

July 2019



CLINKS  
RESPONSE

# Clinks response to the Labour Party consultation: National Policy Forum for Justice and Home Affairs

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## About Clinks

Clinks is the national infrastructure organisation supporting voluntary sector organisations working in the criminal justice system (CJS) in England and Wales. Our aim is to ensure the sector and those with whom it works are informed and engaged in order to transform the lives of people in the CJS and their communities. We do this by providing specialist information and support, with a particular focus on smaller voluntary sector organisations, to inform them about changes in policy and commissioning, to help them build effective partnerships and provide innovative services that respond directly to the needs of their users.

We are a membership organisation with over 500 members, working in prisons and community settings, including the voluntary sector's largest providers as well as its smallest. Our wider network reaches 4,000 voluntary sector contacts. Overall, through our weekly e-bulletin *Light Lunch* and our social media activity, we have a network of over 13,000 contacts. These include individuals and agencies with an interest in the CJS and the role of the voluntary sector in rehabilitation and resettlement.

Clinks is part of the Making Every Adult Matter (MEAM) coalition, along with other national charities Homeless Link and Mind. The coalition works closely with Collective Voice, which represents the substance misuse sector. Together, we represent over 1,300 frontline organisations working in criminal justice, drug and alcohol treatment, homelessness and mental health. Working together, we support 35 local areas across England to develop an effective, coordinated approach to multiple needs that can increase wellbeing, reduce costs to public services and improve people's lives.

Clinks works to support voluntary sector organisations working to combat the over-representation of young adults in the criminal justice system by promoting the need for a fresh approach through the Transition to Adulthood Alliance (T2A). Clinks is one of the founding members of the T2A and supports its programme of work. The Alliance is a broad coalition of organisations and individuals that identifies and promotes the need for a distinct and radically different approach to young adults – an approach that is proportionate to their maturity, and responsive to their specific needs. Clinks supports the T2A response to this consultation in full.

Clinks chairs and provides the secretariat to the Ministry of Justice's (MoJ) Reducing Reoffending Third Sector Advisory Group (RR3), comprising senior leaders from a range of voluntary sector organisations, whose purpose is to build strong



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and effective partnership with the voluntary sector, the MoJ and Her Majesty's Prison and Probation Service (HMPPS). The RR3 also has a formalised arrangement with the cross-ministerial Reducing Reoffending Board (RRB) chaired by David Lidington MP, Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster to provide their expert advice.

Clinks is a member of Agenda - the alliance for women and girls at risk. Agenda has submitted a separate response to this consultation which provides further detail in addition to what we outline below and which we fully endorse.

For more information see [www.clinks.org](http://www.clinks.org)

## About this response

Clinks welcomes this policy consultation and the chance to shape Labour's criminal justice policy programme. Our response focusses on the vital contribution the voluntary sector makes to the CJS, the current operational challenges the sector faces, and recommendations for how a Labour government can develop a policy programme to ensure that well-funded, effective public provision can work alongside, and with the support of, a vibrant, independent and resilient voluntary sector that best enables people to transform their lives.

Due to the breadth of the consultation questions, we've set out our view of the most important and urgent priorities. We would welcome further engagement with the Labour party to help further shape its detailed policy programme for the CJS.

## Recommendations

### Clinks believes that a future Labour government must...

1. Pro-actively engage voluntary organisations as valued partners throughout the criminal justice system at a local, regional and national level, empowering them to effectively provide their distinctive services that can support and supplement those delivered by the public sector.
2. Commit to early intervention, particularly the promotion and funding of community-based interventions, including community youth services.
3. Work with the voluntary sector to expand programmes to divert young people away from the criminal justice system at the earliest stage, and consider denying a child their liberty as an absolute last resort.
4. Establish a specific approach for children who come into contact with the criminal justice system, including implementing a strategy focussed specifically on supporting black, Asian and minority ethnic (BAME) young people. All strategies must adopt the principle of 'child first, offender second', and the Youth Justice Board should develop a set of core welfare-based principles, rooted in full adoption of the United Nations Convention of the Rights of the Child (UNCRC) and a model of desistance appropriate to children.
5. Develop a specific national strategy for a distinct approach to meeting the needs of young adults.
6. Ensure structures are set up in each region to facilitate effective communication between magistrates, judges, probation services and voluntary organisations, to ensure sentencers understand the full range and value of community-based interventions as effective alternatives to custody.

7. Relieve the pressure of 'speedy justice' and establish processes to ensure accurate and full pre-sentence reports are completed for everybody facing a sentence. This report must include important contextual information about an individual, including their protected characteristics and any additional or specific needs, such as caring responsibilities.
8. Further the expansion of alternatives to custody, including Community Sentence Treatment Requirements, and engage the voluntary sector to track and address any adverse consequences that stem from mandated treatments.
9. Develop a clear strategy for reducing the number of people in prison by supporting a presumption against short sentences, increasing investment in preventative services, diverting people away from the criminal justice system, expanding the use of alternatives to custody, and addressing the increase in length of prison sentences.
10. Develop further the ambitions of the Female Offender Strategy, committing further investment into specialist gender-informed women's community alternatives to custody, in order to reduce the female prison population.
11. As part of broader sentencing reform, take a proactive approach to making specific and evidence-based interventions that respond to the specific factors driving disproportionate outcomes for BAME people in the courts.
12. Commit to the continuation of a formal cross-departmental group at the highest level of national government, focussed on reducing reoffending, which is informed by the expertise of the voluntary sector working in the criminal justice system.
13. Support effective public service coordination at the most local level, involving voluntary organisations. Consider how decision makers, commissioners and service providers can use learning from the Making Every Adult Matter coalition to support this.
14. Develop a comprehensive strategy with the voluntary sector that sets out how different people's needs are best met by community alternatives to custodial sentences. A full range of funding mechanisms, including grant funding, must be made available to ensure appropriately local and specialised voluntary sector services are properly supported and resourced.
15. Commit to a distinctive approach to women in the criminal justice system that is gender and trauma-informed, and commit to the long-term sustainable funding of women-only community services. They should build on the work delivered through the Female Offender Strategy and ensure commitments under the strategy are properly resourced.

