

Ministry of Justice consultation on Effective Community Sentences and Probation Services.

1. Background:

- 1.1. On the 27th March the Ministry of Justice launched two consultations relating to sentences in the community (55 pages) and the operation of the Probation Service (43 pages). Within the two publications plans have been set out to make sentences in the community more effective and reform elements of the probation service so that it is more effective in reducing crime, by extending competition and opening up the management of lower risk offenders to a wider range of offenders.
- 1.2. It has already been announced that individuals required to complete Community Payback will be required to do a full five-day week of productive work and job seeking. In addition to this plans have also been announced to increase the maximum length of curfew to 16 hours a day for 12 months. The proposals set out in both consultations plan to go further to address the current high level of reoffending rates for sentences in the community and further improve community confidence.
- 1.3. The overall goal is to reform sentences in the community and probation services so that they are able to both punish and reform offenders more effectively. The consultation highlights that community sentences are not an alternative to short prison sentences. They must be made more effective punishments in their own right to increase public confidence and reduce the chances of reoffending. In addition to this the consultation believes that a modernised probation service will be able to unlock better ways of delivering those sentences.
- 1.4. This report provides members with a brief summary of each consultation. The full consultation documents can be found at the following web address: <https://consult.justice.gov.uk/digitalcommunications/effective-community-services-1>. The deadline for submitted responses is 22nd June 2012 any further comments prior to this date can be forward to Steven Hume, Community Safety Manager Steven.Hume@stockton.gov.uk

2. Punishment and Reform: Effective Community Sentences

- 2.1. The consultation in relation to community sentences aims to:
 - Ensure that there is a clear and punitive element of every community order handed down by the courts
 - Explore the creation of a robust and intensive punitive community disposal, which can be used by the courts
 - Support more creative use of financial penalties alongside community orders, ensuring that they are set at the correct level and enforced.
- 2.2. *Intensive Community Punishment (ICP)*

The consultation calls for an intensive punitive disposal which courts can use for offenders who deserve a significant level of punishment but who are better

dealt with in the community. Intensive Community punishment will include a combination of the following:

- Community Payback
- Significant restrictions on liberty through an electronically monitored curfew, exclusion and a foreign travel ban
- A driving ban
- A fine

It is proposed that these orders will work best if they are short and intensive, a maximum of 12 months. Through an ICP the consultation proposes that offenders should be occupied in purposeful activity either in a job or on Community Payback throughout the week. The aim of the ICP is to also restrict liberty and rights through curfews and exclusions to both reduce the risk of breach and reoffending as well as to support rehabilitation requirements and provide a punitive element. The courts will also be able to add to the ICP any requirements aimed to ensuring reparation to the victim and the community – such as compensation orders and restorative activities. The proposed ICP's follow on from Intensive Alternatives to Custody (IAC) pilots which were offered in some probation areas. Pilot funding ceased in March 2011 and some areas have continued to offer intensive orders, often alongside Integrated Offender Management. Orders are typically made up of three to five of the following requirements:

- Curfew
- Intensive Community Payback
- Supervision or accredited programmes
- Specific requirements to target substance abuse
- Restorative justice
- Extra-statutory mentoring

The consultation proposes that ICP's should build on the existing orders available, but also include a punitive element including: restricting rights and liberties through curfew/removal of privileges such as driving license and passport and the option of applying a fine alongside any order. There is currently no obligation on the courts to select a requirement which has punishment as its primary purpose, in many cases community orders consist of only supervision. The consultation believes that ICP's will send a clear message that offending behaviour will be dealt with.

2.3. Monitoring and enforcement of orders

The consultation proposes exploring how technology can be used to ensure that requirements such as curfews can be monitored and adapted to both suit the needs of the local community and provide the offender with the best possible opportunity to meet the requirements of their order and refrain from re-offending. For example the curfew could be used to ensure that an offender is at home during an afternoon when they have habitually engaged in their offending behaviour. The curfew could also stipulate that an offender has to be home immediately before attending another requirement of their order such as Community Payback or Supervision. It is proposed that through new monitoring contracts location monitoring technologies such as GPS (Global Positioning System) and GSM (Global System for Mobile Communications) be introduced to strengthen community orders in the future. The development of new ways to restrict computer use, through 'cyber-tags' is also being considered. The use of the power to seize assets from

offenders who fail to pay fines, or as a punishment in its own right is also being considered as part of the consultation.

