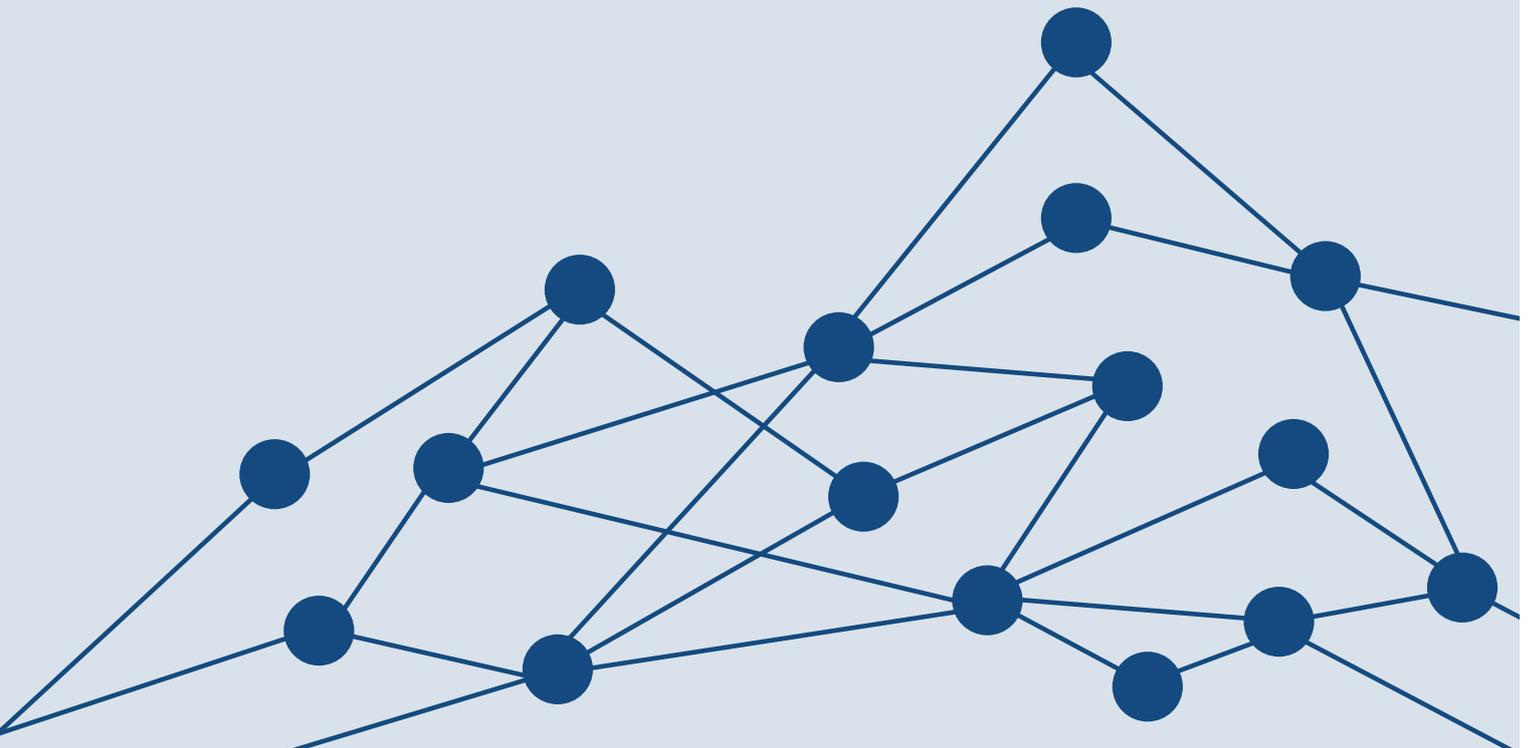


# **A SMARTER APPROACH TO SENTENCING?**

**A response to the government's  
White Paper on sentencing**



## **About the Criminal Justice Alliance**

The Criminal Justice Alliance (CJA) is a network of 160 organisations – including charities, think tanks, research institutions and staff associations – working towards a fair and effective criminal justice system.

