

Criminal Justice Alliance

Response to the Sentencing Advisory Panel's consultation paper on sentencing for drug offences

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About the Criminal Justice Alliance

The Criminal Justice Alliance (formerly the Penal Affairs Consortium) is a coalition of organisations committed to improving the criminal justice system. It has 46 members - including campaigning organisations, voluntary sector service providers, umbrella groups, research institutions, staff associations and trade unions (a full list of members is available at <http://criminaljusticealliance.org/organisations.htm>) - bringing together a wide range of organisations involved in policy and practice across the criminal justice system.¹

Overview

The Criminal Justice Alliance welcomes the opportunity to respond to this consultation. We support the overall approach taken in the consultation paper, in particular proposals to reduce the lengths of custodial sentences given for drugs offences. The Criminal Justice Alliance is particularly concerned about the sentencing of drug couriers, and welcomes the attention given to this issue by the Panel and the proposals to reduce the draconian sentence lengths that drug couriers currently receive.

Response to the consultation questions

We have responded to the consultation questions on which we have a view below. We have not responded to Question 7.

Question 1

Are you aware of any research or other evidence that demonstrates the effectiveness or otherwise of increased sentence lengths for drug offences either in deterring individual sentenced offenders from committing further drug offences or in deterring others from committing similar crimes?

We are not aware of any further specific evidence on the deterrent effect of increased sentence lengths for drug offences, either in terms of individual or general deterrence. However, it should be noted that jurisdictions with very severe enforcement and sentencing regimes for drug offences do not uniformly have appreciably lower levels of drug use and an international study has concluded that: 'Globally, drug use is not distributed evenly and is not simply related to drug policy, since countries with stringent user-level illegal drug policies did not have lower levels of use than countries with liberal ones.'² A recent Beckley Foundation report on cannabis use internationally has similarly concluded that 'there is minimal evidence that changes in statutory penalties would reduce cannabis use.'³

In addition, for increased sentence lengths for drug offences (or any other offence) to have a general deterrent effect, potential offenders would have to be aware of them. However, the public are generally misinformed about sentencing and about the criminal justice system in general, and believe that the courts are more lenient than they are. Potential offenders living abroad, most obviously drug couriers, are particularly unlikely to have knowledge or understanding of the possible penalties for drug offences, as discussed in response to Question 14 (below).

¹ Although the Criminal Justice Alliance works closely with its members, this response should not be seen to represent the views of each individual member organisation.

² http://www.csdp.org/research/10.1371_journal.pmed.0050141-L.pdf

³ p.93: Room, R., Fischer, B., Hall, W., Lenton, S. and Reuter, R. (2008) *The Beckley Foundation Global Cannabis Commission Report* - available at http://www.beckleyfoundation.org/pdf/BF_Cannabis_Commission_Report.pdf

More generally, as the consultation paper acknowledges, evidence suggests that sentence length has very little deterrent effect on levels of offending. Indeed, there is no empirical evidence to support the efficacy of deterrence in sentencing.⁴ The Halliday Report examined this issue, concluding that: ‘The evidence, though limited in this area, provides no basis for making a causal connection between variations in sentence severity, and differences in deterrent effects.’⁵ This is supported by an overwhelming body of evidence, including, for example, an international review of the evidence which showed that sentencing has no significant deterrent effects and concluded that ‘variation in sentence severity does not affect the levels of crime in society’.⁶ This concurs with the conclusions of a Home Office-commissioned review which found that there is insufficient evidence to prove that there is link between the severity of sentences and crime rates.⁷ The Halliday Report went on to confirm that, if anything, the likelihood of being caught may have a more significant effect than the extent of the likely punishment, stating that ‘the increased likelihood of detection and conviction, however, is statistically associated with declining rates of crime.’⁸

This calls into question the current approach to sentencing for drug offences, which focuses on deterrence over the other purposes of sentencing set out in the *Criminal Justice Act 2003*. While the Criminal Justice Alliance agrees with the Panel that ‘a court will determine which purposes are most relevant in any individual case’ (Paragraph 17), we believe that deterrence currently takes undue precedence, and there should be a greater focus on ‘the reform and rehabilitation of offenders’. This would support a shift away from the use of lengthy custodial sentences for drug offences.

