

## **Public and Commercial Services union's response to the MoJ consultation - 'Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders'**

### **Introduction**

The Public and Commercial Services Union (PCS) is the largest trade union representing civil and public servants in central government. It has over 300,000 members in over 200 departments, agencies and non departmental public bodies.

PCS represents over 15,000 members working in the Ministry of Justice (MoJ) as well as over 5,000 in the National Offender Management Service (NOMS) and 2,800 in the Crown Prosecution Service (CPS). Our members undertake a wide variety of jobs in courts, prison establishments, police stations and in headquarters. These range from legal advisers, instructional officers, associate prosecutors, prison governors, managerial, administrative and secretarial jobs to support tasks such as cleaners and office management.

PCS is a significant stakeholder in the criminal justice system and we welcome the opportunity to respond to this consultation. We broadly welcome proposals that recognise that the England and Wales prison population is too high, the damaging impact this has on individuals and on wider society. We also welcome proposals which genuinely support rehabilitation work, alternatives to custody and improvements to how we deal with those with mental health problems, drug and alcohol issues.

PCS has always maintained that to have a world class criminal justice system requires proper resourcing including proper recognition, motivation and remuneration of the dedicated, skilled workers who deliver this public service. We are therefore unable to see how this can be reconciled with the comprehensive spending review (CSR) announcements of a 23% cut to the MoJ budget, not including money set aside for new prison capacity, and over the lifetime of CSR approximately £2bn of cuts from the MoJ budget; £1bn of which is to come from NOMS, coupled with a projected 15,000 job cuts and a three year public sector pay freeze.

As a point of principle PCS believes that any private profit derived from prisoners is morally wrong and indefensible and we are therefore extremely concerned about the increased 'marketisation' of the criminal justice system, particularly proposals to pilot 'payment by results'. We are concerned that criminal justice is complex and it is too simplistic to believe that the market can be used as a universal panacea to cure issues which are a reflection of wider problems in society such as lack of access to health, education, housing and employment, particularly as deep divisions have arisen and are exacerbated by the market itself.

PCS believes that this consultation presents the current government with an excellent opportunity to review the successes and failures of the last few years, to listen to criminal justice stakeholders and professionals and to build on what we know works

best. However, if this consultation is motivated by an ideological purpose to drive down costs, to undermine public services and introduce the private sector supplemented by payment by results schemes predicated on the private sector raising capital from investors, then it will be a wasted opportunity and ultimately counter-productive.

### **Consultation questions**

Listed below are our responses to the questions posed in Annex B of the consultation document.

#### **Q1. How should we achieve our aims for making prisons places of hard work and discipline?**

PCS believes that work in prisons which has a vocational element and which equips prisoners with transferable skills has an important part to play in tackling re-offending. We believe that prisoners' wages should properly reflect the work that they are engaged in. We also recognise that there are practical difficulties within individual prisons, including difficulties of expanding work spaces inside prisons (both the costs involved and limitations of space and facilities), adjusting regimes to accommodate work patterns of up to 40 hours, and most significantly the operational pressures and 'churn' of prisoners within the prison estate because of overcrowding.

We believe that these difficulties can be addressed within establishments by utilising the experience of our Instructional Officer (IO) members who are uniquely placed as the key individuals within prisons who offer work experience in a custodial setting as a form of rehabilitation. They are central to achieving these aims, and could assist in delivering effective work in prisons, by investing, rewarding, motivating and recognising the skills, experience and expertise of IOs.

#### **Q2. How should we best use the expertise and innovation of the private and voluntary sectors to help develop the working prison?**

The experience of the private sector in prison workshops has been very poor to date. The majority of contract service workshops offer low skill labour which acts as a disincentive to steady future employment upon release. Little of this work can be classed as vocational or assisting the prisoner in acquiring practical skills for future employment after release.

In addition to the current limitations, there are other difficulties involved if seeking to expand the role of the private sector. These include ensuring that all work is voluntary and there is no compulsion, in compliance with the Prison Rules 1999 (as amended) and the International Labour Organisation (ILO) Forced Labour Convention. We would particularly draw attention to clause (c) of Article 2 in the ILO's Forced Labour Convention which states:

"Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is

carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations".

There will also be problems with public acceptance at a time of high unemployment, the knowledge and skills and competences of prisoners, and problems with companies/organisations being reluctant to provide business without incentives and without having a longer-term security for their up-front investment.