## **The voluntary sector in criminal justice**

The voluntary sector, driven by purpose not profit, has shaped and reformed the CJS for over 200 years. There are an estimated 1,700 voluntary organisations who work in the CJS, in prisons and community settings.<sup>1</sup> Organisations range from small, volunteer-led groups to large, multi-million pound organisations with thousands of staff. Some only work in their local community, whilst others serve larger areas, including the whole of the UK and beyond. It's estimated that more people are employed by voluntary organisations working in the CJS than the prison and probation services combined.<sup>2</sup>

The voluntary sector is able to deliver services that are often neither possible nor desirable for the public or private sector to deliver. The voluntary sector provides a wide range of services that support, but most often are distinct from, the statutory CJS. These services provide:

- Wraparound support to those who have been sentenced by the court
- Support that responds to the range of needs that push people into the CJS in the first place



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- Support for an individual to desist from crime and live a fulfilling life, far beyond their sentence being served.

Specialist voluntary organisations have a wealth of experience and success in meeting the distinctive needs of certain groups of people in the CJS, including women and BAME people. The sector plays a unique and valuable role in engaging with, and highlighting, the unmet needs of some of the most excluded communities and those suffering multiple disadvantages – those which mainstream services often fail to reach. Through advocacy work and working with people with lived experience, volunteers and peer supporters, voluntary organisations can build relationships with those that have lost trust in statutory services.

Voluntary organisations working in prisons and the community however are facing significant challenges in delivering their services<sup>3</sup> in the midst of cuts to public services and the correlating rise in urgent housing needs, substance misuse and poor mental health. Welfare reform, particularly the roll out of Universal Credit, is pushing people in contact with the CJS into poverty. For the second consecutive year organisations told us in our State of the sector research that service user need is becoming more complex (80%) and urgent (78%) as people's basic needs are no longer being met.<sup>4</sup>

The strain of this rising demand is compounded by a challenging funding environment. There has been an increasing shift away from grants towards contracts and our State of the sector report shows organisations are subsidising contracts that don't pay enough for full cost recovery. Of those voluntary organisations delivering services under contract or sub-contract, only 22% said they always achieve full cost recovery on the contracts they are delivering.<sup>5</sup> The voluntary sector is also often treated as a supplier of services rather than an equal partner in assessing the needs of service users and communities and designing appropriate interventions. Voluntary organisations, especially small and local ones, often struggle to have their voices heard in national policy and the setting of local commissioning priorities.

- 1. A Labour government must pro-actively engage voluntary organisations as valued partners throughout the criminal justice system at a local, regional and national level, empowering them to effectively provide their distinctive services that can support and supplement those delivered by the public sector.**

## Early intervention

**Question: The proportion of the population involved in criminal activity tends to peak at adolescence or young adulthood and then declines with age. What do you think are the key drivers of criminality in young people and how can schools, the police, local authorities, and others work together to address these?**

**Question: What should be the core response of each public service when a young person is at risk of offending or has offended?**

**Question: How can public services work better together to identify those at risk of offending?**

### **How children and young adults come into contact with the CJS**

Although there has been a significant reduction in the population of children and young adults in custody over the past decade, this decline appears to be levelling off, and recent data suggests numbers are on the rise again.<sup>6</sup> There are hundreds of children and young adults in secure settings, often with the most complex and significant needs. Clinks' members have reported facing ever greater complexity of need amongst people they support, in the context of cuts to public services and major welfare reform which has led to a rise in urgent housing needs, substance misuse, poor mental health, and poverty.<sup>7</sup> Millions of children and young adults are affected by this broader picture of poverty and inequality in the UK, with the Social Metrics Commission estimating that 4.5 million children in the UK are now living in poverty.<sup>8</sup>

The possible reasons for children or young adults to come into contact with the CJS are complex and innumerable. All evidence clearly shows, however, that social and economic disadvantage is a major factor. Children and young adults in contact with the CJS are likely to have lived complex early lives, including experiences of poverty, the care system, exclusion from school and poor mental health.<sup>9</sup>

Recent surveys conducted by Public Health Wales and Bangor University at HMP Parc, found that 84% of men in prison had at least one Adverse Childhood Experience, and 46% had four or more such experiences.<sup>10</sup> An Adverse Childhood Experience is defined as a traumatic experience that occurs before the age of 18 and ranges from being a victim of verbal, mental, physical or sexual abuse, to being exposed to alcoholism, drug use or domestic violence. Evidence compiled by the Prison Reform Trust shows:

- 41% of the adult prison population experienced violence in their home as a child (compared to 14% of the general population)
- 24% of the adult prison population were taken into care as a child (compared to 2% of the general population)
- 59% of the adult prison population were regularly truant from school (compared to 5% of the general population).

through youth services in the community, often provided by voluntary organisations, which give one-to-one support to young people, in addition to providing fulfilling activities and opportunities that they would not otherwise have access to. Over recent years, however, there has been a severe reduction in funding for youth services, from £1.028bn in 2008/09 to £0.388bn in 2016/17 – a nominal reduction of 62.25%.<sup>11</sup> We also know that many of the voluntary sector organisations that work alongside youth offending teams and other statutory youth services have been impacted by cuts to local authority budgets.<sup>12</sup> Reinvestment in youth services delivered in the community, including by voluntary organisations, must be an urgent priority in any strategy for early intervention.