Question 2

Do you agree that, in serious cases, powers such as those available under a confiscation order or a serious crime prevention order are now likely to be a more effective deterrent than increasing the length of a custodial sentence beyond that necessary to meet any other purposes of sentencing? Please give your reasons.

The evidence set out in response to Question 1 demonstrates that no sentence is likely to have a significant deterrent effect. In addition, the fact that the risk of detection and conviction is seen as a stronger deterrent factor than the potential punishment (see Question 1, above) is significant, as those at the top of the supply chain, where confiscation orders would be expected to have the most impact, are the least likely to be caught (as the Panel acknowledges in Paragraph 51) and would be likely to have their assets well-protected. However, the Criminal Justice Alliance supports the use of a confiscation order or a serious crime prevention order, in appropriate circumstances, in place of a longer custodial sentence, given the broader negative effects of imprisonment (see Question 16 below). We also agree that a financial penalty may be more likely to be given serious consideration by some potential offenders than a custodial sentence.⁹ However, it would be preferable for the focus

⁴ p.76: Ashworth, A. (2005) *Sentencing and criminal justice* Cambridge: Cambridge University Press.

⁵ p.128: Halliday, J. (2001) *Making Punishments Work: A Review of the Sentencing Framework for England and Wales* London: Home Office.

⁶ Doob, A. and Webster, C. (2003) ‘Sentence Severity and Crime: Accepting the Null Hypothesis’ in M. Tonry (ed.) *Crime and Justice: A Review of Research*, 30: 143-195.

⁷ Von Hirsch, A., Bottoms, A., Burney, E. and Wikstrom, P.-O. (1999) *Criminal Deterrence and Sentencing Severity: An Analysis of Recent Research* Oxford: Hart Publishing.

⁸ p.128: Halliday, J. (2001) *Making Punishments Work: A Review of the Sentencing Framework for England and Wales* London: Home Office.

⁹ See also p.118: Bean, P. (2002) *Drugs and Crime* Devon: Willan Publishing.

to be on rehabilitation and reparation, rather than on substituting one punitive measure for another.

The Criminal Justice Alliance is also concerned that if confiscation orders are used on offenders near the bottom of the supply chain, who have few resources and limited access to legitimate income, it may force the offender to reoffend in the short-term. As a result, the Panel should ensure that those offences that are considered 'serious' for these purposes do not include offences for which a confiscation or other ancillary order could be unhelpful or counterproductive. The courts should also consider how these risks can be minimised in passing confiscation orders.

Question 3

Have the various roles been properly identified and described? What other roles, if any, might need to be considered?

The Criminal Justice Alliance welcomes this approach. However, we urge the Panel to consider the impact that drug addictions may have on the offending of people who play a more significant role than as a street-level dealer. Even where drug addictions have caused individuals to take on more significant activities, we would urge the Panel to recommend that, if their drug addiction is their primary motivation, they should be seen to be in a subordinate role. This may have a particular impact on female offenders, as drug addiction seems to play a disproportionately significant role in women's offending.¹⁰

Question 4

Do you consider that the Panel has taken the correct approach in identifying the role of the offender and either the quantity of drugs involved or the scale or extent of the operation as the key determinants of seriousness? Do you have any reason to believe that this approach would create any difficulties in practice?

The Criminal Justice Alliance supports the approach taken by the Panel.¹¹ However, the Panel should recognise that in practice there are a number of offences in which the quantity of the drug involved may be high, but the offender's involvement in the overall operation may be low. For example 'staff' involved in cannabis farms may be responsible for large quantities of drugs, despite being in a subordinate role. Similarly, drug couriers may be carrying a large quantity of a drug. In cases such as these, the Panel should make it clear that penalties should be in line with the offender's specific culpability.

Question 5

What relevance, if any, should the purity or strength of a drug have to sentencing? To what extent do you agree or disagree with the approach taken by the Panel?

The Criminal Justice Alliance agrees with the Panel that purity should not be a significant factor in determining seriousness. This is particularly true where an offender is fairly low in the supply chain but the purity is high, for example in cases involving drug couriers. In these cases purity should be seen as irrelevant.