Where an order is breached by an offender an offender manager currently has two options – to issue a warning or to return the offender to court for breach proceedings. The consultation proposes offering offender managers with the new option of giving a financial penalty, without returning to court. The offender would be given a fixed period of time to pay the penalty. Failure to do so would result in the breach being heard by a court. This option would only be available to the offender on one occasion. The consultation also looks at how the courts can use fines more flexibly and how an offender's existing means should be taken into account to ensure that a fine is pitched at the right level. The consultation proposes that in some cases a higher level fine could be deemed a suitable punishment on its own or as part of a community order.

2.4. Restorative Justice

The consultation looks at how RJ can be used as part of community sentences to provide the victim with the opportunity to be heard and have a greater stake in the resolution of offences. RJ has also been identified as a vital resource in the rehabilitation of offenders and the prevention of further offending, but it is not seen as an easy option to take and in some cases would be unsuitable. The MOJ is currently working with a number of pilot areas to develop Neighbourhood Justice Panels in Somerset, Sheffield and Norfolk. Through the National Offender Management Service the MOJ is also providing £1.13m to build capacity and capability for RJ in the community and in custody. £1m of this funding will be provided to Restorative Solutions CIC to create and provide training for over 1,000 prison and probation staff to help establish RJ as a more common part of community orders.

Focus on the use and dissemination of best practice in relation to RJ has led to the development of the Skills for Justice National Occupational Standards in RJ and the Restorative Justice Council's Best Practice Guidance, which many RJ practitioners adhere to. Funding was also provided to the Restorative Justice Council to pilot the new Skills for Justice Diploma in restorative practice as well as the development of a practitioners register. Both were formally launched in September. The MOJ also plans to develop a cross-criminal justice system framework for RJ later this year to provide guidance to local practitioners on how RJ approaches can be effectively developed and when they will be appropriate.

2.5. Compensating victims

The consultation looks at how compensation orders can be effectively used to both ensure that the victim is sufficiently compensated and the offender sufficiently punished. With this in mind the consultation explores how best the true cost to the victim is highlighted and considered as part of any order or fine and suggests the removal of the £5,000 fine limit for magistrates courts to provide the opportunity for increased fines in cases where significant damage has been caused and the offender has the means to pay.

2.6. *Women offenders*

The consultation explores how best to support women through the community sentence process. Historically women are less likely than their male counterparts to receive a community sentence. In 2010 just 10% of women received a community sentence compared to 16% of men. However, data suggests that women make the most positive progress through community sentences with 69% successfully completing orders or having them terminated for good progress as opposed to 65% of men. Lower proportions of women (22%) than men (26%) also failed to comply with order requirements or were convicted of another offence while serving an order.

2.7. *Health and tackling alcohol related crime*

The consultation looks at how rehabilitation requirements can be used as part of any community order to assist with an offender's rehabilitation. In particular the focus is on alcohol related crime with alcohol being identified as a key factor in 44% of all violent crime. Following on from the launch of the Alcohol Strategy the consultation highlights the government's commitment to test whether there is a case for sobriety schemes. The government is taking forward two 'proof of concept' pilot schemes to trial enforced sobriety schemes in England and Wales.

2.8. *Key issues*

The consultation reaffirms the Government's commitment to get tough on crime and raise public confidence. However, the changes pose some real challenges in terms of enforcing compliance. For example it is currently difficult to enforce some offenders to comply with the current Community Payback requirements, moving to 5 day weeks of Community Payback will provide a greater challenge. The proposals in relation to providing the option of increased fines and providing more information in relation to an offender's financial status to ensure that the correct fines are imposed will be welcomed. However, the challenge still exists in relation to ensuring compliance.

- 2.9. The proposed introduction of new technologies offers a number of benefits in relation to the effective monitoring of offenders and restriction of their whereabouts at key times during the day. This could have a significant impact on an offender's behaviour and increase public confidence, particularly in relation to repeat victimisation. However, this shift in technology will pose cost implications.