**2. A Labour government must commit to early intervention, particularly the promotion and funding of community-based interventions including community youth services.**

**BAME children and young adults in contact with the criminal justice system**

There is increasing and significant overrepresentation of BAME children and young adults in the CJS. The Lammy Review into the treatment of, and outcomes for, BAME people in the criminal justice system showed 48% of children in custody were from a BAME background. Since publication, that figure has now risen to over 50%.<sup>13</sup> BAME people are also more likely to be affected by many of the wider patterns of disadvantage outlined above. The impact of this, in addition to experiences of structural racism and discrimination in wider society and within the CJS cannot be ignored.

Once in contact with the CJS, BAME children also experience worse outcomes. Boys from a BAME background are more likely to be subject to disciplinary procedures, less likely to be on higher level of the incentives scheme, and only 33% said they had daily association, compared with 59% of white boys.<sup>14</sup> Rates of restraint and separation are also higher for BAME people in youth custody.<sup>15</sup>

We are concerned by the view taken by some decision makers that improving outcomes for all children will lead to improved outcomes for BAME children. The Youth Justice System has made significant progress towards reducing the total number of children in the youth justice system but alongside this the proportion of BAME children has increased. These growing disparities require a strategy focussed specifically on addressing the over representation and poorer outcomes experience by BAME children in the justice system. We welcome the Youth Justice Board's (YJB) inclusion in its Strategic Plan for 2019-2022 a specific priority focussed on the disproportionality of BAME people in the youth justice system.<sup>16</sup> We look forward to working with them to put that priority into practice.

Since the publication of The Lammy Review, CJS agencies have been working to respond to its recommendations. The issues raised are complex and addressing them will require long-term concerted efforts, but continued inaction is not acceptable and cannot be allowed to remain the norm. It is vital that appropriate action is taken, most urgently in the youth justice system where BAME over-representation continues to rise.

**A unique response for children**

The needs of children (under 18) who commit an offence are never best met by custody. The youth justice system has very successfully reduced the overall imprisonment of children over recent years and this focus must be maintained. Therefore, alternatives to custody and community solutions must always be prioritised.

Where children do enter the CJS, they must be treated with a distinctive approach that takes into account their age and circumstances. The adoption of the principle of 'child first, offender second' by the Youth Justice Board and all youth justice agencies last year was a welcome development. However, as set out in Clinks' response to *The Taylor Review*, we think the Youth Justice Board can go further.<sup>17</sup> The Youth Justice Board should set out a clear, evidence-based theory of change – a set of core principles and a model of desistance appropriate to children – to underpin any proposed reforms to the youth justice system. This should be rooted in full adoption of the United Nations Convention on the Rights of the Child (UNCRC), and take a child-centred, welfare-based approach focused on building resilience in children, as well as supporting their desistance if they are caught up in the youth justice system.

**3. A Labour government must work with the voluntary sector to expand programmes to divert young people away from the criminal justice system at the earliest stage and consider denying children their liberty as an absolute last resort.**

**4. A Labour government must establish a specific approach for children who come into contact with the criminal justice system, including implementing a strategy focussed specifically on supporting BAME young people. All strategies must adopt the principle of 'child first, offender second', and the Youth Justice Board should develop a set of core welfare-based principles, rooted in full adoption of the United Nations Convention of the Rights of the Child (UNCRC) and a model of desistance appropriate to children.**

### **A unique response to young adults**

There must also be a unique response for young adults (18-25). There is an emerging body of evidence to support the development of a tailored and distinct approach to young adults (aged 18-25) across all criminal justice agencies.

Young adults are disproportionately represented in the criminal justice system. 18-24 years olds account for 10% of the total population in England and Wales but 17% of people in prison and 24% of individuals under probation supervision. Young adults have the highest breach rates for community sentences and are the most likely group to be reconvicted during or following their sentence. Young adults are the most likely age group to desist and grow out of crime, although the wrong intervention at this time can slow desistance and extend the period that a young adult is involved in the criminal justice system. Therefore, getting it right at this critical time is crucial to assisting young adults to make a successful transition to a crime free adulthood.<sup>18</sup>

The Transition to Adulthood Alliance (T2A) evidences and promotes effective approaches to young adults throughout the criminal justice system. It is an alliance of 16 criminal justice, health and youth organisations, including Clinks. T2A has submitted a separate response to this consultation which provides further detail in addition to what we outline below and which we fully endorse.

T2A has highlighted that young adults require a distinct approach that is responsive to their specific needs, which differ from those of children and adults older than 25. T2A has contributed to positive change in policy and practice and at central and local levels, and its evidence has informed service redesign and delivery nationally and internationally. These include welcome changes to recognise maturity in sentencing and Crown Prosecution Service guidance, the



development of a transitions framework for adult and youth justice services by the Youth Justice Board and HM Prison and Probation Service, and consultation on the development of a young adults operating model by HM Prison and Probation Service. T2A's work has helped to promote the development of young adult-specific projects and approaches in a growing number of devolved Police and Crime Commissioner (PCC) and probation areas.