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**The views expressed in this briefing are not necessarily those of any individual CJA member or funder.**

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# Introduction

**By Professor Rod Morgan, CJA Trustee**

Review and change of penal policy are urgently needed. For most commentators are agreed that we have got ourselves into what is frankly a fine old mess urgently requiring reformist attention. What the Rt Hon Robert Buckland QC MP describes in his introduction as the 'legislative hyperactivity' of recent decades has created more confusion regarding the philosophy and principles underpinning sentencing policy and practice. Unfortunately, this White Paper does not appear to clarify matters, in fact, it adds further layers of confusion. We are disappointed that this White Paper was not preceded by a Green Paper, to allow time and space for proposals to be consulted on and adapted accordingly.

We have prisons bursting dangerously at the seams. We have prisoners still serving what everyone, including the Home Secretary who introduced them, has agreed are unjust indeterminate sentences. We have a probation service so dismembered, failing and lacking in morale that magistrates have declining confidence in the effective supervision of community sentences. Our criminal courts are faced with a huge backlog of criminal cases, exacerbated by COVID-related restrictions and made more difficult to reduce because of the greatly diminished number of courthouses and magistrates available to hear cases. Meanwhile the police are not exactly pining to be given additional responsibilities, checking, for example, on the compliance of those subject to out of court conditions of one sort or another. Further, whatever measures in sentencing policy are eventually legislated for, they will have to be operationalised during a period when departmental budgets will be under the severest of strains, as a result of the mountain of public debt accrued responding to COVID-19. All of which means that close attention will be paid to the question as to how extra spending can be delivered as a result of savings achieved elsewhere. The Treasury will have a more than usually vigilant eye on estimated cost-benefits for different parts of the penal system.

## **What does the government's sentencing White Paper focus on?**

The White Paper, *A Smarter Approach to Sentencing*, is substantial – over 100 pages – wide-ranging and complex. It covers almost every aspect of sentencing from imprisonment tariffs, automatic release and eligibility for parole to community disposals including out of court measures and the establishment of specialist problem-solving courts. There is a whole chapter on the reinvigoration of the probation service. There are chapters on reducing reoffending by various means and on youth offending. Finally, there are two brief annexes on race disparity and the treatment of women in the criminal justice system. Indeed there is scarcely a topic that does not get a mention, though there are one or two elephants in the room - like alcohol and drugs policy and what the White Paper terms neurodivergence - that are addressed in only the most peripheral, consequentialist of terms: there is no suggestion, for example, that how we sentence those with alcohol and substance misuse issues needs to be linked with some rethinking of how we better tackle drugs policy more generally. Likewise, it is clear that many people caught up in the criminal justice system have mental health and learning needs, but repairing the deficits in community provision will require more than mere recognition – it will involve significant expenditure on community-based services.

To the extent that the White Paper represents an overall philosophical approach it is what sentencing analysts have termed bifurcation - stretching the options and practice in two, opposed directions simultaneously: less intervention and parsimony for those committing more minor offences and more protracted, severe exclusion for those who have committed more serious offences. Compared to the options available to sentencers half a century ago the government proposes, as recent administrations have done, an increasingly complex mix and match approach with increasingly conditional feedback loops for those who fail to comply with less interventionist orders. The difficulty for readers of the White Paper lies in predicting which direction of travel is likely to win out. So much will depend on budgetary allocations for community-based services.

Given the unfortunate lack of a formal consultation process and the wide ranging impact of the proposals, we thought it would be of value to invite a few CJA members, representing a range of criminal justice interests, all of which have a bearing on sentencing policy in one way or another, to answer four questions about the White Paper. We asked our members what they:

- were pleased to see in the White Paper
- were disappointed or concerned to see
- would have liked to see that was missing
- and whether they had any other reflections or comments

We attach the answers we received from our members in Appendix One. Below I highlight some patterns that emerged from their responses. We have also identified a number of key recommendations and considerations for the Ministry of Justice (MoJ) more broadly, and the Bill team and Probation Reform team specifically, which we would appreciate a response to in due course.

