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Transforming Rehabilitation consultation

Ministry of Justice
8.25, 102 Petty France
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To Consultation Co-ordinator,

Make Justice Work (MJW) was launched in the summer of 2009. It is an independent campaign aimed at highlighting the cost and ineffectiveness of short-term prison sentences and improving public confidence in community sentences. MJW is a Community Interest Company and receives no public funding.

MJW welcomes the emphasis in Transforming Rehabilitation on tackling the cycle of reoffending and rehabilitating offenders. We also agree that resources should be focussed on offenders sentenced to prison for 12 months or less, who under the current system are largely ignored and receive no support following their release. However, the contracting out of many functions of the Probation Service to the private and voluntary sectors, combined with the widespread adoption of Payment by Results (PbR), represents a radical new departure. We are especially concerned that PbR has never yet been applied to the delivery of community sentences in the UK or anywhere else, and no one knows for sure how it will work.

In May 2012, MJW brought together 30 leading experts to explore in an open-minded and constructive spirit the challenges of applying the principles of PbR to the delivery of community sentences. The group did not identify any difficulties that were in principle insuperable, but the report, *Just Results*¹ reveals many potential problems, some of which could have serious consequences if not managed effectively. At the heart of the *Just Results* report are nine interlocking operating principles all of which, in the view of the participants, must be applied if the use of PbR in community sentence provision is to have any chance of success. The principles are not a menu from which a selection can be made.

Our response to the consultation document sets out our views in detail, but we are very worried that the proposed reforms are being introduced with such haste that serious problems will almost certainly arise. If these result in higher rates of breach and reoffending, the whole reform programme may be jeopardised. We therefore recommend that any new service

¹ <http://www.makejusticework.org.uk/results-3/>

delivery agreements include a 'discovery' period (perhaps extending for three years) to allow flexibility for contracts to be adjusted to reflect lessons learned.

Yours sincerely



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Question B2: How can we use the reform of offender services in the community to enhance the broader range of social justice outcomes for individuals?

- Increase training of the judiciary of the role of community sentences to include mandatory yearly visits to community sentences plus a rolling programme of opportunities for the judiciary to attend seminars and workshops with a focus on good practice in community sentences (such as the seminar programmes devised by the Prison Reform Trust).
- Improved offender services must be showcased to sentencers to give them confidence in sentencing lower level offenders to alternatives to custody - particularly those with drug, alcohol, mental health and learning disability/difficulty issues. MJW's Community or Custody Report² (Appendix 2) indicates that people are less likely to re-offend if they are sentenced to a robust and demanding community sentence and it is more cost effective.³
- Integrated Services: Effective management of service provision must extend beyond the agencies of the traditional criminal justice system if it is to address the underlying causes of crime. Key to this is recognising the diversity of services involved (eg housing, employment, education, mental health and substance abuse services), and the need to encourage creative partnerships that integrate services across sector and functional boundaries, focusing on the specific needs of offenders.
- Intensify investment in preventative work, particularly around health, education, employment, housing and supporting families. With regard to justice reinvestment, evidence from both New York State and Texas in relation to community drug rehabilitation services has proven to be very effective in this area.⁴

² <http://www.makejusticework.org.uk/national-commission-enquiry/>

³ http://www.makejusticework.org.uk/wp-content/uploads/Matrix-MJW_updated-Final-Report_June-2012-2-1.pdf

<http://www.makejusticework.org.uk/wp-content/uploads/are-short-term-prison-sentences-an-efficient-and-effective-use-of-public-resources-MATRIX-Oct-2009.pdf>

⁴ <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/9405.htm>

- Women offenders should have access to gender specific services – generic community sentences for lower level offenders (unless delivered via their local women’s centres) - are inappropriate and do not take into account their distinct needs. This should be reflected in the sentencing guidelines.
- Investment in ‘sign posting’ services which are available to those who would find accessing key support difficult and for all interested parties. e.g. StartHere (www.starthere.org). Such a service could be commissioned on a local/global basis.
- The voice of victims. As evidenced in MJW’s report “Out in the Open – What victims really think about community sentencing”⁵ victims are not as punitive as is often perceived, do not think short prison sentences work and are open minded about the rehabilitative benefits of community sentences.
- Procedural Justice: The process of justice is important, as well as the outcomes. Procedural justice ensures there is fairness and transparency in the processes by which decisions are made. Offenders must be treated with respect and fairness; they should understand what is happening to them at each stage of the process and be assured that undertakings will be honoured. There must be a fair balance between the interests of offenders and victims, ensuring both are treated with dignity throughout the process. This will require mechanisms to reflect offender views, light touch inspection regimes, staff training and embedding a principle of co-design.