In 2016, the Justice Committee published a report into the treatment of young adults in the criminal justice system, and recommended that the government prioritises creating a distinct approach to young adults.<sup>19</sup> Despite the welcome developments outlined above, in its follow up report in 2018, the Committee said the government still had a long way to go towards creating a distinct approach.<sup>20</sup>

The Committee's view, which we share, is that a major factor inhibiting the development of a distinct approach to this age group is a lack of a national strategy on young adults. Although there are good examples of distinct provision for young adults in many probation and PCC areas in England and Wales, overall provision is patchy and often contingent on local practitioner and senior management champions, who are not present everywhere. In many cases, the voluntary sector has led the way in pioneering these approaches. However, the extent to which the good practice and learning has been shared and informed practice is inconsistent.<sup>21</sup>

A joint report by the Centre for Justice Innovation and T2A suggests that a fairer and distinct approach to how the courts deal with young adults would lead to better outcomes.<sup>22</sup> It sets out a blueprint for a new approach to 18-25 year-olds in court, developed over the last two years by criminal justice practitioners in five areas of England and Wales (West Midlands, Northamptonshire, Leicestershire, Suffolk and South Wales). These areas have worked with the Centre for Justice Innovation to develop a model that could be delivered within current law. Despite this and the Justice Committee's recommendation to establish a young adult court pilot in London, the government has stated that "the MoJ has no plans to centrally pilot courts for young adults".<sup>23</sup>

**5. A Labour government must develop a specific national strategy for a distinct approach to meeting the needs of young adults.**

**The role of the voluntary sector in supporting children and young adults**

In many instances voluntary organisations can have more impact on children and young adults than statutory services, as they often have more flexibility and space to be creative and tailor interventions to the needs of individuals. Practitioners from voluntary organisations may also be able to build more stable, trusting, positive relationships with young people as they are not viewed as part of the 'official' system and are not involved in enforcement. Smaller voluntary sector organisations in particular have local expertise and can provide an ideal route for young people to re-connect with, and develop a stake in, their local communities. Effective partnerships between statutory services and the voluntary sector will therefore help build supportive relationships, encourage children's engagement and wider social inclusion, promote childhoods removed from the justice system and empower children to fulfil their potential.

However, the voluntary organisations we work with often report feeling undervalued and are rarely treated as key strategic partners in the design and delivery of services. This is compounded by the adverse funding environment faced by voluntary organisations specialising in supporting young people, who have been hit hard by the aforementioned cuts to local youth service provision. A Labour government would need to address this.

## Courts

### **Question: How can courts work more closely with local authorities, health service, probation providers and other public bodies, as well as the third sector, to address underlying behaviour?**

#### **Communication with the voluntary sector**

To inform our response to the MoJ's consultation *Strengthening Probation, Building Confidence*, Clinks held consultation events with members across the country, attended by over 150 people representing 95 organisations. We were told of significant issues with engagement between voluntary organisations and courts under the Transforming Rehabilitation model. In particular, voluntary organisations reported that magistrates lacked awareness of possible community solutions, including voluntary sector services.<sup>24</sup> This was seen to stem from a high turnover of magistrates and a lack of training, which prevented sentencers from developing a detailed knowledge of community services in particular areas. Voluntary organisations told us that TR reforms contributed to this too, creating a fragmented probation system which damaged the relationship between probation and the judiciary. For example, specialist women's organisations have said that prior to reforms, there was more frequent dialogue between probation trusts and the Magistrates Association to inform them about women-specific community pathways.<sup>25</sup>

A lack of awareness of community alternatives, leads to a lack of confidence amongst sentencers that community alternatives can best meet people's needs. Custody is still perceived by some sentencers as a safer, better known option, even as the awareness of the harm of short custodial sentences is increasingly well understood. To address this, regional structures should be established to enable engagement between the voluntary sector, probation providers and the courts, thus providing greater visibility and understanding of available interventions and their impact. The National Probation Service (NPS) needs to ensure they have mechanisms in place for staying up-to-date with the changing environment of local services provided by voluntary organisations. This is particularly important as the geographical size of the NPS areas under the reformed probation system is set to increase.

**6. A Labour government must ensure structures are set up in each region to facilitate effective communication between magistrates, judges, probation services and voluntary organisations to ensure sentencers understand the full range and value of community-based interventions as effective alternatives to custody.**

#### **Pre-sentence reports and speedy justice**

Pre-sentence reports (PSRs) are completed by NPS staff and are provided to the court to inform sentencing. Done well, PSRs include important contextual information about the person, including any additional or specific needs they have, and support sentencers to give sentences that are appropriate for the individual, and offer the best route to desistance. People with PSRs are more than ten times more likely to receive a community sentence rather than a custodial sentence.<sup>26</sup> However, recent analysis by the Centre for Justice Innovation<sup>27</sup> has found that:

- Between 2012/13 and 2016/17 there was a 22% decrease in the number of new PSRs delivered to courts
- An increasing proportion of PSRs are delivered orally rather than in writing
- Modelling suggests that if the number of PSRs had remained stable, there could have been 33,000 more community sentences each year.

Not only are the numbers of complete PSRs declining, but those that are being completed are increasingly being rushed. The pressure placed on courts to speed-up the rate at which cases are dealt with, in the drive towards 'speedy justice', acts as a severe limitation to the provision and quality of PSRs. Rushed PSRs can be damaging in a number of ways:

- Community Sentence Treatment Requirements may not be given, as courts are reluctant to adjourn cases to allow time for an assessment to be made
- Assessments of people eligible for unpaid work schemes are often not completed
- *The Lammy Review* raised concerns about the impact of fast delivery PSRs on outcomes for individuals from BAME backgrounds.

The National Audit Office has suggested that structures brought in under Transforming Rehabilitation have had a direct impact on the quality and frequency of pre-sentence reports.<sup>28</sup> They argue that poor communication between the NPS and CRCs about the availability of services in each area, has led to poor PSRs and a loss of trust amongst sentencers. It is hoped that the decision to reunify offender management will reduce the number of operational interfaces between different agencies and simplify the structure.