**Q3. How can we make it possible for more prisoners to make reparation, including to victims and communities?**

PCS supports the idea that prisoners should make reparation to victims and note that this can be achieved by amendment and implementation of the Prisoner Earnings Act 1996, but we are concerned that any deductions from prisoners' wages must be supported by a process to ensure it is fairly adjudicated, taking into account the impact on the prisoner and any financial dependents.

**Q4. How do we target tough curfew orders to maximise their effectiveness?**

PCS believes that, like all other sentences, curfew orders should reflect the seriousness of the offence they are punishing. They are not seen as popular with magistrates because the restriction of liberty in an offender's own home is perceived as too comfortable to be much of a punishment. Curfews can be very powerful in relation to offences where antisocial drinking or disorderly socialising is an issue. Keeping offenders in on certain nights can be an appropriate punishment for nuisance crimes.

**Q5. What are the best ways of making Community Payback rigorous and demanding?**

PCS is concerned that this very question reinforces one of the difficulties with the understanding and perception of this approach as what is 'rigorous and demanding' depends on the individual. With adequate supervision community projects can be undertaken but there needs to be a variety of work available so that it is demanding rather than damaging for those who are less physically able.

Similarly, working patterns must take into account specific issues such as those with caring responsibilities. It is important that Community Payback is not limited to those physically-intensive 'chain-gang' jobs supported by certain sections of the tabloid press.

**Q6. How can communities be more involved in influencing the type of work completed by offenders on Community Payback?**

With the caveat that there are difficulties in defining what constitutes the 'community' and then ensuring that it is reflective of the local demographics and that

all interests are acknowledged; if adequate supervision is available to meet a wide variety of community projects all that is required is a system whereby communities can contact the Probation Service to put forward suggestions.

Local criteria may be introduced to reflect local community priorities but these must be subject to broad national guidelines to ensure consistency and fair treatment, and scrutiny before being implemented. However, community expectations need to be managed because there are safety issues both in relation to offenders and those they may come into contact with.

**Q7. How should we seek to deliver Community Payback in partnership with organisations outside government?**

Volunteers have been involved in supervising unpaid work for many years so involving further organisations is unnecessary. The dogmatic drive to involve more organisations in offender management will increase overheads because administration will be fragmented and duplicated. The Probation Service needs to focus its activity to working with offenders and put resources both professional and voluntary into this area of work.

**Q8. What can central government do to help remove local barriers to implementing an integrated approach to managing offenders?**

The Youth Offending Teams have achieved integration with people from different disciplines: police, education, restorative justice, social work and health working together. This has been achieved only after overcoming numerous challenges including how they are funded and in managing staff from so many agencies. It is important that the example of the best of them can be followed. There are areas, mainly in large cities where organisations do not work so well together because there is a culture of blaming others to try and avoid blame rather than working together to overcome challenges.

**Q9. How can we incentivise and support the growth of Integrated Offender Management approaches?**

PCS supports developing Integrated Offender Management units and believes that this approach can be supported by ensuring that each organisation has compatible targets, a common purpose, and rewards the professionalism of staff. We also need to ensure that the entire management culture supports working with offenders and with other agencies. However, we are concerned that spending cuts will see all the involved agencies and organisations looking to make savings and consequently this work will be deemed secondary and not their core business. As each organisation looks inwards we believe this will curtail the benefits of this 'joined up' approach.

**Q10. How can we ensure that providers from the voluntary and community sector can be equal partners in the delivery of this integrated approach?**

It is difficult to see how small organisations can be equal partners with the large ones, as by their very nature they are small enterprises, localised and lack strategic oversight. The public-sector organisations carry statutory responsibilities and have duties to perform. Overall offender management should remain the responsibility of the National Offender Management Service (NOMS). We believe it is right that NOMS co-ordinates the work of both the prison and probation services and NOMS should be accountable to Parliament for it.

Voluntary and community sector organisations have much to offer and in many areas work alongside NOMS giving additional support to a particular group of offenders and supplementary to NOMS services. These sorts of partnerships can and should be built on.

**Q11. How can we use the pilot drug recovery wings to develop a better continuity of care between custody and the community?**

PCS support proposals to improve drug (and alcohol) services in prison although we believe that prison is not necessarily the best setting in which to deliver such treatments. Overcrowding and 'churn' in the prison estate mean that prisoners are frequently moved from one prison to another, meaning that they are unable to complete programmes.

