

Clinks response to the Government's review of Sentencing in England and Wales

Clinks welcomes the opportunity to respond to the request for comments that could contribute to a White Paper to be published in the Autumn.

The following suggestions are structured around the key stages in the criminal justice process and particularly identify the potential for the enhanced role of the VCS.

About Clinks

Clinks is a national voluntary sector infrastructure organisation supporting voluntary and community sector (VCS) agencies that work with offenders and their families.

We are particularly focussed on the role of small and medium size organisations in Criminal Justice System. Our main activities include:

- Representation and voice
- Partnership and collaboration
- Capacity Building
- Volunteering and mentoring

Our manifesto commitments include a greater focus on rehabilitation of offenders, a more proportionate and rational use of imprisonment, promoting a focus on local delivery, and a commitment to tackling inequality and racism in the Criminal Justice System.

Appropriate use of prison

There is a proportion of offenders who commit serious violent and sexual offences who need to be held securely in order for society to be protected and for their risk to be successfully addressed and reduced.

However, many of the defendants that are arrested and appear before the courts do not pose a major risk to the public. They commit relatively petty offences and tend to come before the court on a number of occasions.

They have a range of needs including poor accommodation, debt, poor literacy, lack of skills, mental ill health, and substance misuse. Much of their offending is a result of their inability to overcome these disadvantages and manage their lives in a responsible and productive way. These are compounded by poor parenting, lack of positive role models, which in turn have led to an inability to form positive long term relationships.

Reform which delivers a more rational and effective sentencing framework should include measures which provide access, as early in the criminal justice process as possible, to services that meet these needs.

Many of the problems that the Criminal Justice System is presented with are best addressed with a minimum of punitive intervention, leaving greater capacity to deal with serious criminality.

The success in achieving more rational use of resources in other criminal justice jurisdictions has been based on constructing community based alternatives to custody; beginning with arrest and proceeding through to sentence and, in the case of custody, release and resettlement in to the community.

Diversion from custody

One of the most effective means of achieving effectiveness and proportionately in sentencing is to divert those defendants that have mental health and substance misuse problems away from the formal justice process.

The provision of quality treatment for these individuals depends crucially on robust assessment at an early stage in the criminal justice process. The mental health courts in Brighton and Stratford are good examples of this approach, as are the Dedicated Drug Courts in London and Leeds.

These approaches may appear expensive, but are capable of generating significant savings further 'downstream'. VCS organisations working in mental health and substance misuse have a track record of engaging with individuals experiencing addictions and supporting them through treatment and rehabilitation.

Without effective diversion strategies in place, sentencers are often left with little alternative other than to impose custodial sentences, which are generally ineffective at dealing with these issues.

Restorative Justice

There is increasingly compelling evidence that both victims and offenders find value in the opportunities, both direct and indirect, for offenders to express their remorse and make amends for their offending.

There are a range of models and processes for implementing Restorative Justice, including face-to-face meetings between victim and offender, written statements by offenders, and actual practical work undertaken to make good damage caused by the offender.

Victims find it reassuring to learn that it is often the case that they were not targeted personally (in the case of burglaries and thefts) and that the offence was often motivated more by opportunity.

Offenders report the impact of hearing the effect of their offence on the victim as being significant in motivating them to change their offending behaviour.

Restorative Justice can take place at several stages in the criminal justice process and can be an effective strand in a diversion strategy at pre-trial and pre-sentence stages, as well as forming an important part of supervision in the community.

There are a number of VCS organisations that specialise in this work and the Restorative Justice Consortium

(www.restorativejustice.org.uk) is the umbrella organisation supporting Restorative Justice initiatives in England and Wales.

Bail/Custodial Remand

Many of the decisions to hold a defendant in custody prior to appearance in court are determined by the availability (or otherwise) of accommodation, health services, employment, and mentoring or counselling services.

The recent publication of the National Policing Improvement Agency's (NPIA) policy of working with the VCS to divert offenders from offending and re-offending offers real scope to develop working relationships with the VCS and the police, both in the community and in police cells, to provide solutions to the aforementioned problems. If left unresolved this often results in custodial remand in order to ensure that defendants appear at court.

Wherever it is possible to safely and effectively allow defendants to remain in the community to resolve issues that have contributed to their arrest, the greater the possibility of successful rehabilitation. The current programme of developing 'problem-solving courts' is a good example of this approach.

Fines

Financial penalties are potentially very effective punishments, and it is regrettable that their use has declined over the past 10 years. Much of the decline has been due to the lack of confidence in enforcement.

The consequence is that many offenders who would have been suitable for this sanction have been 'up-tariffed' to community orders, thus increasing probation case loads with offenders who do not present a substantial risk to the public, restricting the probation

service's ability to do the more important work with more serious offenders.

Much has been achieved in courts where there is access to debt advice services, often delivered by VCS organisations. These services can provide both defendants and courts with good information upon which to base both the level of fines and the strategies for ensuring successful payment.

Community Orders

The range of possible requirements and sanctions available to sentencers imposing community orders is extensive and embraces both rehabilitative, controlling, and punitive elements.

There are two problems with community orders, however, and they relate to compliance and availability of services and resources to make the requirements meaningful.

The Intensive Alternatives to Custody pilots have shown the value of high quality mentoring in improving offenders' motivation and ability to successfully keep appointments and comply with other requirements of the order. These mentoring services are usually delivered by VCS organisations with experience of supporting vulnerable and chaotic individuals.

The resources issue is probably best illustrated by the scarcity of alcohol treatment services, thus restricting sentencers' ability to ensure that these issues are addressed during the term of the order. These services should be funded by the health service and are often delivered by specialist VCS agencies.