There is a real commitment to utilising Restorative Justice in both pre-sentence and post sentence work with adult offenders. This will provide a number of opportunities to enhance the skills of practitioners as well as provide the opportunity to involve other partners such as VCS organisations in the delivery of schemes.

- 2.10. A full list of the consultation questions is detailed below with some initial responses:

1. What should be the core elements of Intensive Community Punishment?

2. Which offenders would intensive Community Punishment be suitable for?
3. Do you agree that every offender who receives a community order should be subject to a sanction which is aimed primarily at the punishment of the offender ('a punitive element)?
4. What requirements of the community order do you regard as punitive?
5. Are there some classes of offenders for whom (or particular circumstances in which) a punitive element of a sentence would not be suitable?
6. How should such offenders be sentenced?
7. How can we best ensure that sentences in the community achieve a balance between all five purposes of sentencing?
8. Should we, if new technologies were available and affordable, encourage the use of electronically monitored technology to monitor compliance with community order requirements (in addition to curfew requirements)?
9. Which community order requirements, in addition to curfews, could be most effectively electronically monitored?
10. Are there other ways we could use electronically monitored curfews more imaginatively?
11. Would tracking certain offenders (as part of a non-custodial sentence) be effective at preventing future offending?
12. Which types of offenders would be suitable for tracking? For example those at high-risk of re-offending or harm, including sex and violent offenders?
13. For what purposes could electronic monitoring be best used?
14. What are the potential civil liberties implications of tracking offenders and how can we guard against them?
15. Which offenders or offences could a new power to order the confiscation of assets most usefully be focused on?
16. How could the power to order the confiscation of assets be framed in order to ensure it applied equitably both to offenders with low-value assets and those with high-value assets?
17. What safeguards and provisions would an asset confiscation power need in order to deal with third-party property rights?
18. What would an appropriate sanction be for breach of an order for asset seizure?
19. How can compliance with community sentences be improved?
20. Would a fixed penalty-type scheme for dealing with failure to comply with the requirements of a community order be likely to promote greater compliance?
21. Would a fixed-penalty type scheme for dealing with failure to comply with the requirements of a community order be appropriate for administration by offender managers?
22. What practical issues do we need to consider further in respect of a fixed penalty-type scheme for dealing with compliance with community order requirements?
23. How can pre-sentence report writers be supported to advise courts on the use of fines and other non-community order disposals?
24. How else could more flexible use of fines alongside, or instead of, community orders encouraged?
25. How can we better incentivise offenders to give accurate information about their financial circumstances to the courts in a timely manner?
26. How can we establish a better evidence base for pre-sentence RJ?
27. What are the benefits and risks of pre-sentence RJ?

28. How can we look to mitigate any risks and maximise any benefits of pre-sentence RJ?
29. Is there any more we can do to strengthen and support the role of victims in RJ?
30. Are there existing practices for victim engagement in RJ that we can learn from?
31. Are these the right approaches? What more can we do to help enable areas to build capacity and capability for restorative justice at local levels?
32. What more can we do to boost a cultural change for RJ?
33. How can we ensure that courts are provided with the best possible information about injury, loss or damage in order to support decisions about whether to impose a compensation order?
34. How could sentencing guidelines support a more consistent approach to fixing the value of compensation orders?
35. Would removing a £5,000 cap on a single compensation order in the magistrates' court give the magistrates greater flexibility in cases where significant damage is caused and offenders have the means to pay?
36. How else could our proposals on community sentences help the particular needs of women offenders?
37. What is the practitioner view of implementing enforced sobriety requirements?
38. Who would compulsory sobriety be appropriate for?
39. Are enforced sobriety requirements appropriate for use in domestic violence offenders?
40. What additional provisions might need to be in place to support the delivery of enforced sobriety requirements?
41. What other areas could be considered to tackle alcohol-related offending by those who misuse alcohol but are not dependent drinkers?
42. What do you consider to be the positive or negative equality impacts of the proposals?
43. Could you provide any evidence of sources of information that will help us to understand and assess those impacts?
44. Do you have any suggestions on how potential adverse equality impacts could be mitigated?
45. Where you feel that we have potentially missed an opportunity to promote equality of opportunity and have a proposal on how we may be able to address this, please let us know so that we may consider it as part of our consultation process.