**Q12. What potential opportunities would a payment by results approach bring to supporting drug recovery for offenders?**

The biggest risk with payment by results is that it gives a financial incentive to focus resources on individuals where results are easy to achieve, the cases where results could be achieved with limited resources. It is known a small proportion of offenders commit a large proportion of crime. The prolific offenders are hard to work with but this is where resources need to be concentrated and a lot of the work needs to be done by skilled professionals who are paid regardless of the outcome. Otherwise there is no incentive to tackle the offenders whose behaviour is the biggest problem to society.

**Q13. How best can we support those in the community with a drug treatment need, using a graduated approach to the level of residential support, including a specific approach for women?**

No comment.

**Q14. In what ways do female offenders differ from male offenders and how can we ensure that our services reflect these gender differences?**

Significant research already exists detailing the differences between female and male offenders, and we agree with Baroness Corston, who in her 'The Corston Report review of women with particular vulnerabilities in the criminal justice system' in 2007 stated:

*“There can be few topics that have been so exhaustively researched to such little practical effect as the plight of women in the criminal justice system. The volume of material might lead one to suppose that this is a highly controversial area, which might account in some way for the lack of progress and insight in the way women continue to be treated. This is not the case. There is a great deal of evidence of fundamental differences between male and female offenders.”*

PCS supported the 43 recommendations and express our disappointment that one of the key recommendations, namely; that existing women’s prisons should be replaced with suitable, geographically dispersed, small, multi-functional custodial centres, and that these should be phased in over a period of 10 years, has not been implemented.

**Q15. How could we support the Department of Work and Pensions payment by results approach to get more offenders into work?**

PCS believes that this can only be achieved by policies which encourage full employment. We note with considerable concern that underlying trends show that unemployment is rising, mainly from jobs lost in the public sector whilst the supposed recovery within the private sector has failed to materialise. Official employment statistics from the Office for National Statistics show job cuts are falling hardest in the north-east of England and Wales, and more people are taking part-time jobs to avoid unemployment.

The increase in female joblessness is running approximately double that of men and the appalling track record on youth unemployment continues with the number of 16- to 24-year-olds out of work currently at 965,000, the highest figure since records began in 1992, giving a youth jobless rate of 20.5%. Over the last quarter, another 27,000 people have been driven into early retirement, making a total of 1.53 million, largely because they have little or no hope of finding full-time work. Others, desperate for work, have been forced to join the ranks of those employed part time because they could not find a full-time job, increasing that figure by 46,000 to 1.16 million, a record high.

We note that against this background, ex-offenders will be competing in an increasingly competitive employment market with former public servants with a proven work record and young people with no criminal record.

As the union representing nearly 90,000 staff in the DWP, we would also note that ‘payment by results’ approaches have not been particularly successful in getting people into work.

**Q16. What can we do to secure greater commitment from employers in working with us to achieve the outcomes we seek?**

We believe that the public sector could and should be prepared to be pro-active in employing ex-offenders and that this would be a significant entry into first-time employment, as well as assisting other workers in re-entry. However, this cannot be

achieved against a background where government policy spending cuts are leading to a projected 500,000 job losses in the public-sector alone. PCS is concerned that there is a danger of justice policy being shaped by the populist press with employment of ex-offenders a particularly emotive subject.

**Q17. What changes to the Rehabilitation of Offenders Act 1974 would best deliver the balance of rehabilitation and public protection?**

PCS would welcome changes to the Rehabilitation of Offenders Act 1974 and suggest that this should be the subject a separate consultation exercise. We note that there is a general consensus amongst the majority of criminal justice practitioners of supporting a 'two year rule' for rehabilitation periods, two years from date of release or date of conviction for a non-custodial sentence.

**Q18. How can we better work with the private rented sector to prevent offenders from becoming homeless?**

PCS believe that accommodation is an important factor in reducing reoffending as stable accommodation assists ex-offenders in accessing education and employment. We welcome any proposal to reduce custodial sentences which in turn will mean that less people lose their accommodation.

However, we note that government policy towards housing will exacerbate and worsen the situation. We believe that an over reliance on the market of the private rented sector is not the best means to tackle this issue. The announcement, first in the emergency budget and then in the comprehensive spending review, of housing benefit cuts totalling £2.5billion for private rented accommodation, will be damaging and counterproductive. The justification for these cuts is that restricting housing benefit payments will place a downward pressure on private rents. This may be so in areas of low demand, but there has been no assessment of the likely impact of these cuts in areas of high demand such as London, the South East and other expensive areas.