¹⁰ p.19: Corston, J. (2007) *The Corston Report: a review of women with particular vulnerabilities in the criminal justice system* - available at <http://www.homeoffice.gov.uk/documents/corston-report/>

¹¹ However, while recognising that it is outside the Panel's remit, the Criminal Justice Alliance believes that the existing classification system is unscientific and arbitrary, in line with the concerns set out in House of Commons Science and Technology Committee's report *Drug classification: making a hash of it?* - available at <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmsctech/1031/1031.pdf>

Question 6

Is it possible to make a reliable estimate of the street value of drugs seized and to what extent should value be relevant to the assessment of offence seriousness?

The Criminal Justice Alliance believes that estimates of street value are unreliable as a basis for sentencing. There is no consistent way of calculating the street value of a drug, given the range of variable factors that contribute to the price of drugs. Consequently, it should not be a factor in assessing offence seriousness.

Question 8

Do you agree that, where an offender has knowingly supplied a fake drug, the offence should be sentenced as if it were an offence of dishonesty? If you do not agree, in what circumstances (if at all) should it mitigate the seriousness of an offence that the items offered for supply were not, in fact, illegal substances?

If the items offered for supply were not illegal substances, but were legal and benign, then it should act as a mitigating factor in sentencing as there will be less harm caused by the offence.

Question 9

In what circumstances (if at all) should the seriousness of an offence be mitigated by an offender's mistaken belief about the drug involved or by the fact that the offence was not commercially motivated?

The Criminal Justice Alliance strongly supports an approach in which a lack of commercial motivation should be treated a potential mitigating factor. As the Paper suggests, this may be particularly appropriate in cases of social supply, where the offender buys a relatively small amount of a drug and then sells some of it on to friends for little or no profit. It may also be appropriate where drugs are being purchased on behalf of somebody who is using them for medicinal purposes (see Question 11, below).

Question 10

What other factors, if any, might make an offence less serious and why?

Paragraph 79 argues that supplying drugs to a prisoner should aggravate the seriousness of an offence. While the Criminal Justice Alliance recognises the harmful effects of drugs in prisons, we are concerned that this could be used to penalise the families of prisoners who bring drugs into prison. This would be inappropriate given the huge pressures that prisoners' families are under and the levels of coercion that they may face. Families may be pressured into providing drugs to family members in custody,¹² a fact that was recognised by David Blakey in his review of measures to disrupt the supply of drugs into prison.¹³

Question 11

Do you agree or disagree that the fact that drugs are used to help with a medical condition should be considered as offender mitigation for drug offences?

We strongly support an approach whereby if drugs are being obtained or produced and used for medical purposes, this should be considered as offender mitigation. However, we think that the Panel has not gone far enough in addressing this issue. In particular, sentencing guidelines should recognise that arrest, investigation and conviction may cause disproportionate suffering for people suffering from serious medical conditions, and that

¹² p.20: Smith, R., Grimshaw, R., Romeo, R. and Knapp, M. (May 2007) *Poverty and disadvantage among prisoners' families* York: Joseph Rowntree Foundation.

¹³ p.9: Blakey, D. (2008) *Blakey Review: Disrupting the supply of illegal drugs into prisons* - available at <http://www.justice.gov.uk/publications/docs/blakey-report-disrupting.pdf>

sentences should be scaled down accordingly. We therefore believe that where an offender has a relevant medical condition, a custodial sentence should never be given.

This approach should extend beyond the use of cannabis to the use of other drugs for medicinal purposes, for example heroin or other opiates. It is also not clear why this should only refer to the treatment of physical pain, as the Paper implies. Drugs are often used in response to emotional pain or the effects of trauma such as abuse or bereavement, and this should also be recognised as a mitigating factor. In addition, we question the Panel's assertion that 'there is little evidence that supports the link between drug use and pain relief' and support the submission of Release, which argues that there is extensive and robust evidence to support the use of cannabis and other controlled drugs for medicinal purposes.

Question 12

Do you agree or disagree that the fact that an offender's vulnerability was exploited by others should be treated as offender mitigation?

The Criminal Justice Alliance supports this approach. This could include, in appropriate cases, prisoners' families coerced into providing drugs for prisoners (see Question 10, above).