Access to good education, training and employment services in the community can also be problematic, especially when dealing with offenders with a long history of underachievement. Again it is VCS organisations working in this area that have achieved some significant results but are often constrained by a lack of funding.

The enforcement of community orders has been both a marked success and, paradoxically, a failure.

Centrally set targets for rigorous enforcement of community orders have driven up performance, but at the expense of the flexibility necessary to work effectively with chaotic individuals.

Confidence in community orders as an effective non-custodial alternative is undermined by the frequent 'breaches' of community orders which follows from the rigid application of procedural standards.

Reforms which sought to return sensible and appropriate professional discretion to probation staff supervising community orders would contribute to their greater use by magistrates and judges.

Short sentences

The inefficacy of short term custodial sentencing (defined here as less than twelve months) has had considerable investigation and the difficulties caused by these sentences in terms of loss of housing, jobs, family ties, etc. is well-rehearsed, as is the futility of effecting any kind of meaningful rehabilitation in what are very short time spans spent in often dehumanising environments.

However, sentencers need to be able to have a framework, to help them deal with persistent petty offenders, that won't bring them into disrepute or hold them up to ridicule if they continue to impose non-custodial sentences on these individuals.

Hence, there is merit in bringing back the principle, embodied in the Criminal Justice Act (1991), of sentencing for the offence before the court rather than on the basis of previous offending. This may have to be modified for more serious offenders, although they would receive custodial sentences in any event.

The 'just desserts' principle provides sentencers with legislative support for responding to low level offending in ways that realistically reflect the often inevitably long process of rehabilitation and reintegration that many offenders face.

As noted previously, the availability of robust and effective services for the offender to address their difficulties is critical if the whole process is not seen to be a meaningless revolving door of arrest, court appearance, sanction, offending, arrest, etc.

Longer sentences

The current arrangements which distinguish between sentences of twelve months to four years, and those greater than four years, cause unnecessary confusion for defendants, victims, and the wider public.

The proposals put forward in the election manifesto about minimum-maximum sentencing go some way to clear this confusion; however care must be taken to ensure that the legislation doesn't inadvertently result in prisoners spending

even longer in prison than is currently the case.

There will always have to be provision for some kind of automatic release prior to the end of the sentence in order that disciplinary sanctions imposed by prison governors have real meaning.

Finally, the constraints on judges caused by so-called mandatory sentencing provisions have ensured that average sentence lengths have increased in the absence of any evidence that this has been effective in reducing crime.

Youth Offending and Transitions to Adulthood

The work undertaken by the Barrow Cadbury Trust, and others, has identified the serious shortcomings of the current arrangements for offenders aged between 18-25 years.

Clinks, and other members of the Transition to Adulthood Alliance (www.t2a.org.uk) have argued that the arbitrary, and often brutal, transfer of young offenders to the adult system upon reaching the age of 18 is damaging to many young people in the Criminal Justice System.

We have urged that the system takes much greater account of young offenders' needs, and differing rates of maturation, when deciding the kind of regime most appropriate to them.

In particular, we have argued that educational provision should be better tailored to take account of their differential attainment.

Most crucially, it is important that all young offenders have access to an individual mentor who will support them throughout their sentence and back into the community.

The Princes Trust, and others, have developed high quality mentoring provision targeted at this group, and have trained young ex-offenders to deliver this. The GateMate campaign (www.gatemate.org.uk) aims to provide a mentor for every young person leaving prison.

Indeterminate Sentences for Public Protection (IPP)

These sentences have contributed significantly to the rising prison population.

Some of the seriously unjust outcomes of this legislation have been ameliorated by the amendments to the Criminal Justice Act (2003), restricting the imposition of IPP sentences to those offences that would have attracted longer sentences in any event.

However, it is difficult to imagine how sufficient resources are going to be found to provide the opportunities for IPP prisoners to demonstrate that they can be safely released, including the additional resources needed for the Parole Board to properly undertake its role in respect of these prisoners.

Given that it may not be possible to immediately remove these provisions, there is a case to be made for introducing further criteria to restrict their use.

Life Sentences

There is scope for considering a review of the criteria for imposing life sentences in respect of non-mandatory convictions (convictions other than Murder).

The relationship between life sentences for these offences, and the imposition of IPP's for similar offences, creates confusion and undermines consistency in sentencing.

Diversity Issues

The rise in the prison population during the past 20 years has become unsustainable and we welcome the comments made by the Justice Secretary reflecting the government's concern about this situation.

Within this overall rise, there has been an extraordinary and unjustifiable increase in the number of women in prison, doubling in the past 14 years.

A commitment to diverting offenders away from the Criminal Justice System in general, and from custody in particular, will hopefully help to drive down the numbers of women in prison.

This will be helped by the continued focus on developing community based services for vulnerable women, which have been the focus of policy following Baroness Corston's influential report.

Another group disproportionately represented at all points in the Criminal Justice System is Black, Asian and Minority Ethnic (BAME) offenders.

This is particularly the case regarding the proportion of the prison population that is comprised of BAME offenders.

It is important, therefore, that efforts are made to seek community based alternatives to custody, including custodial remand, and access to relevant services for this group.

Clinks has commissioned research into the barriers that BAME offenders face in trying to access employment, health, and accommodation services which will hopefully offer solutions to these issues.

We are also continuing to work with other BAME-led VCS organisations to increase the capacity in this part of the Sector.

We would urge the review to consider the impact of any proposals on BAME offenders.

More information

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