The cuts will directly penalise larger families, meaning children of poor households will be forced to live in more overcrowded conditions, compounding their disadvantage. The right of single people who are dependent on housing benefit to live in self-contained accommodation has been further restricted with the raising of the age at which someone can get housing benefit for anything more expensive than a room in a shared house from 25 to 35. This will particularly hit people being released from prisons, long term homeless being resettled from hostels or the streets and vulnerable single people, such as those suffering from mental health problems or addiction.

**Q19. How can we ensure that existing good practice can inform the programme of mental health liaison and diversion pilot projects for adults and young people?**

PCS welcomes proposals for a national network of liaison and diversion schemes and a 'joined up' approach between the Ministry of Justice, Home Office and Department of Health/NHS. Funding is a major issue in relation to mental health, it is not well understood, and society seems unwilling to recognise how common mental illness is.

**Q20. How can we best meet our ambition for a national roll-out of the mental health liaison and diversion service?**

PCS agrees with the recommendations of Lord Bradley's 2009 Report 'review of people with mental health problems or learning disabilities in the criminal justice system' in that wherever possible, offenders with mental health issues should receive care and treatment from health and social services rather than be dealt with via the criminal justice system. To be effective this liaison and diversion must happen as soon as the person enters the criminal justice system and be supported by training.

Therefore we believe that as well as ensuring that the necessary liaison and diversion services are available at police stations, there needs to be a national programme of training to improve awareness of mental health problems amongst key workers with whom there is early contact, namely; police officers, duty solicitors and CPS staff.

Liaison and diversion services also need to be available at courts, and court staff – including other court users such as probation, defence, CPS prosecutors receive training to ensure that they have a good awareness of mental health problems. Ideally we would like to see a unified awareness training programme available to all workers within the criminal justice system, including all prison staff.

**Q21. How can we reshape services to provide more effective treatment for those offenders with severe forms of personality disorder?**

No comment.

**Q22. Do you agree that the best way of commissioning payment by results for community sentences is to integrate it within a wider contract which includes ensuring the delivery of the sentence?**

As we have already stated, PCS is opposed to the introduction of 'payment by results' and to the ideology that perceives 'marketisation' as a universal solution.

PCS is not sure how this proposal will impact on how public sector probation services will operate in such a market, as although it is envisaged they could bid for contracts their purpose is not to make profit nor are they able to raise finances in the same way as private or voluntary sector providers. In practical terms the most obvious danger of introducing the concept of profit into re-offending outcomes is that bidders will seek to 'cherry-pick' to maximise profit. As with drug addicts, resources need to be focussed on the few who commit a large proportion of the crime. Payment by results encourages providers to focus on those who can be made to comply with the least resources.

**Q23. What is the best way of reflecting the contribution of different providers within a payment by results approach for those offenders sentenced to custodial sentences and released on licence?**

As we have already stated, PCS is opposed to the introduction of 'payment by results' and to the ideology that perceives 'marketisation' as a universal solution.

PCS believes that individual prisons would be central to delivering such a proposal as is the case now; prisons are the focal point for a number of different agencies. Prisons are best placed to co-operate with the provider of probation services in the design and delivery of their regimes. Payment by results encourages providers to focus on those who can be made to comply with the least resources. Those managing offenders should be focussing on those who pose the greatest risk.

**Q24. What is the best way of developing the market to ensure a diverse base of providers?**

As we have already stated, PCS is opposed to the introduction of 'payment by results' and to the ideology that perceives 'marketisation' as a universal solution.

PCS believes that a market is not the correct model for dealing with offenders. Instead a multi-disciplinary approach which offers a variety of support with appropriate monitoring should be developed.

**Q25. Do you agree that high risk offenders and those who are less likely to reoffend should be excluded from the payment by results approach?**

PCS believes that the public sector should be wholly responsible for those classed as high risk offenders and we support the current national network of multi agency work underpinned by the Multi-Agency Public Protection Arrangements (MAPPA).

We believe this is the appropriate model in that it brings together departments to manage risk. We therefore would welcome any decision to remove these offenders from the payment by results proposals. We suspect part of the rationale for this proposal is that private sector providers do not want to take on the 'risk' that these offenders pose to profitability under a payment by results approach.