Question 13

Do you agree or disagree with the aggravating, mitigating and offender mitigation factors that have been identified for drug offences? What other factors, if any, (not covered here or in Annex D) ought to affect the seriousness of an offence or influence the sentence imposed?

The Panel should consider the sentencing of young adults aged 18-24 as part of this guidance. 12% of young adults aged 18-24 in prison under sentence are imprisoned for a drug offence, and young people aged 18-24 would benefit from an approach to sentencing that recognises the role that their immaturity and the economic, social and structural factors that specifically impact upon them play in their offending.¹⁴ As a result, the Panel should examine how the guidance can best be developed to ensure that young adults are sentenced appropriately. The Transition to Adulthood Alliance has suggested that youthfulness should be seen as a potential mitigating factor in sentencing young adults between the ages of 18 and 24,¹⁵ for the reasons described by the Panel in Paragraph 61 of its consultation paper on principles of sentencing for youths, which could equally apply to young people aged 18-24.¹⁶ This approach to sentencing could be applied to sentencing for drug offences as part of this guidance.

The Panel should also ensure that if an offender is committing a drug offence in order to fund a drug habit, this should act as a mitigating factor as it may reduce the offender's culpability. Rehabilitation, to break the cycle of offending, should be the primary aim of sentencing in these cases.

¹⁴ The needs and characteristics of young adults are examined in depth in *Universities of Crime: Young Adults, the Criminal Justice System and Social Policy*, a report from the Transition to Adulthood Alliance. It is available at <http://www.t2a.org.uk/publication-download.php?id=15>

¹⁵ p.27: Transition to Adulthood Alliance (2009) *A New Start: Young Adults in the Criminal Justice System* - available at <http://www.t2a.org.uk/publication-download.php?id=21>

¹⁶ p.21: Sentencing Advisory Panel (2008) *Consultation paper on principles of sentencing for youths*

Question 14

Do you agree that the combination of factors that the Panel is proposing should be taken into account by the courts will result in less severe sentences for drug couriers? Are you satisfied that this is the correct approach?

We agree that the proposals made by the Panel are likely to result in less severe sentences for drug couriers.¹⁷ This is entirely welcome, as sentences for drug couriers are currently draconian. This area of sentencing is long overdue for substantial revision, and we welcome the attention given to it in this Paper.

A high proportion of foreign national prisoners are serving sentences for drug offences (three out of ten sentenced men and six out of ten sentenced women), many of whom are serving sentences for drug trafficking (this is reflected in the fact that a far higher proportion of the foreign national prison population is serving a sentence for a drug offence than of the British national prison population).

If the primary aim of these harsh sentences was intended to be deterrence, then they were always going to be ineffective. Most drug couriers are very unlikely to be unaware of the scale of punishment in the UK (for example Hibiscus, an organisation which works with female foreign national prisoners, has reported that potential couriers are often informed that, if caught, they will simply be deported¹⁸) before agreeing to act as couriers. Many are also in such difficult circumstances that even if they did know the risks, deterrence would be unlikely to be effective. Many are coerced into complying and are themselves victims, selected due to their vulnerability and powerlessness. It also seems unlikely that the risk of a severe sentence would be seen as more of a deterrent than the high levels of risk to themselves of swallowing narcotics in cases where drugs are carried internally. If they are willing to take this risk, it seems unlikely that a potentially severe punishment (even in the unlikely event that they are aware of it) would deter them. This is in addition to the more general concerns about the extent to which severe sentencing can act as a deterrent (see Question 1, above). For these reasons the Criminal Justice Alliance urges the Panel in the strongest possible terms to do everything possible to minimise the sentences given to drug couriers and supports the Panel in its efforts to do so.

However, while supporting the general approach taken by the Panel, the Criminal Justice Alliance is concerned that it appears that drug couriers will only be seen as being in a 'subordinate' role if the quantity of drugs they are carrying is relatively small. In Paragraph 105, the Panel argues that this is likely to be the case, but experience suggests that relatively large quantities of drugs can be carried by drug couriers, particularly internally. In addition, in Paragraph 51, the definition of somebody in a 'leading role' includes offenders who are 'instrumental in the importation of controlled drugs'. This could clearly be seen to include drug couriers, despite their low position in the supply chain. As a result, the Criminal Justice Alliance believes that the Panel should consider whether the approach to sentencing drug couriers can be modified to ensure that these two factors do not lead to drugs couriers receiving inappropriately harsh sentences.