The emphasis on 'speedy justice' has also meant that voluntary organisations supporting people in the CJS are often unable to contribute to pre-sentence reports or are given insufficient time to do so. This means organisations cannot provide vital knowledge and understanding of service users' needs in court. Adequate time and resource must be allocated for the completion of pre-sentence, reports and proactive steps should be taken to ensure voluntary organisations with expertise in supporting people in contact with the CJS are engaged in this process.

- 7. A Labour government must relieve the pressure of 'speedy justice' and establish processes to ensure accurate and full pre-sentence reports are completed for everybody facing sentence and include important contextual information about an individual including their protected characteristics and any additional or specific needs, such as caring responsibilities.**

### **Community sentence treatment requirements**

Clinks has found strong support for the value of Community Sentence Treatment Requirements (CSTRs) to support people with mental health, drug or alcohol needs.<sup>29</sup> CSTRs are community sentences involving mandatory treatment for a mental health, drug and/or alcohol problem, typically delivered by the local authority or NHS service. They can include the following elements:

- Mental Health Treatment Requirement
- Drug Rehabilitation Requirement
- Alcohol Treatment Requirement.

Treatment will have been arranged by the court as part of the sentence, with the consent of the person being sentenced. Mental Health Treatment Requirements (MHTRs) for example can cover a wide range of interventions, including therapy for depression and anxiety through to secondary and psychiatric care.

*The NHS Long Term Plan* has committed to the expansion of CSTRs to include more women in contact with the CJS, those serving short-term sentences, people with a learning disability and those with mental health and additional requirements.<sup>30</sup> In June 2019 the process evaluation of the CSTRs protocol pilots was published and showed improvements to sentencing options and access to mental health services.<sup>31</sup> The Labour Party should

support these existing plans by NHS England and the MoJ for continued expansion of CSTRs, and push further to make them available nationally, tailored appropriately to meet the needs of different groups and to explore how the greater success of mental health treatment requirements can be mirrored by drug and alcohol treatment requirements.

There were concerns raised through a consultation run by Clinks with voluntary organisations and service users that if requirements are too stringent or unrealistic, this could cause people to relapse, disengage from services or be returned to court, with the possibility of the imposition of a custodial sentence.<sup>32</sup> The government's evaluation also showed that key factors for success of CSTRs were individualised and flexible services for individuals, key worker relationships and multi-agency working.<sup>33</sup> The Labour Party should support the involvement of voluntary organisations in the delivery of CSTRs but also, alongside the people they work to support, in tracking and addressing any adverse consequences that CSTRs place on vulnerable people.

**8. A Labour government must further the expansion of alternatives to custody, including Community Sentence Treatment Requirements, and engage the voluntary sector to track and address any adverse consequences that stem from mandated treatments.**

**Question: It is not in the interest of society or the individual for persistent low level offenders to serve very short sentences in prison, further exacerbating problems of overcrowding, and reducing their chances of rehabilitation. How can sentencing be rationalised to address these issues.**

**Question: Some groups of people, for instance women offenders or people from a BAME background, are much more likely to receive a custodial sentences for a first offence. What can we do to tackle underlying biases within the criminal justice system so sentencing is applied fairly?**

### **Presumption against the use of short sentences**

Almost half of all people given a prison sentence will serve six months or less and 63% of those who serve a custodial sentence under 12 months will go on to reoffend within a year. Short sentences do not work. They are long enough to remove and disrupt people's accommodation, employment and family life, but not to provide effective rehabilitative support. David Gauke MP, Secretary of State for Justice and Robert Buckland, Minister of State for Justice have publically recognised this, and announced that the MoJ is looking into restricting the use of sentences of six months or less. The recent Justice Select Committee report Prison Population 2022: planning for the future, argues curbing the use of prison sentences under 12 months.<sup>34</sup>

In Scotland, the presumption against prison terms of less than three months, introduced in 2010, has reduced the use of short jail terms by 40%, with both six and 12 months sentences in decline.<sup>35</sup> Despite initial concerns that the presumption against three month custodial sentences would result in up-tariffing, this hasn't so far been the case, though outcomes will need to continue to be tracked to fully understand the impact. The Scottish government is now pushing towards a policy of a presumption against 12 month sentences.

Clinks welcomes the government's announcements on pursuing a presumption against six month prison sentences in England and Wales. Considering the weight of evidence highlighting the damaging effects of custodial sentences under 12 months, the government must justify its reasoning as to why a presumption should be limited only to six months, rather than 12. While understanding the political difficulties of sentence reform, Clinks supports extending a presumption to 12 months, as the most effective way of reducing the prison population and representing the best chance of rehabilitation for service users.

For outcomes to improve by reducing the use of short sentences, effective community alternatives must be in place that can give people the support they need. The government has mandated that everyone leaving prison must receive 12 months of post-sentence supervision, and this was legislated for under the Offender Rehabilitation Act (2014). As shown in a recent thematic report from HM Inspectorate of Probation,<sup>36</sup> post-sentence supervision for people serving short sentences has been poor, and services have failed people. Clinks supports the findings in that report, which argues systems-wide changes must accompany sentence reform if it is to be successful. This will also need significant investment and it remains to be seen if the government's probation reforms will deliver this.

It is not just short prison sentences that are contributing to overcrowding. The growth in very long and indeterminate sentences (including a population of people recalled from the conditional release element of such sentences) is the most significant contributory factor to overcrowding.<sup>37</sup> Any future Labour government committed to addressing overcrowding will also need to tackle this issue.