**Q26. What measurement method provides the best fit with the principles we have set out for payment by results?**

PCS believes that an informed response to this question can only be made if/after new payment by results processes have been piloted and vigorously scrutinised. There is an obvious danger that payment by results will produce unintended consequences and the desire for profit will produce skewed outcomes.

We believe that, in addition to individual circumstances, re-offending behaviour is influenced by a number of wider social factors and local variations. During the pilots we would like to see complete transparency between providers so as to share best practice. We recognise that the limitations of competition and commercial rivalry may seek to undermine and/or restrict this approach.

**Q27. What is the best option for measuring reoffending and success to support a payment by results approach?**

Re-offending has been traditionally measured as the percentage of people having committed a new offence within a period of time post sentence, but this method is crude and inaccurate as an increasing amount of offending is dealt with in ways that are not properly recorded. It does not measure frequency and the fact that many crimes are never actually reported or that there are local variations in detection, investigation and prosecution.

PCS is concerned that private-sector providers will lobby for as short a period as possible so as to maximise profitability and as re-offending statistics suggest that a greater proportion of offenders are reconvicted the longer the period of time. We therefore favour an option that measures against the longest possible term and takes into account frequency of reconviction.

**Q28. Is there a case for taking a tailored approach with any specific type of offender?**

Sex offenders have always posed particular issues because of the high incidence of denial after conviction and thought patterns that lead to minimising the harm done and justifying re-offending. The small number of women in the prison estate and their reasons for imprisonment justifies an approach more sophisticated than payment by results can offer and we would like to see women prisoners removed from payment by results.

**Q29. What are the key reforms to standards and performance management arrangements that will ensure that prisons and probation have more freedom and professional discretion and are able to focus on the delivery of outcomes?**

PCS supports the view that probation officers have been hedged in by rules which can waste their own resources and those of the court. Professionals should be recognised and given discretion particularly when working with offenders with drug and mental health problems. Cases should be brought back to court when offenders are not engaging but using court appearances to deal with failure to attend a small proportion of appointments where an offender is generally attending and engaging does not help the rehabilitation that is under way.

**Q30. What are the key reforms to financial arrangements that will support prisons and probation in delivering outcomes at less cost?**

No comment.

**Q31. How do we involve smaller voluntary organisations as well as the larger national ones?**

No comment.

**Q32. What are the best ways to simplify the sentencing framework?**

It is important that so called "reforms" do not lose sight of justice and that a structured approach to sentencing remains in place. The aim of keeping offenders out of prison runs contrary to many "reforms" of the last two decades when the trend in response to perceived public pressure has been towards tougher sentencing. Then when the prisons are full this is interfered with. One problem that has arisen recently is political interference with sentencing to try to reduce the prison population outside of any principles of sentencing. Changes to the sentencing framework generally complicate rather than simplify it. It is contrary to principle to have retrospective legislation relating to punishment of crime so every change puts a new layer of sentences over the old. Crimes committed or sentenced before certain dates are punished under one set of rules and those after under another. So for a number of years the courts are working on two systems.

The sentencing of both adults and youths has been considered and restructured recently; there is nothing wrong with the framework which gives courts flexibility. We are concerned that the lack of flexibility in sentencing crimes leads to injustice when an unforeseen case arises. At one time intention was a major factor in determining culpability more recently negligence has been punished more severely where consequence is serious as in causing death by careless driving. Trends since 1990 have been towards reflecting the seriousness of an offence this consultation and police practice in some areas seems to suggest moves towards less restrictive outcomes for first offences even ones which are relatively serious.

**Q33. What should be the requirements on the courts to explain the sentence?**

The court should be and is required to explain a sentence in everyday language and should ensure that it is understood by both defendants and victims, particularly taking into account any mental health and/or learning issues that the parties may have. Some of the pronouncements given to the court may be wordy and not in everyday language but the requirements are clear. A court should state what has determined the seriousness of a crime, what mitigating circumstances it has taken into account and explain what the offender is required to do and where they are at liberty, the consequences of not doing it.

**Q34. How can we better explain sentencing to the public?**

Magistrates do a lot to explain sentencing in schools and community groups including exercises involving the community in how offenders are sentenced.