¹⁷ This is supported by the response to this consultation paper of Release, a Criminal Justice Alliance member, which compares previously decided drug courier cases against the Panel's proposed sentencing framework.

¹⁸ Heaven, O. (2009) 'Long sentences for drug mules were never going to act as a deterrent' in *The Guardian*, 14 May.

Question 15

Is there any reason to believe that the Panel's proposals will impact disproportionately on some offenders by reason of their gender, age, disability, race or ethnic background?

There is particular concern about the harsh sentences given to female drug couriers, and the proposals contained in the Paper should have a positive effect on addressing this issue. The proposals to allow medicinal use as a mitigating factor should also have benefits for offenders with a disability convicted of drug use for medicinal purposes.

As has been frequently documented, ethnic minority people are overrepresented throughout the criminal justice system.¹⁹ This is reflected in their disproportionate representation for drug offences, with black people more likely to be arrested, charged, convicted and imprisoned for drug offences than white people (proportional to the overall population). This is despite the fact that white and black people have similar levels of self-reported drug use, with white people more likely to use Class A drugs. Although the proposals contained in this Paper will do nothing to address this directly, shorter custodial sentences would at least be equally beneficial for all offenders, and clear guidance should help to reduce disproportion at the sentencing stage.

Question 16

Do you have any comments about the Panel's approach to sentencing for drug offences? In particular, do you agree that starting points should be reduced from current levels for the reasons given?

In general, the Criminal Justice Alliance fully endorses the approach taken by the Panel, in that it looks to limit the use of custody for drug offences wherever possible. Prison is an appropriate sanction for the most serious offenders, but the Criminal Justice Alliance supports the Panel's view that fewer and shorter prison sentences are appropriate in the majority of cases involving drug offences. At present 16% of the prison population has been imprisoned or remanded for a drug offence, while 8,186 people were sentenced to immediate custody for a drug offence in 2007. This is despite the fact that the use of prison is extremely ineffective in rehabilitating offenders and consequently reducing reoffending. Prison has detrimental effects on prisoners' mental and physical health (with particular implications for prisoners with drug addictions), their self-esteem, their future employment opportunities, and their relationships with their families. All of these factors increase the likelihood of future offending.

Imprisonment also has a negative impact on the wellbeing of prisoners' families. Children of prisoners have about three times the risk of developing mental health problems compared to their peers and experience higher levels of social disadvantage,²⁰ while a review of the experiences of prisoners families has concluded that 'criminal justice and social welfare

¹⁹ For example, the most recent Ministry of Justice figures show that in 2007/8 there were four times more arrests of black people per head of population than of white people and there were five times more black people in prison per head of population than white people. For British nationals, the proportion of black prisoners relative to the population was 6.8 per 1,000 population compared to 1.3 per 1,000 for white persons. See <http://www.justice.gov.uk/publications/docs/stats-race-criminal-justice-system-07-08-revised.pdf>

²⁰ Action for Prisoners' Families, CLINKS, Prison Advice & Care Trust and the Prison Reform Trust (2007) *The children and families of prisoners: Recommendations for government* - available at http://www.prisonersfamilies.org.uk/uploadedFiles/Influencing_Policy/Agenda%20for%20Action%20Final.pdf

policy combine to impoverish and disadvantage, and exclude, the relatives of those in prison - in particular prisoners' children'.²¹

On release, many prisoners face problems in obtaining accommodation and employment, and many have immediate financial problems. Around 70% of prisoners report having no employment, education or training in place when they are released, while around 30% have no accommodation.²² The latter is likely to be a significant underestimate, with many ex-prisoners only having access to temporary accommodation. This has significant effects on reoffending, with 74% of prisoners with problems with both employment and accommodation reoffending during the year after custody, compared to 43% of those with no problem with employment or accommodation.²³ Many people leaving prison also struggle to get immediate access to money, beyond the limited discharge grant, as many are reliant on benefits, which are paid fortnightly in arrears and often take a considerably longer period to set up. As a result, many ex-prisoners face a shortage for money for immediate subsistence needs. As an additional factor, there are often delays in accessing GPs and other support services, which may cause particular problems for offenders with a history of drug use.