### **Community sentences**

Regarding what our members were pleased to see, there was a general welcome for various measures that might stimulate greater reliance by sentencers on community-based disposals. Specific measures mentioned included: greater use of restorative justice interventions both out of court and pre-sentence; deferred sentencing; and more constructive use of unpaid work. However, there are differences of opinion regarding particular measures. Not everyone, for example, is keen on the wider use of electronic tagging and there are doubts about House Detention Orders; in particular, members have raised concerns about their use for primary carers and young adults. There will need to be clear guidance for probation officers and sentencers, ideally based on research evidence, as to which individuals will likely benefit from which restrictions and vice versa. The current lack of evidence for such guidance is a significant worry. Furthermore at least one member warns that subjecting those on community orders to multiple requirements or conditions is likely to backfire, resulting in increased breach proceedings, thereby potentially undermining any reduction in reliance on custody. There are lessons from history here. 'Tougher' community sentences have all too often failed to displace use of custody, but have rather served to displace less intrusive community orders - the well-established process of sentencing inflation. There are also concerns raised that people are being up-tariffed from the simple caution which worked and had no conditions to the conditional caution, and that the emphasis on compliance will set people up to fail.

## **Criminal records**

Several members welcome the government's proposals on Rehabilitation of Offender provisions, reducing the time periods after which convictions are spent. This will reduce the degree to which people's future prospects, particularly with regard to employment, higher education and accommodation, are blighted.

However, members said that the suggestions for change do not go far enough. Some offences could be spent after even shorter time periods: why, for example, should the convictions of all those with sentences of four years imprisonment or more never be spent? One member also suggests removing the rehabilitation period for the conditional caution to reduce barriers to employment for those diverted from court.

## **Youth justice and young adults**

Several members welcome the White Paper proposals to tighten the criteria for resort to custodial remands of children, the majority of which do not currently precede custodial sentences. Two members highlight the need for reform of adult remand too, in particular given the recent increases in the lengths of time people are spending on remand due to the court backlog caused by COVID-19. Several members express disappointment at the constant emphasis on 'toughness' throughout the White Paper chapter on youth sentencing, as opposed to a welfare approach. One member objects to the proposition that secure school providers should be able to claim charitable status. The overriding objective should, it is argued, be the welfare of children and providing a form of custody is not a charitable activity.

With regard to young adults, those aged 18-25, one member highlights the fact that some measures in the White Paper, including increased sentence lengths and strengthening the 'robustness' of community orders and Out of Court Disposals, run counter to the government's own evidence. The government's evidence specifies that approaches known not to work with this cohort are 'punitive or deterrence-based approaches' and 'interventions that reinforce a criminal identity.'

## **Problem-solving courts**

Several members specifically welcome the proposed piloting of specialist problem-solving courts. This is of course a policy proposal that has been teetering on the edge of real development for several decades and where cost and other logistical factors, not least those related to the reorganisation of the probation service, will be critical. We welcome the recognition of the value of Restorative Justice (RJ) as 'an important part of the justice system' which has 'significant benefits both for the victim and for the rehabilitation of offenders.' However, one member highlights that such positive intent, without a commitment to renewing the national action plan for RJ, risks this intention not being translated into practice.

## **Increasing the time people spend in prison**

Despite the general welcome for measures that might shift the centre of sentencing gravity, and penal expenditure, from custody to the community, there is virtually unanimous disappointment and concern from members regarding the firm emphasis in the White Paper on proposed measures which will certainly mean that some people will spend even longer in prison than is already the case.

These reactions are informed by the fact that the United Kingdom has proportionately more citizens in prison per head of population than any other country in Western Europe, the reason being not that we send many more people to prison than other countries, but because we send them to prison for longer. Furthermore, where automatic release and parole discretion applies, we also keep people in prison for longer. More than one of our members complains that no evidence is offered that the various up-tariffing proposals in the White Paper will make the public safer and other members are disappointed to see that there are no legal proposals embodying a presumption against the use of short custodial sentences.

## **Equalities**

Finally, some of our members welcome the attention and call for evidence in the White Paper regarding meeting the needs of people who have neurodivergent conditions. But others would like to see that discussion broadened to include the needs of people with learning difficulties or disabilities. Other members likewise observe that the annex on racial disparities in the penal system will need to fully examine and mitigate disparities at every stage and with regard to every aspect of provision, in order to adhere to the Public Sector Equality Duty and avoid exacerbating existing inequalities highlighted by the Lammy Review. As it currently stands, these proposals will increase disproportionality.