Unfortunately sentences are usually too lenient when you see it from the victims view and too harsh from the offenders perspective. That is exacerbated by sensational reporting in the media without a full account of the facts.

Courts do not always get it right but they do try to balance the seriousness of a crime and the impact of a sentence and have information in reports which is not available to the public. It is not straightforward and trial by press is not helpful.

**Q35. How best can we increase understanding of prison sentences?**

With the exception of indeterminate sentences for public protection (IPPs), prison sentences are not difficult to understand. Sections of the press choose to misrepresent them. Credit for guilty plea is not widely accepted but must surely be retained to avoid every offender exercising the right of trial, putting the victim through cross examination and adding to the financial cost for the public. The provisions for release and recall of prisoners are difficult to understand and when they are interfered with for either economic or political reasons this is difficult to explain or justify.

**Q36. Should we provide the courts with more flexibility in how they use suspended sentences, including by extending them to periods of longer than 12 months, and providing a choice about whether to use requirements?**

It is difficult to envisage a crime which deserves more than 12 months imprisonment but not an immediate custodial sentence.

**Q37. How can we make community sentencing most effective in preventing persistent offending?**

The causes of persistent offending often relate to addictions, poor decision making together with association with other offenders as well as social factors. Preventing it requires lifestyle changes from people who are difficult to motivate and may move in subcultures which have reversed the values of society where violence and risk taking earn credibility. As do periods of imprisonment and drug use. The social change needed requires more employment opportunities for young people and will take time. It will not be achieved by community sentencing alone.

**Q38. Would a generic health treatment community order requirement add value in increasing the numbers of offenders being successfully treated?**

It is very difficult to get any medical practitioner to agree to treat an offender under a court order; an order may make an offender attend but cannot make them engage in treatment. Medical Practitioners are loath to waste their time particularly on addicts or those with mental health issues who are not going to actively engage. It may be possible for nurses to support drug addicts with mental health and physical health problems or those with mental and physical health issues. The important issue would be the provision of the nurses.

**Q39. How important is the ability to breach offenders for not attending treatment in tackling their drug, alcohol or mental health needs?**

Society is well served by an addict getting treatment and it is impossible to force anyone to go through the lengthy challenge of withdrawal, they have to actively engage with the treatment. Voluntary treatment is an option with any community order and a supervising officer may be able to monitor it although not breach for not undertaking it. This is often successful because it is only done with those offenders who really want it. However, sentencers find it difficult to see this as a credible sentence for a serious offence. The element of breach seems to give the court control and the option of punishing for non compliance makes the sentence more acceptable.

**Q40. What steps can we take to allow professionals greater discretion in managing offenders in the community, while enforcing compliance more effectively?**

PCS supports the position of probation trade unions in stating that in the past probation officers were given more discretion and in some cases got far better results. National requirements can mean that offenders who are engaging are dragged back to court when they are complying nine appointments out of ten. Bringing an offender who is engaging back to court can undermine the relationship with the supervisor and the offenders' motivation to work with them.

There needs to be some national guidance to ensure consistency and an even approach. As with other workers in the criminal justice system Probation Officers should be recognised and remunerated as professionals and should be treated as such with more resources and discretion.

**Q41. How might we target community sentences better so that they can help rehabilitate offenders before they reach custody?**

Most offenders are young and do not consider the consequences of their behaviour. Unfortunately simply attending a programme will not change their thought patterns, only by actively engaging in one. Prior to 2003 sentencing was often a ladder each offence taking offenders up a step from discharge to fine to community to custody.

This approach was possibly better at keeping offenders out of custody but sentences for first offences often did not reflect the crime. Different groups in society have different views and the views of victims vary, sentences which may be effective in deterring reoffending may not be seen as sufficient punishment. Sentences which are primarily punishment may do a lot less to deter further offending than many would like to think and may even contribute to the seriousness of further offending. For instance Community Payback in high visibility jackets identifies offenders for all to see. These are people who already have low self esteem, the punishment reinforces that and removing any vestige of respect in the law abiding community entrench

offenders further in a subculture where violence, drug use and offending give credibility.

**Q42. How should we increase the use of fines and of compensation orders so as to pay back to victims for the harm done to them?**

Fines do not pay back victims, they are paid to the state. Many offenders will not in their lifetime manage to pay the fines they owe. Compensation should be considered in all cases. It should be a priority for the police to collect the information needed so the court can assess compensation at the first hearing. The court needs evidence of financial loss, details of injury and details of the compensation.