In addition, levels of self-harm in prison are very high. There were 23,026 recorded incidents of self-harm during 2008, an increase of 25% since 2004. 55% of these were committed by women and girls, despite the fact that they comprise less than 6% of the prison population.²⁴ Levels of suicide are also considerably higher in custody than in the community. There were 61 self-inflicted deaths among prisoners in England and Wales in 2008 and in total there have been 827 self-inflicted deaths among prisoners in England and Wales in the last ten years.²⁵ The average suicide rate over the last ten years is 114 per 100,000 prisoners, compared to around 19 per 100,000 for adult men in the general population and around 7 per 100,000 for adult women in the general population.²⁶

The failings of custodial sentences are amplified by the current level of overcrowding in the prison system. HM Prison Service defines 'the good, decent standard of accommodation that it aspires to provide all prisoners' for each prison, called the Certified Normal Accommodation (CNA) level. This is the level above which prisons become officially overcrowded. As of 31 May 2009, the prison population was 111% of the CNA level, exceeding the CNA level by 8,166. 84 of the 139 prisons in England and Wales, 60%, are officially overcrowded. Prison overcrowding is damaging to every aspect of the work of the Prison Service, leading to an increase in the reoffending rate. It disrupts education, training, behavioural programmes and drug and alcohol treatment; moves prisoners away from home and disrupts family and community ties;

²¹ p.ix: Smith, R., Grimshaw, R., Romeo, R. and Knapp, M. (May 2007) *Poverty and disadvantage among prisoners' families* York: Joseph Rowntree Foundation.

²² p.1: Niven, S. and Stewart, D. (2005) *Resettlement outcomes on release from prison in 2003*, Home Office Findings 248 - available at <http://www.homeoffice.gov.uk/rds/pdfs05/r248.pdf>

²³ p.6: May, C. Sharma, N. and Stewart, D. (2008) *Factors linked to reoffending: a one-year follow-up of prisoners who took part in the Resettlement Surveys 2001, 2003 and 2004* London: Ministry of Justice.

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<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090330/text/90330w0044.htm#0903311000032>

²⁵ <http://www.justice.gov.uk/news/newsrelease010109.htm>

²⁶ Office for National Statistics - <http://www.statistics.gov.uk/cci/nugget.asp?id=1092> (accessed 10 July 2009).

moves prisoners without warning, creating stress and worsening mental health difficulties; and reduces the prospects for prisoners of securing a job or housing on release.

Rt Hon Lord Woolf, a former Lord Chief Justice, has stated: 'When I made my Strangeways report about 15 years ago the evidence of the Prison Service was that overcrowding was a cancer eating at the heart of that service...that cancer has persisted and it is reflected in reconviction rates and our failure to stop reoffending.'²⁷ In addition, Anne Owers, the Chief Inspector of Prisons, has stated that prison overcrowding is contributing to the recent increase in the number of prisoners who have committed suicide in prison,²⁸ while the Joint Committee on Human Rights has also previously identified prison overcrowding as contributing to deaths in custody.²⁹

The problems of overcrowding have also led to the introduction of the End of Custody Licence Scheme. This sees prisoners serving between four weeks and four years released from custody on licence for the final 18 days of their sentence, although those imprisoned for the most serious offences are not eligible.³⁰ As well as damaging public confidence in the criminal justice system, this has led to particular potential risks for drug-using prisoners. In addition to problems registering with a GP and with referrals to community mental health services, prisoners are not eligible for benefits during this 18-day period and are therefore provided with a one-off lump payment on leaving prison. There are concerns that this may lead to prisoners with addictions purchasing large quantities of drugs on release, with ensuing risks of overdose, especially as they may have reduced tolerance to street drugs. There are also problems maintaining continuity of care into the community, with Drug Intervention Programme teams either not informed of a prisoner's release by the prison-based services or not given sufficient time to put support in place.³¹ For all prisoners with drug addictions, the transition from prison back into the community is a difficult period, with problems with continuity of treatment and support and risks of relapse or overdose.