Question B3: Should any additional flexibility be built into the community sentencing framework to strengthen the rehabilitative impact of community orders, and the reintegration of offenders into society?

- Pre-sentence reports: The importance and value of Probation in the initial assessment of risk and individual needs of offenders must be recognised and rewarded. Assessments must include the likely response of an offender to a specific community sentence, how it will be delivered and its overall effectiveness.
- Personalised Services: Providers need the flexibility to tailor packages of support that reflect the individual needs of offenders, victims and communities; intervention ‘packages’ must be created around what offenders need in order to turn their lives around. This may be contingent upon the ability of smaller, bespoke service providers to operate successfully within the market system; mechanisms are needed to protect them and the contribution they can make.
- Effective Communication: Good communication is required, focused on building the confidence of sentencers and the public in community sentencing. Magistrates and judges need flexibility and the understanding of what works in order to apply it. This means that partnership and information sharing is vital within the system – particularly around outcome measurements. This should lead to a criminal justice system where only people who need to be in prison are in prison. Failure to share information is a key risk.
- Women: Particular attention should be paid to the requirements attached to a community order to ensure the best outcomes for women offenders. Pre-sentence

⁵ <http://www.makejusticework.org.uk/victims-views/>

reports are critical particularly bearing in mind the rights of any children involved and the impact of sentencing mothers who are the sole carers. Again, magistrates are woefully unaware of the specific issues surrounding women offending which can impact on the inappropriateness of sentencing.

- Restorative Justice: In those cases where victims are willing and feel comfortable in taking part, restorative justice has a valuable role in ensuring offenders are made aware of the impact of their criminal behaviour.⁶

Part C: System Specification Questions

Question C5: We want to incentivise through the gate provision, but some prisoners will disperse to a different part of the country following release. How can we best account for that in contract design?

Prisoners serving under 12 months:

- Incentives must be provided to prisons, their staff and those organisations working with offenders in custody. There must be sufficient motivation and reward provided for the work that needs to be done prior to release, which can often mean little personal reward for those staff members working with those on a short sentence who sometimes spend only a few weeks in prison.⁷
- The fragmentation of services, with provision of services shifting from a single local Probation Service to a plethora of new providers and organisations may also make it more difficult to ensure offenders access the services they need to following their release from prison. Therefore, well resourced local/global sign posting service which connects all concerned to services in local areas which can support prisoners on release and those on community sentences must be commissioned. www.starthere.org
- Women offenders and their responsibilities for children (the UN convention on the Rights of the Child): a system needs to be established and resourced to make it easier for children to have opportunities to visit their parent/s in prison (in those circumstances where the prisoner wants it to happen), particularly if they are living far away.
- The National Prison Radio station should be fully utilised and resourced to ensure all offenders in prison have access to information and services. This is particularly critical for the new cohort – those serving less than 12 months - who will be unaccustomed to the new legislation which means they will be receiving mentoring and other services on release. www.prisonradioassociation.org
- The most effective way to address issues caused by geographical distance is to place offenders on robust and demanding community sentences in the areas where they reside, rather than prison. Evidence clearly demonstrates that offenders who are closest to family networks of support and encouragement are most likely to desist from criminal behaviour.

⁶ <http://www.makejusticework.org.uk/victims-views/>

⁷ <http://www.policyexchange.org.uk/images/publications/expanding%20payment%20by%20results.pdf>

Question C9: How can we ensure that the voluntary and community sector is able to participate in the new system in a fair and meaningful way?