Victims of crime would be shocked to know the number of occasions that compensation is not paid because the court has insufficient information to identify them. Victim impact statements are rarely taken by the police, if encouraged they could give the court a clearer picture of the victims loss than just an invoice.

**Q43. Are there particular types of offender for whom seizing assets would be an effective punishment?**

Seizing assets would only be an effective punishment for offenders who are wealthy enough to have them. The majority of offenders are on low incomes in low income families and reliant on credit, loans, 'hire-purchase' etc. It would be appropriate where assets have been obtained by dishonest acquisition. The proportion of offenders with any assets of note is small. The value recovered from assets seized and sold by bailiffs recovering fines is small due to the limited value of second hand goods.

**Q44. How can we better incentivise people who are guilty to enter that plea at the earliest opportunity?**

The experience of PCS members who are legal advisers is that generally offenders do not plead guilty because they hope to evade conviction. They are often being unrealistic and on the day of trial will plead guilty. They also hope that luck will be on their side and the witnesses will not turn up. There has been a suggestion to make sentences after trial always proportionately harsher than those after an early guilty plea, but we note that this may lead to pressures for defendants to plead guilty even when they are not, a situation that we believe would be exacerbated if defendants are unrepresented. This is likely to increase as a consequence of the cuts to legal aid. We believe that the issue of how we encourage people who are guilty to enter a plea at the earliest opportunity should be considered in greater detail and be the subject of a separate consultation.

**Q45. Should we give the police powers to authorise conditional cautions without referral to the Crown Prosecution Service, in line with their charging powers?**

PCS opposes such a proposal and believe that the Crown Prosecution Service (CPS) should retain the power to authorise a conditional caution and that the police must continue to make referral to the CPS. We believe that the consequences of conditional cautions can be significant and that the CPS is best placed to ensure that the conditions are proportionate and achievable as well as appropriate.

**Q46. Should a simple caution for an indictable only offence be made subject to Crown Prosecution Service consent?**

Indictable only offences are serious which is why they are heard in the Crown Court. Any caution for such an offence should require the consent of the CPS after a full statement including victim impact has been considered.

**Q47. Should we continue to make punitive conditional cautions available or should we get rid of them?**

PCS believes that punitive conditional cautions are unnecessary. In most instances, the case is better dealt with in the magistrates' court.

**Q48. How can we simplify the out of court disposal framework for young people?**

The out of court disposal framework is not complicated although the naming has become so. It was originally envisaged that the first disposal should be a reprimand and the second a final warning. The idea of this was young people should not keep "getting away with it" because that was considered a factor in encouraging persistent offending. Although a final warning can be given with no reprimand and a second final warning can be given this is not really complex if the system was less flexible it would not be able to deal with the various ages of offender and types of offence covered.

**Q49. How can we best use restorative justice approaches to prevent offending by young people and ensure they make amends?**

The Youth Offending Services has developed an understanding of when restorative justice can be effective and when it cannot. If an offender is required to be involved in any direct restoration to the victim this must be supported by a sanction for non-compliance. Victims may be quite courageous by agreeing to some direct contact and must not be victimised a second time by it not happening

**Q50. How can we increase the effective enforcement of youth sentencing?**

PCS believes that in enforcing youth sentencing it is important that the appropriate sentence is given in the first place and breaches can be avoided by not setting requirements that are destined to fail. We believe that sentencers are key to this and there is a requirement to greater understanding and training on community disposals

as part of the original sentence passed and subsequent decisions about compliance and breaches.

**Q51. How can we succeed in reducing the need for custodial remand for young people?**

PCS supports any measure that reduces the use of custodial remand for young people where there is no likelihood of a custodial sentence, and would support ideas to ensure that custodial remand is only used where there are risks of further serious offences and raising the minimum age at which a child can be held in custodial remand from 12 to 14.

**Q52. How do you think we can best incentivise partners to prevent youth offending?**

As we have already stated, PCS are opposed to the introduction of 'payment by results' and to the ideology that perceives 'marketisation' as a universal solution.

**Q53. How can we deliver a performance management and inspection regime that achieves our aim to reduce burdens and increase local accountability?**

No comment.

