial sentences

Clinks is opposed to the proposal to introduce a mandatory sentence of six months for adults in possession of a knife to threaten or endanger. The evidence suggests that short prison sentences are ineffective for reducing reoffending. In 2009, almost 60% of offenders who received a sentence of less than twelve months were reconvicted within a year of release⁷. A mandatory sentence for knife possession is likely to have a number of unhelpful implications, not least the expense of 100 extra prisons places estimated by the Ministry of Justice Impact Assessment.

Indeterminate sentences

Clinks welcomes the urgent review of indeterminate sentences for public protection (IPPs) and recognition of the flawed system that IPPs have created. The current system where over 2,000 IPP prisoners have exceeded their 'tariff' date because of lack of resources to enable them to demonstrate their reduced risk to the public has had a profound effect on the prison system.

In conclusion, rationalising the use of custody would release the necessary savings to reduce reoffending and improve rehabilitative outcomes. Clinks supports the original vision of a reduced prison population outlined in *Breaking the Cycle* Green Paper.

⁶ Women's Justice Taskforce. 2011. *Reforming Women's Justice*. Online: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women%27s%20Justice%20Taskforce%20Report.pdf>

⁷ Ministry of Justice. 2011. Adult re-convictions: results from the 2009 cohort England and Wales. Online: <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/adult-reoffending-statistics-09.pdf>

ECONOMIC CONTEXT

Clinks' response is also informed by the result of two recent online surveys that were undertaken to gauge the impact of the economic downturn on the VCS working in the CJS. Over 230 organisations and individuals responded to the surveys and the results confirm that the Sector is in a fragile state.

- 68% of the responding organisations were undertaking programmes of redundancies, with many intending to significantly reduce their staff complement.
- Of the 96 respondents that answered questions about their income and funding, 76% said they had seen a fall in grant income in the past year and 87% expected further cuts in funding in the financial year 2011/12.
- Slightly more than 70% of these charities said they had used their reserves to compensate for a fall in income, and 89% expected to use their reserves in 2011/12.
- The kind of support that organisations were seeking from Clinks included information about alternative sources of funding as well as advice on forming new collaborations and mergers to achieve economies of scale and reductions of 'back office' functions.

Given these findings we are concerned that the positive and progressive proposals in the Green Paper will be fundamentally undermined unless there is swift and effective action at national and local levels to offset the impact of the economic downturn and the imminent public sector budget cuts. If action is not forthcoming soon then the Sector will not be in a position to take up the challenges and opportunities of greater engagement in delivery of public services and reducing reoffending.

NICHE NEEDS

Clinks is concerned at the broad-brush approach to offenders taken in the Government response. Many contributors to *Breaking the Cycle* consultation emphasised the importance of recognising the distinct needs of different groups of offenders. For example, young adults transitioning to adulthood; BAME offenders; and women offenders. There are no specific provisions in the Sentencing Bill for women offenders, despite the call in the Corston Report for a distinct and radically different approach to women offenders. The Impact Assessment does not investigate the implications of the justice reforms for different types of offenders. Clinks would like to see some exploration of the distinct needs and challenges facing different offender groups and how the justice reforms will be tailored to the needs of different individuals.

OUR SUBMISSION

Clinks exists to provide infrastructure support to the VCS working with offenders across England and Wales. Our mission is to support, represent and campaign for the Sector, so that VCS organisations, and all those with whom they work, are engaged and informed to transform offenders' lives and reduce reoffending. We are a membership organisation with over 340 members, including the Sector's largest providers as well as its smallest, and our wider national network reaches 3,500 VCS contacts. Overall, through our weekly e-bulletin *Light Lunch*, we are in contact with over 6,645 individuals and agencies with an interest in the Criminal Justice System (CJS) and the role of the VCS in the resettlement and rehabilitation of offenders.

Clinks and our members remain strongly committed to the ambitions for a rehabilitation revolution, as outlined in *Breaking the Cycle Green Paper*. Our submission aims to highlight aspects of the Bill that have our support and where we have concerns that positive elements of *Breaking the Cycle Green Paper* may be lost in the reform process.

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work with offenders and their families

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