Clinks thinks the government should develop a clear strategy for reducing the number of people in prison by committing to sentencing reform, increasing investment in preventative services, diverting people away from the CJS and expanding the use of alternatives to custody. We know however that this is a politically fraught issue, and while the sentiment so far is positive, sentencing reform is a long way from being achieved, and it is to be expected that there will be significant resistance from media outlets and groups in parliament. Clinks would welcome the Labour Party taking a brave and bold approach to sentencing.

**9. A Labour government must develop a clear strategy for reducing the number of people in prison by supporting a presumption against short sentences, increasing investment in preventative services, diverting people away from the criminal justice system, expanding the use of alternatives to custody and addressing the increase in length of prison sentences.**

### **A distinctive approach to women sentencing**

Women remain a minority group in contact with the CJS and represent just 5% of the prison population, but women experience more complex and acute needs than their male counterparts. A large majority have experienced trauma, including sexual and domestic abuse; many are primary carers for children; and some will suffer from mental ill health including post-traumatic stress disorder. Only a tiny proportion of women who have offended are assessed as a high risk of harm to others, yet many are still sent to prison.

Last year 82% of women entering prison had committed a non-violent offence, and 72% were sent there to serve a sentence of less than a year.<sup>38</sup> Imprisonment rates are on the rise across England and Wales and imprisonment rates vary widely across regions, suggesting a postcode lottery in how women are treated in the CJS.<sup>39</sup>

Over 1,700 women were recalled to prison in England and Wales during the last year and the number of women recalled to prison has more than doubled since Transforming Rehabilitation and the Offender Rehabilitation Act 2014.<sup>40</sup>

A distinctive approach to sentencing for women is crucial. Prison is rarely the most appropriate response to women who have committed a crime; nor is it the most proportionate given a majority of women serve short sentences for non-violent crimes. Most women could be effectively managed in the community, thereby avoiding the need for prison.

PSRs, which have been so diminished under 'speedy justice', must be provided to sentencers, with full details of women's circumstances, including caring responsibilities. A report from HM Inspectorate of Probation found that PSRs often "did not differentiate the needs of women from those of men."<sup>41</sup> Full and comprehensive reports that set out an individual's circumstances are more likely to lead to appropriate sentencing for that individual.

The Ministry of Justice's *Female Offender Strategy* published in 2018 has welcome aspirations, including an aim to reduce the use of imprisonment for women and improve services in the community, recognising the important role of voluntary organisations in supporting women's complex needs. However, the resource committed to these aims falls a long way short of what is needed to support community based, women-centred provision.

**10. A Labour government must develop further the ambitions of the Female Offender Strategy, committing further investment into specialist women's, gender-informed community alternatives to custody, in order to reduce the female prison population.**

### **BAME sentencing**

*The Lammy Review* highlights a glaring difference in plea decisions between BAME and white defendants. The relative rate index analysis conducted for *The Lammy Review* found that young BAME men were more likely to enter a 'not guilty' plea than their white counterparts, and that black and Asian men were more than one and a half times more likely to enter a 'not guilty' plea than white men. As those who plead guilty can see their sentences reduced by a third or be given alternatives to custody, these findings offer some understanding of the disproportionality of BAME people in custody.

The reasons why BAME people plea in different ways to white people however is not clear. *The Lammy Review* suggests it is primarily due to a lack of trust in the system amongst BAME people, stating that BAME defendants are less likely to cooperate with the police or trust the advice of legal aid solicitors who are viewed as part of 'the system'. Concerns have been raised however that too much focus on pleas misses elements of unfair treatment at other stages in the process, such as how structural or unconscious racism can simply lead to more innocent BAME people being charged and taken to trial. It is therefore important that the data is understood in the context of the whole CJS and that agencies at each stage of the system take full responsibility for achieving the best possible outcomes for individuals they are working with – this includes addressing the effects of earlier disproportionate decision making.<sup>42</sup>

*The Lammy Review* recommended the roll out of deferred prosecution models as a way to address BAME disproportionality, citing examples in New Zealand, Canada and pilots in Durham and the West Midlands. Deferred prosecution involves defendants cooperating with the police but not formally admitting guilt. If they

successfully complete a programme of interventions, their prosecutions are dropped. If the interventions are not successfully completed, they proceed to court.

Deferred prosecution presents a positive model for diverting people away from the criminal justice system. Clinks supports a roll out of further deferred prosecution models and welcomes Mayor Sadiq Khan's announcement last year that the Metropolitan Police would roll out a two year pilot of a deferred prosecution scheme in London aimed at young people.<sup>45</sup> The voluntary sector already has a track record and expertise in delivering successful alternatives to custody and diversionary interventions in the community for people who have offended. Where such schemes are developed, voluntary sector partners, and in particular BAME led organisations and others that specialise in meeting the needs of people with protected characteristics, must be identified and engaged as delivery partners for the interventions involved.

It is important to note that the creation of such diversionary pathways will not necessarily address BAME disproportionality. In Clinks' consultations with voluntary sector organisations to inform our submissions to both *The Lammy Review* and *The Taylor Review*, organisations raised concerns that BAME children and young adults were not referred to diversionary options because they were perceived to be of higher risk than their white counterparts. There is therefore a need to target such schemes specifically at reducing disproportionality and to ensure that staff are not consciously or unconsciously engaging in racial stereotyping.