**Q54. What are some of the ways we might be able to further involve local communities in youth justice?**

The youth justice system already involves over 10,000 volunteers, for example as youth offender panel members and in prevention work. The infrastructure which allows them to get involved locally has been built up over time by experienced professionals with specific skills in training, organising and supporting local people who wish to get involved in youth justice.

For the government to develop this involvement further, this infrastructure must be expanded and improved to accommodate the training and support volunteers need, such as identifying specific training needs, as well as workshops on subjects like child development, issues that affect young people, safeguarding and more.

To successfully expand the local community's involvement, a greater budget allocation is needed for youth justice and more youth justice staff should be employed to focus specifically on training and supporting volunteers.

**Q55. How can the functions of the Youth Justice Board best be delivered by the Ministry of Justice?**

The Youth Justice Board was set up as a separate body in 1998, and is funded by the Department of Children, Schools and Families and the Ministry of Justice because it was recognised that children and young people who offend required specifically

targeted interventions and rehabilitation programmes to reduce the damage caused by offending, both to themselves and wider society.

Therefore it is vital to have dedicated youth justice professionals in place, who have a youth justice background and strong links with local youth offending teams (YOTs), in order to formulate, disseminate and measure good practice and ensure improvements continue.

It is an accepted fact that there is a need for a distinct youth justice system, and that youth justice policy must be driven by the experiences of front-line staff and incorporate the needs of young people. This is ensured by the unique relationship between the YJB and YOTs. To break that link is to separate policy from practice, which we believe will undo the good work done so far and most likely increase offending.

We recommend the best course of action for the Ministry of Justice would be to replicate what is already there, and so logic suggests the Department should remain the sponsoring department of the YJB and allow the work to continue in the current structure.

**Q56. What sort of offences and offenders should Neighbourhood Justice Panels deal with and how could these panels complement existing criminal justice processes?**

We are concerned that the concept of neighbourhood justice panels raises more questions than it answers. Local justice is provided by local magistrates' courts where volunteers who represent a cross section of the local community are trained to deliver justice. Over the years justice has become less local because courts have closed and benches have become larger. Now there is a suggestion that local panels should decide the way offenders are dealt with. How will this "justice on the cheap" approach ensure that miscarriages of justice are avoided? Who is going to decide that the offender has the capacity to admit guilt? How will offenders be protected from undue pressure to accept guilt to avoid involvement with the now distant court? If the panel comes to a conclusion that is out of line with sentencing will the offender have a way of challenging it?

The magistrates' courts are not perfect and justice sometimes seems complicated. Many of the complications have been put in place to protect the innocent and those falsely accused. The sentencing system has been hedged with checks and balances to prevent "postcode" sentencing. There is a clear view that criminal justice could be simpler. Branding an innocent person a criminal and giving them a punishment that does not reflect the seriousness of the crime is a real risk without the proper protections in the system. Falsely dealing with someone as a criminal can ruin their life.

**Q57. What are the other ways in which we can work effectively across Government to increase local flexibility to tackle offending?**

No comment.

**Q58. What more can be done to support family relationships in order to reduce reoffending and prevent intergenerational crime?**

The issue is primarily influenced by wider social factors including economic effects on families and within households. Whilst in custody, the effects of overcrowding have led to 'churn' and prisoners serving sentences far from their families which lead to pressures and strains.

PCS believes more resources could be directed at services which support visiting arrangements such as the NOMS Assisted Prison Visits Unit (APVU) which administers a scheme that provides help with travel expenses when visiting a close relative or partner and in appropriate cases a friend in prison (includes Young Offender Institution), as well as reviewing current arrangements on prisoner phone calls and letters.

**Q59. What more can we do to engage people in the justice system, enable and promote volunteering, and make it more transparent and accountable to the public?**

There are thousands of volunteers in the criminal justice system, including; magistrates, prison visitors, those on Youth Referral Panels, and those involved in schemes working with offenders. However, in a recession it becomes increasingly difficult for those in employment to volunteer and employers do not find it necessary to tolerate the inconvenience and/or cost. Changing employment patterns mean a greater proportion of employees are required to be available evenings and weekends. High housing costs mean younger people in employment are likely to have more than one job.

Traditionally public servants were a rich source of volunteers because of their relative job security and public service ethos – but this is disappearing and those who are uncertain about their employment will focus on that and not feel able to volunteer. What will discourage volunteering is more flexibility for employers and an increase in people taking a number of poorly paid jobs.

**4 March 2011**