3. Punishment and Reform: Effective Probation Services

- 3.1. The consultation document acknowledges that the Probation Service has achieved some success in increases in efficiency and in reducing re-offending. However, it also notes that efforts to achieve greater diversity of providers of probation services and increase competition have not been as successful as originally hoped. The consultation clearly states that improvements in the delivery of probation services can only be achieved by greater competition. The proposals set out in the consultation are aimed at achieving significant progress in this area.

3.2. The proposed reforms within the consultation include the following:

- A stronger role for public sector Probation Trusts as commissioners of competed probation services. Trusts will be accountable to the Secretary of State for achieving improved outcomes to protect the public and reduce reoffending;
- The budget for community offender services will be devolved to Probation Trusts, from which Trusts will commission services to meet local need and circumstances. Trusts are seen as best placed to work with courts and with local partners to design and commission services jointly;
- Some services, such as electronic monitoring of curfew requirements may continue to be commissioned at a national level in order to obtain best value for money;
- Probation Trusts will continue to be responsible for providing, in the case of all offenders, advice to court on sentencing and the enforcement of sentences. Probation Trusts will be responsible for making certain decisions for all offenders that are deemed to be in the public interest. Trusts will continue to supervise directly offenders who pose the highest risk;
- The government will open up to competition all probation services not directly provided by Probation Trusts. This will include competing the management and supervision of lower risk offenders, alongside other services to reform offenders such as accredited programmes. Those providing services under competition will be increasingly incentivised through payment by results to reduce reoffending;
- Voluntary, private and public sectors will be encouraged to participate alongside new models for delivering public services such as joint ventures, social enterprises and Public Service Mutuals;
- Probation Trusts may choose to compete for services. Where this is the case Trusts will be required to become separate entities, independent of those Trusts that are responsible for commissioning, giving advice to court, managing higher risk offenders and taking public interest decisions.

3.3. The government wishes to strengthen local probation presence as the front line of offender management. There is a commitment to ensure that proposals enable effective working with local partners and support local priorities in the shared community safety agenda. The government will support the joint commissioning of services for offenders between probation and key partners such as local authorities, health and the police.

The consultation highlights that over time there may be the potential for other public bodies, such as local authorities, or Police and Crime Commissioners to take responsibility for probation services. However, for the time being Probation Trusts will be held accountable through their contractual arrangements with the National Offender Management Service, for working with Police and Crime Commissioners.

3.4. *Key Issues:*

Commissioning capacity of Trusts

In order for Trusts to achieve the purchasing power and senior commissioning capacity to manage the market effectively it is likely that there will be a reduction in the number of Trusts. If this was to happen there is a risk that such an approach would not adequately respond to local need or be consistent with aspirations of local co-commissioning involving health, Police and Crime Commissioners and local authorities. The document also acknowledges that the scale of commissioning which is envisaged within the proposals will be a barrier to smaller VCS organisations entering the market and includes a commitment to provide prime contractors with incentives to sub-contract small VCS providers to deliver locally.

Impact on local relationships

A smaller number of larger Probation Trusts could also have implications for the work carried out by probation at a local level. It is expected that Trusts will ensure that local delivery structures remain unaffected in order to maintain work with MAPPA, Community Safety Partnerships, Youth Offending Teams and other local partners. The consultation recognises that local leadership skills may need to be reinforced as a result of the introduction of different providers which may cause complexities. The suggested potential opportunity for local authorities or Police and Crime Commissioners to take responsibility for the delivery of probation services would also run counter to the proposal to create larger Trusts.

Complexities in enforcement

The retention of 'public interest decision points' by the Probation Trust could create difficulties where different providers are managing and supervising offenders. For example, if an offender is on licence and needs to be recalled to prison, this would require swift and effective communication between the commissioned provider, and the probation officer.

Public Service Mutuals and Professional qualifications

Through the consultation Probation staff are encouraged to consider forming Public Service Mutuals, which could then be in a position to bid to deliver probation services. All Probation Officers are required to have a recognised professional qualification. There is currently a Professional Qualification Framework (PQF) and this is available to any employer. Both VCS and private sector employers would need to access this in order to equip staff to undertake 'contracted out' services. Whilst this would not necessarily be an issue for larger providers it does have clear cost implications for small providers wishing to enter the market.