The indirect discrimination that may result from some of the proposed changes should not be justified as 'proportionate means of achieving a legitimate aim.' The government committed in the latest update on 'Tackling Race Disparity in the Criminal Justice System' (February 2020) to 'challenge and change' over-representation of ethnic minorities in the criminal justice system. It follows that the government must therefore remove aspects of this White Paper that would do the opposite.

The CJA's vision for a fairer and more effective criminal justice system is one that is safe, smart, person-centred, restorative and trusted. We define smart as follows: 'Supports cross-sector solutions to significantly reduce the prison population and promotes prevention, diversion and rehabilitation.' The CJA and its expert members look forward to a detailed response and to working with the MoJ in the coming months to help deliver a truly smarter approach to sentencing and criminal justice.

*Rod has been a Trustee of the CJA since 2019. He is Professor Emeritus of Criminal Justice at the University of Bristol and Visiting Professor at the University of Sussex and an Associate of Birkbeck University Centre for Prison Studies. He was formerly Chief Inspector of Probation and Chairman of the Youth Justice Board. He has also served on the IMB, as a magistrate, a Parole Board member and advisor to the Council of Europe.*

# Key considerations and recommendations

## Sentencing

- Proposals to increase tariff lengths should be removed, including Whole Life Orders for 18-20 year olds.
- If tariffs are increased, they should not be applied retrospectively. Plans to strengthen the criteria for imposing minimum sentences for repeat offences (like drug or weapon-related offences) should be shelved.
- A presumption against short custodial sentences in favour of community sentences and diversionary initiatives should be included, given the government's own evidence of effectiveness.
- The House Detention Order should only be used as a genuine alternative to prison, not for people who have committed repeat low-level offences. There should also be an available sentencing option for those who have previously received a custodial sentence and evidence-based guidance should be available for sentencers and probation staff on its use. These orders should not be rolled out for groups where evidence would suggest such orders could be detrimental, for example those with caring responsibilities and young adults.
- Those who turn 18 while waiting for their case to come to court should remain in youth courts, rather than being dealt with in the adult jurisdiction.
- The government should commit to a review of the age of criminal responsibility being raised.
- Plans to raise the threshold required for a sentencing court to impose a sentence below the minimum sentence in those circumstances where a presumptive minimum sentence applies should be reconsidered.
- The increased use of mandatory minimum sentences for drug importation should be removed. The measure deprives sentencers of discretion particularly in relation to those who are exploited and coerced into committing these offences.
- The government should commit to an overarching review of drug sentencing policy.
- Attendance Centres (a dedicated community sentence for young adults) should not be abolished without any alternative proposals.
- The government should commit to extend detention in Young Offender Institutions to 25 years of age, as recommended by the Justice Select Committee.
- The government should remove measures that would strengthen the 'robustness' of Out of Court Disposals and community orders for young adult males, given its own evidence on what doesn't work with this cohort.
- Clarity is needed on the criteria that the Parole Board will use to assess cases and safeguard those individuals who are serving a sentence for non-terrorism related offences but who are perceived to present a significant danger to the public.
- There should be a review of the evidence for allowing assault of emergency worker offences to be aggravated on sentence, including impact on race disparity.
- Judges should have to justify the reasons why they have sentenced outside of the sentencing guidelines, including specifically addressing protected characteristics, orally and in writing.

## **Resource impact**

- Any measures that do increase sentencing options or severity must be matched by increased funding for rehabilitative activities within prisons including staffing and digital technology.
- Funding allocated for longer prison sentences should instead be channeled to resettlement and community interventions to ensure that individuals are better able to make the transition from prison to community, reintegrate successfully and not reoffend.
- Social housing providers should have to accommodate those leaving prison and sufficient funds must be allocated for this.
- Adequate funding for support services linked to deferred sentences and community sentences (including treatment requirements and gender/race-specific services) is needed if they are to address the root causes of offending.
- Current funding arrangements disadvantage gender-specialist holistic providers and should be reformed in order to deliver on the Women's Strategy.
- We recommend the government considers a mechanism for funding local intervention programmes, particularly if forces can demonstrate they are saving the MoJ money by diverting low-level cases from the courts.