- We need fixed-price contracts and procurement processes that protect small providers – to guarantee service quality, and to learn about effectiveness and quality. It is vital that the system is protected from the dominance by a small number of large players.
- We need a core principle to drive up diversity in the market (not only focusing on price), giving enough lead-in time for smaller providers to build a funding and operational base.
- The role of charitable funders must be enhanced and valued (particularly those NOT involved in social finance, such as faith based and locally run community and voluntary services - there is evidence that a number of charitable trusts are withdrawing their funding of organisations working in the criminal justice system).
- A pool of pro-bono experts on commissioning and contracting must be made available as soon as possible to organisations who wish to engage so they have the capacity to participate and form collaborate partnerships with the private sector. It is possible this could be achieved via Clinks. <http://www.clinks.org/>

Questions C10: How can we best use statutory supervision on release from custody to ensure that offenders engage with rehabilitation effectively?

Prisoners serving under 12 months:

- Integrated Services: Effective management of service provision must extend beyond the agencies of the traditional criminal justice system if it is to address the underlying causes of crime. Key to this is recognising the diversity of services involved (eg housing, employment, education, mental health and substance abuse services), and the need to encourage creative partnerships that integrate services across sector and functional boundaries, focusing on the specific needs of offenders.
- Those serving under 12 months will not be subject to 'statutory' supervision as we know it – this will be provided by the private and voluntary sector. Careful consideration needs to be taken as to what constitutes supervision: is it mandatory, will it increase the likelihood of breach, who will be the enforcer, what is probation's role in reducing risk for this group?
- There is also a major risk to the effectiveness of Probation focussed services who work with offenders in the community if it is contracted out to the private sectors providers if there is not meaningful engagement with voluntary and community sector organisations. It is these organisations which possess both corporate memory and experience of good practice in this field. Unless contracts are constructed in such a way as to ensure this engagement takes place, private providers/primes running Probation services may not take on board the quality of input and practice which exists within the voluntary and community sectors.
- The role of mentors, whilst welcome, must be very carefully considered. Unpaid mentors with proper training and expenses offer a much healthier and more effective option to paid mentors. Equally the use on peer mentors will not always be appropriate.

- There also needs to be a recognition that the new landscape will provide considerable challenges for community and voluntary organisations dealing with referrals made to their services. The ethos and values of the third sector will often dovetail effectively with the aims and intentions of the local Probation Service. However, it will be extremely difficult to expect similar types of partnerships and relationships to co-exist following the privatisation of Probation Services, where the objective of achieving profits will often contradict the spirit of many voluntary and community based organisations.

Question C11: How can we ensure consequences for non-compliance are effective, without building in significant additional cost?

Considerable attention needs to be paid to reduce the likelihood of non-compliance:

- Innovation – Structures of provision and service delivery must be agile and flexible, allowing for innovation and learning. We need a diverse and efficient market for community interventions that supports service providers, encompasses a mature approach to the inevitability of some failure in risk-based systems and encourages lessons to be learned, but that also retains the confidence of the police, politicians, magistrates and others in the criminal justice system.
- The role of magistrates and judges is critical in ensuring that the sentence given is clearly informed by a thorough pre-sentence report and courts should have the flexibility and discretion to adapt the requirements of a community sentence in light of the challenges faced by individual offenders. An effective method of achieving this is to develop Review Courts/Problem Solving courts such as Red Hook in New York and the drugs review courts in Cardiff.⁸
- There is also a major risk that the government’s proposal to include further mandatory punitive elements in all community sentences – except in ‘exceptional circumstances – could lead to a replacement of rehabilitative measures for punitive ones, due to risk aversion, leading to an increase in breaches and more people going into custody
- Value for money: This must be measured by success in achieving outcomes and not simply in reducing costs. Any PbR model must be developed in a way that creates the means to improve or sustain outcomes within a context of budget cuts through more effective deployment of resources within (and outside) the system. The market mechanisms need to be designed to allow providers to innovate to improve outcomes, but also reduce their own cost base.

Question C14: Police and Crime Commissioners will play an integral role in our reforms. How best can we maximise their input/involvement and that of other key partners locally?

- Within the commissioning arrangements, the PCC role must include consultation with probation, the judiciary, local authorities and other local organisations and strategic partnerships in building its wider Police and Crime Plan to ensure local

⁸ <http://www.courtinnovation.org/project/red-hook-community-justice-center>

<http://www.cjp.org.uk/news/archive/wales-first-dedicated-drug-court-launched-by-straw-08-04-2009/>

probation/community offender management priorities are considered and are affordable.