Prison is generally particularly problematic for those convicted of drug offences who are also addicted to drugs. Firstly, drugs are widely available in prisons. In his Government-commissioned review of measures to disrupt the supply of drugs into prison, David Blakey stated that: 'Anecdotally, and in the press, one hears of prisons being 'awash' with drugs and research and interviews with prisoners conducted outside of this Review would seem to indicate a ready availability. Certainly substantial amounts of all types of drugs do get into prisons.'³² Mandatory Drug Testing has shown that in 2006/7, 8.85% of the prison population (about 6,800 prisoners) were taking illicit drugs when randomly tested each month. However, this is likely to be an underestimate, given serious concerns about the efficacy of this approach to monitoring drug use. Attempts to avoid 'failing' a mandatory test may also lead to prisoners using drugs that are harder to detect, encouraging prisoners to move from using

²⁷ p. Ev2: Home Affairs Select Committee (2007) *Towards Effective Sentencing: Oral and Written Evidence* - available at

<http://www.publications.parliament.uk/pa/cm200607/cmselect/cmconst/467/467i.pdf>

²⁸ <http://news.bbc.co.uk/1/hi/uk/6294090.stm>

²⁹ <http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrightts/15/1507.htm#a27>

³⁰ In total, by the end of May 2009 59,781 prisoners had been released early under the End of Custody Licence Scheme since it was introduced on 29 June 2007 -

<http://www.justice.gov.uk/publications/docs/stats-ecl-0509.pdf>

³¹ p.19: McKnight, C. (2009) 'Early Birds' in *DrugLink* 24 (3), May/June 2009.

³² p.7: Blakey, D. (2008) *Blakey Review: Disrupting the supply of illegal drugs into prisons* - available at <http://www.justice.gov.uk/publications/docs/blakey-report-disrupting.pdf>

cannabis to using opiates. The Sainsbury Centre for Mental Health has reported that ‘several of the prisoners we interviewed in the West Midlands reported using opiates for the first time in prison, all becoming major users after this introduction and all reporting that it was relatively easy to attain drugs whilst in prison.’³³ This is particularly problematic as sharing of injecting equipment can lead to an increased risk of HIV/AIDS or hepatitis.

Secondly, as the Paper recognises in Paragraph 20, prison is an inappropriate setting in which to deliver drug treatment programmes.³⁴ Prisoners are frequently moved from prison to prison which disrupts the delivery of programmes, short sentences may not allow enough time for programmes to be completed, and there is currently insufficient capacity for the numbers of prisoners that need access to programmes. While work to provide equivalence of care in prisons with that provided in the community is welcome, the UK Drug Policy Commission has argued that prison drug services frequently fall short of even minimum standards.³⁵ In addition, many prisoners with drug addictions also have mental health problems and prisons have very limited provision for dual diagnosis. The Sainsbury Centre for Mental Health has argued that ‘there is a big gap in “dual diagnosis” services in prisons and a lack of co-ordination between different teams’.³⁶ A later study reported that mental health and substance misuse services recognised the need to work closely together, but largely failed to do so.³⁷ Despite this, anecdotal evidence suggests that some offenders are sentenced to custody because the courts believe that they will receive treatment for a drug addiction much faster in prison than if they were given a community penalty. This is a shocking misuse of resources, and a wholly inappropriate use of prison.

Overall, as the UK Drug Policy Commission concluded, ‘custodial sentences may frequently do more harm than good. By creating or exacerbating problems such as housing, employment and family relationships and increasing health risks such as infection from blood-borne viruses, the chances of successful long-term outcomes are further reduced. Enforced detoxification without adequate follow-up support also increases the risk of relapse, overdose and death, particularly on release.’³⁸ Unsurprisingly, in the light of this analysis, 75% of prisoners saying they had a drug problem before custody go on to reoffend within a year of release.³⁹

Prison may even aid some drug dealers in their ongoing offending. One Home Office-commissioned research report on the illicit drug trade in the UK, discussing methods for

³³ p.17: Durcan, G. (2008) *From the Inside: Experiences of prison mental health care* - available at http://www.scmh.org.uk/pdfs/From_the_Inside.pdf

³⁴ This is not to say that there are not some excellent programmes within the prison system. For example, RAPt’s abstinence-based model, developed along 12-Step lines in nine English prisons, has been shown to achieve significant and sustained reductions in drug use and offending.