3.5. ***Opportunities and challenges for the VCS***

In response to the consultation *CLINKS* (An organisation which supports voluntary organisations that work with offenders and their families) has highlighted a number of opportunities and challenges for the VCS as a result of this consultation:

3.6. *Management of low risk offenders*

While the priority for probation resources is high and medium-risk offenders, caseloads also contain a significant number of assessed low-risk offenders who could be receiving a low level of support. Whilst presenting a low risk, there is a high probability that these offenders have substantial needs and could benefit from the skill and expertise of the VCS in relation to a number of issues such as housing, education, health and other associated family problems. Evidence already exists which shows that volunteering and mentoring programmes run by VCS organisations can reduce the risk of an individual reoffending.

3.7. *Approved Premises*

The VCS currently owns and manages approximately 10% of the current Approved Premises provision, organisations such as the Langley House Trust and Stonham have a long track record of providing supported accommodation for a range of offenders. The high level of security and enforcement required for the provision of Approved Premises may pose difficulties for potential VCS providers.

3.8. *Accredited programmes*

There is a wide range of accredited programmes which address issues such as general offending behaviour, sex offending, substance misuse and domestic violence. VCS organisations are currently involved in the delivery of some of these programmes and would be well placed to provide services if the use of accredited programmes is expanded.

3.9. *Victim Liaison*

CLINKS has highlighted that there is a strong argument for the delivery of Victim Liaison services to be carried out separately from the organisation that has prime responsibility for the management and rehabilitation of offenders. The interests of victims will always be separate from offenders. With this in mind victims ideally should have an agency dedicated to their welfare as their first point of contact for information about the case of the offender. VCS has always been seen as the front runner in developing services and advocating for victims and as such there is an opportunity for this expertise to be commissioned further under the proposals.

3.10. Overall the consultation offers VCS and other organisations a real opportunity to deliver services to offenders in the community. However, there are key challenges that need to be overcome in relation to effective commissioning, capacity and ensuring fair competition among prospective providers. The issue of consistency also needs to be considered to ensure that probation services maintain a high level of quality and access between localities. A full list of the consultation questions is detailed below.

1. What are the key issues in competing the management of offenders and how should they be resolved? For example, where should we strike the balance in deciding how far to compete offender management?
2. What arguments will best enable Probation Trusts to take effective action against offenders who breach their sentence in cases where they do not directly manage the offender?
3. What is the best approach to competing the management of prisoners released into the community on licence?
4. How can we best ensure that greater competition for probation services enhances local partnership arrangements, such as Integrated Offender Management?
5. What would be the right balance between commissioning services at local and national levels and how can we best achieve that balance?
6. What are the main issues in separating the Trust commissioner role from the provision of competed services? How can these best be resolved?
7. How can we support Trusts to develop the commissioning and procurement capability they will need in the future?
8. How can we best ensure the specific needs of women offenders are taken into account in commissioning services?
9. How can we best encourage and support small and medium sized enterprises and the voluntary sector to participate in competitions to provide probation services?
10. How can we best support public sector staff in the creation of mutuals and other models for delivering probation services?
11. What are the most effective ways to extend service improvements and innovation through payment by results?
12. How can we best support the continued development of probation professionals consistent with our proposals for reform?
13. How can we best strengthen local probation delivery arrangements and the local leadership skills base?
14. How might we improve partnership working and local co-commissioning, especially if we have fewer, larger Trusts?
15. What are the main issues for local authorities, or Police and Crime Commissioners potentially becoming more accountable over time for probation services?
16. What do you consider to be the impacts of these proposals on those with protected characteristics under the Equality Act 2012 (race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity)?
17. Are you aware of any research and statistical evidence that will need to be considered as part of our equality analysis? Please supply the evidence sources along with what effect they are considered to have on these proposals.

4. Next steps

- 4.1. The deadline for submission of responses to both consultations is 22nd June 2012. It is proposed that a response is prepared on behalf of the Safer Stockton Partnership in consultation with colleagues from Probation. Any members who would like to contribute to the consultation should forward responses direct to Steven Hume, Community Safety Manager by Monday 18th June. A final copy of the response submitted will be brought to the SSP meeting on 26th June.