- Effective probation and rehabilitation services will require strong partnerships and collaboration between statutory services and other providers. PCCs are well placed to facilitate such arrangements with a focus on the joint commissioning of services and could be further enhanced by the establishment of local community justice hubs.
- The Offender Management model used extensively across the country has already proven to be successful and there is a risk that during a period of major disruption and upheaval in the Probation Service, good practice could be lost at a time when it needs to be consolidated and extended further.

Question C16: What role can the Inspectorate of Probation best play in assuring effective practice and a high standard of service delivery?

- With Probation's role severely curtailed in relation to working with offenders in the community there is a strong case for a new independent inspectorate to ensure that proper mechanisms of quality assurance are in place, and that outcome data are robust and reliable, and properly shared.
- Quality Assurance: Independent outcome data and effective quality assurance are required, but inspection and regulation must be as light as possible. New mechanisms of quality assurance must be put in place by service providers under the oversight of inspectors. The system should assess the levels of offender and victim feedback and satisfaction throughout the process. Sentencers should have sight of better information as well. In order to improve the levels and types of support for people on short-term sentences and during the community re-integration process, conditions have to be right for good-relationship-building through integrated provision.
- The early launch of the 'Justice Data Lab' is also vital to ensure a consistency of data collection and early warning indicators to identify weak and ineffective performance at the earliest opportunity.

Question C18: What are the likely impacts of our proposals on groups with protected characteristics? Please let us have any examples, case studies, research or other types of evidence to support your views.

- Equity of outcome – Equity of outcome across different groups must be a goal. The differentiated needs of gender, ethnicity, geography, age, severity etc must be respected and reflected in the way interventions are designed. In practice this could mean differentiated measurement, inspection and pricing policies across these groups. For some groups, PbR may not be an appropriate mechanism.
- Women should be considered a priority cohort to be removed from this mechanism.

Questions C19: Do you have any further comments on our proposals for Transforming Rehabilitation in this document?

- The success of the Government's vision is dependent on effective collaboration and partnerships between the private sector and the voluntary and community sectors. However the latest survey by NCVO for its quarterly charity forecast reveals that over half of charity leaders expect the financial situation of their organisation to worsen over the next twelve months. Additionally almost a third have plans to decrease the number of paid staff in the next three months.⁹ This is a very challenging climate for the voluntary and community sector and there is a risk that the third sector will not have the capacity or financial capital to be active participants in the new market. Every contract should have within it an outcome measure around public confidence.
- Built into each contract should be the cost of a communications person whose responsibility is to engage with local/regional media and key members of the community (as used to be the case in every probation area). Community sentencing is notoriously difficult to explain to the public and resources should be made available to ensure a more consistent and collaborative approach to promoting community sentences.
- Beware the unintended consequences: by creating a highly competitive market, there is a danger of a negative increase in self-interest within the private, voluntary and statutory sectors. Shared outcomes across all services to reduce the likelihood of this occurring must be considered.

Appendix 1

The nine underlying principles identified in Just Results:

- **Focus on Outcomes** – The ultimate goal is to make life safer for everyone. The focus of PbR is currently on reducing reoffending, but other outcomes, particularly reducing crime, are also important.
- **Integrated Services** – Service provision must embrace agencies outside the traditional criminal justice system to address the underlying causes of crime.
- **Personalised Services** – Providers need the flexibility to tailor packages of support that reflect the individual needs of offenders, victims and communities.
- **Equity of Outcome** – Addressing the needs of offenders of all kinds must be a goal.
- **Procedural Justice** – All aspects of the management of offenders and victims under PbR must be fair and transparent.
- **Effective Communication** – Good communication is required, focused on building the confidence of sentencers and the public in community sentencing.
- **Quality Assurance** – Independent outcome data and effective quality assurance are required, but inspection and regulation must be as light as possible.

⁹ <http://www.ncvo-vol.org.uk/charity-forecast-survey>

- **Innovation** – Structures of provision and service delivery must be agile and flexible, allowing for innovation and learning, and tolerating some failure.
- **Value for Money** – Value for money must be measured by success in achieving outcomes and not simply in reducing costs.