³⁵ p.64-66: UK Drug Policy Commission (2008) *Reducing Drug Use, Reducing Reoffending: Are programmes for problem drug-using offenders in the UK supported by the evidence?* London: UK Drug Policy Commission.

³⁶ p.5: Sainsbury Centre for Mental Health (2007) *Mental health care in prisons* - available at http://www.scmh.org.uk/pdfs/briefing32_mh_care_prisons.pdf

³⁷ p.43: Durcan, G. (2008) *From the Inside: Experiences of prison mental health care* - available at http://www.scmh.org.uk/pdfs/From_the_Inside.pdf

³⁸ p.14: UK Drug Policy Commission (2008) *Reducing Drug Use, Reducing Reoffending: Are programmes for problem drug-using offenders in the UK supported by the evidence?* London: UK Drug Policy Commission.

³⁹ p.5: May, C. Sharma, N. and Stewart, D. (2008) *Factors linked to reoffending: a one-year follow-up of prisoners who took part in the Resettlement Surveys 2001, 2003 and 2004* London: Ministry of Justice.

growing a drug dealing enterprise, noted that ‘prison presented the opportunity to identify new suppliers. One interviewee described making new contacts whilst in prison abroad. Serving time in prison was important in establishing credibility and trustworthiness. One interviewee described the importance of a “criminal CV”.’⁴⁰

Custody for offenders who are also addicted to drugs is also uneconomical. Recent research by Matrix Evidence for Make Justice Work has estimated that diverting one offender from custody to residential drug treatment would save society approximately £200,000 over the lifetime of the offender and diverting one offender from custody to intensive supervision with drug treatment would save society approximately £60,000 over the lifetime of the offender. This includes not only the cost of carrying out the sentence, but also the costs avoided by lower levels of reoffending.⁴¹ The research estimates that 7,873 offenders who were drug users were given prison sentences of less than 12 months in 2007. It suggests that if they had been given residential drug treatment instead, society could have saved £980 million over their lifetimes.⁴²

Question 17

Do you have any comments about the way in which the Panel has calculated relative drug quantities and aligned them with the proposed starting points and ranges?

We recognise the need to specify actual amounts in the guidelines, to ensure that they are useful to sentencers and genuinely promote consistency, as highlighted in Paragraph 135. We have not taken a view on whether the quantities and the ensuing starting points and ranges have been set appropriately.

Question 18

Do you have any specific comments on the sentencing guidelines proposed above for each of the offences covered in this consultation paper?

While we support the overall approach taken by the Panel, we would urge the Panel to do as much as is possible to reduce the use of custody for drug offences and to reduce sentence lengths for those people who are sent to prison. As a result, the Panel should consider further reducing the starting points for drug offences in line with the lack of evidence of a deterrent effect of severe sentencing and the well-established damaging effects of imprisonment. In doing so, the Panel should do further work to establish whether other offences for which offenders receive similar sentences as for drug offences are equally serious.

**Criminal Justice Alliance
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For further information about this response, please contact Jon Collins, Campaign Director, at jon.collins@criminaljusticealliance.org or on 020 7840 1207 or at Park Place, 10-12 Lawn Lane, London, SW8 1UD.

⁴⁰ p.43: Matrix Knowledge Group (2007) *The illicit drug trade in the United Kingdom* - available at <http://www.homeoffice.gov.uk/rds/pdfs07/rdsolr2007.pdf>

⁴¹ p.5: Matrix Evidence (2009) *Are short term prison sentences an efficient use of public resources?* - available at <http://makejusticework.org.uk/wp-content/uploads/2009/06/are-short-term-prison-sentences-an-efficient-and-effective-use-of-public-resources.pdf>

⁴² p.14: Matrix Evidence (2009) *Are short term prison sentences an efficient use of public resources?* - available at <http://makejusticework.org.uk/wp-content/uploads/2009/06/are-short-term-prison-sentences-an-efficient-and-effective-use-of-public-resources.pdf>