**11. A Labour government must, as part of broader sentencing reform, take a proactive approach to making specific and evidence-based interventions that respond to the specific factors driving disproportionate outcomes for black, Asian and minority ethnic people in the courts.**

## Offender management

**Question: How should the criminal justice system work with other public bodies to ensure people convicted of low-level offences are not dragged into a cycle of reoffending? Which public services beyond the criminal justice system should be included in offender management?**

### National coordination

Social determinants drive people into the CJS— such as experience of abuse, poverty, homelessness, substance misuse, mental health and the care system— and experience of the CJS can further compound such existing disadvantage. This complexity of needs shows that failures in government departments beyond the MoJ have a direct impact on the CJS, and the majority of government departments also have clear and significant responsibilities in meeting the needs of people in the CJS. It is essential therefore that while we need much greater investment in public services that can help early intervention and diversion, a whole systems approach must also be taken. All public bodies must understand both how their failures can drive people into the CJS, and the urgent responsibilities they have in meeting the complex needs of people in the CJS.



## CLINKS response to the Labour Party consultation: National Policy Forum for Justice and Home Affairs

July 2019

This requires a cross-departmental approach from national government. The Reducing Reoffending Board (RRB) is a cross-ministerial group chaired by David Lidington MP, Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster, and attended by senior ministers from all government departments with a stake in the causes and effects of reoffending. This is an important initiative, which recognises that only cross-departmental solutions are viable to address reoffending, and is something that should be continued in the long-term, regardless of which party is in government. As called for in the Justice Select Committee report *Prison Population 2022: planning for the future*, the RRB should also work with the Treasury to map the cross-departmental activity related to reoffending, to inform future spending reviews.<sup>44</sup>

Clinks convenes and chairs the Reducing Re-offending Third Sector Advisory Group (RR3), a group of 16 openly recruited senior experts from the voluntary sector, which has agreed a formal relationship to provide advice to the RRB and recently submitted evidence on access to Universal Credit and banking services for people leaving prison.<sup>45</sup> It is essential too that cross-departmental working at the highest level of the government must be informed by the unrivalled experience and expertise of the voluntary sector.

A particularly pressing example of the need for effective cross-government cooperation at the national level is regarding the provision of safe, stable accommodation for people in contact with the CJS, especially those leaving prison. A number of simultaneous factors have created significant barriers for people accessing appropriate accommodation, including:

- People leaving prison facing delays in accessing first payments under Universal Credit, due to difficulty in applying online from prison, access to bank accounts and having valid identification documents
- Confusion over the responsibilities of different agencies in supporting people to find accommodation under Transforming Rehabilitation
- The loss of some small, specialist providers who have struggled to engage with commissioning processes under Transforming Rehabilitation
- The impact of a wider housing crisis including a lack of social housing, supported housing and a rapacious private rental market.

These factors have led to many people falling through the gaps in provision. MoJ data, revealed through a freedom of information request by the Revolving Doors Agency, showed that 1000 prisoners a month are released into homelessness and rough sleeping, including one in four short sentenced prisoners. These figures are likely to be an underestimate, as the MoJ does not know where a sixth of short-term prisoners are intending to sleep on their first night.<sup>46</sup>

The RR3 Special Interest Group on accommodation, consisting of 14 openly recruited voluntary sector experts, and informed through consultation with people with lived experience, sets out a number of key principles for how the government can best work in a cross-departmental way to ensure access to accommodation.<sup>47</sup> The group influenced last year's *Rough Sleeping Strategy*,<sup>48</sup> published by the Ministry of Housing, Communities and Local Government, which included funding for pilots to address the issue of people sleeping rough after leaving prison.

**12. A Labour government must commit to the continuation of a formal cross-departmental group at the highest level of national government, focussed on reducing reoffending, and this body must also be informed by the expertise of the voluntary sector working in the criminal justice system.**

### **Local coordination**

Any attempt to coordinate national policy work must have a clear understanding of how local services operate, as national policy inevitably filters to services delivered and accessed at the local level. There must also be effective coordination at a local level, especially to ensure better support for people facing multiple disadvantage, as this requires a range of agencies working together. People in contact with the CJS commonly experience a combination of homelessness, drug and alcohol misuse problems and mental ill-health at the same time. A lack of coordination between services and commissioners means that these individuals are often passed from pillar to post, whilst facing multiple assessments and coming up against different referral criteria. This can be confusing and leaves people unable to receive the support they need.

The voluntary sector has led the way in piloting new approaches which break down the barriers to services. They have created new partnerships with a range of organisations from all sectors, set up new services, involved people with lived experience in their design and delivery, made their approach more flexible and changed their culture to get people the support they need. These new approaches are changing the way local systems work for the better. Decision makers, commissioners and service providers should use learning from the Making Every Adult Matter coalition and the Big Lottery's Fulfilling Lives programme to develop new policies and better coordinated services which support people with multiple needs.

**13. A Labour government must support effective public service coordination at the most local level, involving voluntary organisations. They must consider how decision makers, commissioners and service providers can use learning from the Making Every Adult Matter coalition to support this.**

### **Distinctive challenges in Wales**

There are distinctive challenges faced in Wales when attempting to work across public services to reduce reoffending.<sup>49</sup> While the CJS remains the responsibility of the UK Government (largely through the MoJ and Home Office), wrap-around services that provide individuals with the support they need to complete their sentence, and go on to live fulfilling lives will likely interact with education, health, housing and social care support, all of which are policy areas devolved to Welsh Government. This complex system can be difficult for both service users and voluntary organisations to navigate.

It is therefore vital that any long term vision for justice in Wales, and future structures resulting from it, considers how to ensure that these devolved and non-devolved policy areas can best be joined up to ensure that they work together towards better rehabilitation outcomes. The probation review offers an opportunity in Wales to consider how prisons, probation, Police and Crime Commissioners and other public services can better work in partnership to co-commission services and focus their attention towards shared outcomes. There is a real potential for Wales to be at the forefront of a whole systems approach to justice, and this opportunity should be seized.