Appendix 2

From the Community or Custody Report, September 2011

Confronting the causes of crime

During community sentences time should be spent addressing the key drivers of low-level crime in order to help offenders move towards a stable, productive and crime free life.

- The focus of all community based programmes must be the underlying causes of criminal activity, with each programme being tailored to the individuals own behavior, needs and circumstances
- Further funding needs to be made available to widen the availability of mental health liaison services operating at the earliest possible stage in the criminal justice process.
- All offenders should be screened and assessed for low-level mental health needs that may not qualify for serious psychiatric intervention but if properly addressed would reduce the likelihood of reoffending.
- Alcohol and drug misuse must be awarded equal status and alcohol rehabilitation provision must be increased.
- Every programme should provide wider family and community support to help offenders resolve problems in their lives and break away from bad influences.
- Providers of community sentences must work to reduce the barriers to a productive, crime-free lifestyle, such as lack of stable accommodation, low educational attainment and limited employment opportunities.

Giving victims confidence in the punishment

Community sentences must not be a soft option.

- Whilst rehabilitation is integral, victims and the wider public must be confident that community sentences are tough and effective.
- Reparation must be a central part of an intensive community sentence. Offenders should understand the impact of their crimes on their communities and victims and work to restore damage caused.
- Victim- awareness activities should be included in all community orders and the option of Restorative Justice conferencing should be available to all courts.
- Offenders who breach the conditions of their order must face a firm and swift response, but this must be balanced by finding better ways to achieve compliance. Offenders (and the wider public) need to understand that an alternative to custody is not a soft-option and that it makes tough demands.

Examples of a tailored approach:

Manchester

The IAC Order in Manchester involves an intensive curriculum of activity offering rehabilitation, punishment and reparation through new partnerships between Greater Manchester Probation Trust, statutory, voluntary and private sector organisations. IAC Orders last for 12 months and most will involve up to five requirements out of the twelve available under the Criminal Justice Act 2003.

The partner agencies who assist in delivering the IAC Orders with GMPT are Work Solutions, Partners of Prisoners and Group 4 Securicor.

The tailored approach is achieved through:

- Intensive supervision
- Enhanced monitoring
- 30 hours per week activity + curfew
- Accredited Programmes
- Unpaid work
- Court review progress
- Drug, alcohol, mental health treatment
- Swift sanction for non-compliance
- Accommodation support
- Mentoring
- Victim awareness

Bradford

At the Bradford-based Together Women Programme, an individually-tailored support plan is created which is designed to tackle the specific needs of each offender. The support model aims to be holistic and needs-centred – each woman referred undergoes a detailed needs assessment which tries to identify issues across a range of areas. These include: substance misuse, mental and physical health issues, lack of suitable accommodation, lack of access to education, training and employment, domestic abuse, and money management issues such as unmanageable debt. Probation Supervision appointments are located at the centre which reduces the likelihood of breach because all activities take place under one roof and there is a crèche.

The tailored approach is achieved through:

- One-to-one key worker support
- Courses and groups run internally by staff and by partner agencies
- Advocacy work on behalf of women with statutory agencies such as Social Services or the courts
- Referrals and supported access to specialist agencies such as mental health, domestic violence, alcohol and drug treatment agencies Educating Training and Employment
- Counselling
- Use of OFSTED registered crèche facilities enabling women with children to access all support and services

Appendix 3

List of MJW reports referred to in this consultation response:

- **Community of Custody. Which Works Best? A National Enquiry.**
<http://www.makejusticework.org.uk/national-commission-enquiry/>
- **Just Results – Payment by Results In Community Sentencing.**
<http://www.makejusticework.org.uk/results-3/>
- **Out in the open: what victims really think about community sentences.**
<http://www.makejusticework.org.uk/victims-views/>
- **An economic analysis of alternatives to short term custody.**
http://www.makejusticework.org.uk/wp-content/uploads/Matrix-MJW_updated-Final-Report_June-2012-2-1.pdf
- **Are short term prison sentences an efficient and effective use of public resources?** <http://www.makejusticework.org.uk/wp-content/uploads/are-short-term-prison-sentences-an-efficient-and-effective-use-of-public-resources-MATRIX-Oct-2009.pdf>