**Question: If there is a presumption against short sentences, how can we ensure community based alternatives, command the confidence of the public and the criminal justice system, as well as provide a chance for effective rehabilitation?**

**A well-funded and effective probation system**

A well-funded and effective probation service that supports people to rebuild their lives is crucial to command the confidence of both the public and the judiciary in the use of community sentences. However, the changes to probation brought in under Transforming Rehabilitation, has led to worse services for people and a loss of confidence amongst sentencers. Of the 21 companies established to deliver probation under the Transforming Rehabilitation system, eight have collapsed. 12 consecutive CRCs inspected by HM Inspectorate of Probation since September 2018 were rated as under-performing. In her 2019 annual report, the HM Chief Inspector of Probation described the Transforming Rehabilitation model as “irredeemably flawed”.<sup>50</sup> Similar conclusions were made by the Justice Committee and the National Audit Office<sup>51</sup> in the months before.

Transforming Rehabilitation has also negatively impacted the voluntary sector. The voluntary sector has a long record of providing support and rehabilitative services to people under probation supervision to help people turn their lives around, including employment and education support, mental health support, drug and alcohol services, accommodation support, specialist women’s services, specialist services for disabled people and specialist support for BAME people. Our TrackTR research highlighted that the reformed model left charities under represented, under pressure and under resourced. Many charities received referrals from the probation service but no funding to deliver services, while many charities that did receive funding through the NPS or CRC were forced to subsidise services with their own reserves or with other funding sources.<sup>52</sup> Organisations also told us that the model has had a negative impact on their service users.

We have therefore welcomed the government’s recent decision to reunify probation services under the NPS. There are, however, many details of the new probation plan which are currently still unknown. As a matter of primary importance, the new probation model must be backed by adequate funding. The voluntary sector has experience of welcoming new approaches and positive rhetoric from government strategies, only to see inadequate resources committed to support them. Without adequate funding for community organisations in particular, and fit for purpose structures for funding and commissioning services, the government won’t achieve the ambitions they have set for themselves.

This will need to include utilisation of the full range of funding mechanisms appropriate for small, local organisations as well as the larger providers in the voluntary sector; arrangements to ensure that appropriately local and specialised services are available; and a commitment to ensuring that specialist services for people protected under the Equality Act (2010) are properly supported and resourced. Grant funding for the voluntary sector is key to this and would reduce complex and expensive commissioning processes, sustain vital effective services and provide flexibility to give charities the space to innovate and find the best solutions for service users. Commissioning strategies should make a proportion of budgets available as grant funding alongside other funding mechanisms. Commissioning strategies must also ensure that funding reaches small voluntary organisations who deliver essential local work.

Crucial to the success of probation is a comprehensive strategy that works with the voluntary sector and uses its expertise in understanding how different people’s needs are best met by community alternatives to custodial sentences. Such a strategy

should set out how the government would best benefit from the knowledge and experience of the sector to meet people's needs, recognising that the sector will not always want to play an enforcement role but has a vital supporting role to play.

**14. A Labour government must develop a comprehensive strategy with the voluntary sector that sets out how different people's needs are best met by community alternatives to custodial sentences. A full range of funding mechanisms, including grant funding, must be made available to ensure appropriately local and specialised voluntary sector services are properly supported and resourced.**

### **Question: What changes need to be made to the management of women offenders in order to create a presumption against custodial sentences for non-violent offending?**

The distinctive disadvantages that women face necessitate a gender specific response, as set out in the Equality Act (2010) and the requirements of state agencies under the Equality Duty of that act. Placements provided under community sentences, such as unpaid work, must be appropriate for women, while probation services must be gender and trauma-informed. There must be provision for broader women's services in safe women-only environments where required, such as mental health services and drug and alcohol services. Recent evidence has shown a decline in the percentage of women-only bed spaces, with only 7% of accommodation projects women-only in 2017, down from 13% in 2013.<sup>53</sup> There must be concerted funding directed at protecting provision for women-only accommodation services too.

Clinks welcomed the *Female Offender Strategy's* focus on early intervention, prevention, the reduction in the use of imprisonment and improving services. However, we remain concerned that the financial package announced to accompany the strategy falls considerably short of what is needed to ensure its aspirations are realised.

Women's specialist organisations, including women's centres run by the voluntary sector, provide uniquely holistic support in a safe and women-only environment, but many are facing significant funding challenges. In Clinks' TrackTR research, women's specialist organisations reported particular difficulties under Transforming Rehabilitation.<sup>54</sup> Compared to the wider voluntary sector, women's specialist organisations reported having worse relationships with CRC owners, being more concerned with the alignment of ethos/values between their organisation and the CRCs, being more concerned about contractual risk under CRC contracts, and being more likely to subsidise CRC contracts. A future Labour government must seek to address these challenges, by committing to long term sustainable grant funding for specialist voluntary sector women's services, including a vital network of women's centres as an essential part of a broader programme for women in contact with the CJS.

**15. A Labour government must commit to a distinctive approach to women in the criminal justice system that is gender and trauma-informed, and commit to the long-term sustainable funding of women-only community services. It should build on the work delivered through the Female Offender Strategy and ensure commitments under the strategy are properly resourced.**

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# CLINKS

**Clinks supports, represents and advocates for the voluntary sector in criminal justice, enabling it to provide the best possible opportunities for individuals and their families.**

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Tavis House  
1-6 Tavistock Square  
London WC1H 9NA  
020 7383 0966  
info@clinks.org  
@Clinks\_Tweets  
[www.clinks.org](http://www.clinks.org)