## **Equalities**

- A more comprehensive assessment must be undertaken to avoid any risk of measures exacerbating existing disparities within the criminal justice system. Measures need to be built into legislation to ensure that racial disproportionality does not continue.
- There should be further consideration of the impact of sentencing on primary carers and pregnant women to ensure that alternatives to custody are used to minimise harm to children and families.
- Where probation officers have increased discretionary decision-making powers, regular training is required to ensure consistent, fair and reasonable use of such powers.
- The Equality Impact Assessment (EIA) needs to better reflect intersectional disproportionality, for example recognising that following conviction Black women are almost 25 percent more likely than White women to receive a custodial sentence at Crown Court.
- More attention should be paid in the EIA to the further harm that could be done to ethnic minority individuals through increased sentence lengths, in particular relating to drug offences, given that Black people are being prosecuted for drug offences at more than eight times the rate of White people.
- Diversion and community alternatives should not rest on admissions of guilt, which statistics show Black people are less likely to benefit from due to a lack of trust in the system.
- The proposals on tariff reviews for life sentences, acknowledging the importance of dealing with children who commit crime in ways which reflect their maturational development, should apply to such sentences received by young people up to the age of 25. Other sentencing provisions for people aged 18-25 should be based on the strong research evidence of the impact of immaturity on criminal behaviour.
- Membership of the Parole Board should reflect the make-up of the prison population. Members should be trained thoroughly on cultural competence, and the Parole Board should publish outcomes data.

### **Criminal records**

- The government should extend the proposal to reduce criminal record disclosure periods to the significant number of people sentenced to four years or more.
- The government should commit to a widespread review of the criminal records system, including life disclosure and the implications for children and young people.
- A judicial process should be introduced to review criminal records and declare them spent when appropriate.
- The rehabilitation period associated with the conditional caution should be eliminated so individuals are not forced to disclose this record to potential employers.

### **Neurodivergence**

- The government should confirm that people with learning disabilities and difficulties will sit under the neurodivergence banner and have their needs considered in the planned review.
- The government should explore the possibility of a specific sentencing option, designed to meet the additional needs of people with neurodivergence and learning disabilities, through accessing support at a specialist centre.

### **Diversion**

- New legislation and/or the guidance should clarify the criteria for the two formal Out of Court Disposals, and that the conditional caution should not always be used in place of the simple caution. Two tier Out Of Court Disposals should not exclude repeat offenders from diversion into support without criminal sanctions.
- Consideration should be given to the evidence surrounding the potential of 'net-widening' from problem-solving courts and how they may detract from the use of Out of Court Disposals.
- Deferred prosecution programmes recorded by police under Outcome 22 should be counted as a positive outcome to better reflect reality and to encourage use of deferred prosecution where it is available.

### **Probation**

- Services should be designed using a co-production approach alongside people with lived experience.
- Probation should comprise an integrated and regulated service, open to external scrutiny through an independent community scrutiny mechanism and/or an objective regulatory system.
- The principle of local collaboration should be embedded within any new probation structure so that the Probation Service is responsive to the dynamics of communities once again.
- The Probation Service needs consistent, coherent and agreed standards and qualifications to which all practitioners, managers and leaders in probation can adhere.
- Education and training should be commissioned alongside employability services (as steps to employment) and commissioned through the Dynamic Framework.

## **Conditionality**

- Without the right support these measures are more likely to increase breach rates of community orders or licence conditions and increase the number of convictions for people in the revolving door.
- Less emphasis should be placed on conditions (programmes) for conditional cautions. The evidence is that less is more.
- Charities providing support services (including Residential Women's Centres) should remain independent from enforcement and punishment elements of an order to promote trusting and open relationships.

## **Evidence**

- There is a lack of clear evidence that suggests the proposed changes are required and will achieve the desired outcome. We would advocate for additional research, data and analysis to understand the evidential grounds before implementation.
- More research should be carried out into electronic monitoring, including the impact on women accessing support in the community in limiting their ability to engage with services, especially for women with a range of care responsibilities.
- An outcome evaluation of the Community Sentence Treatment Requirement should be commissioned. More research is required into which community order requirements are most likely to reduce reoffending.
- The government should invest in piloting, further research and evaluation of distinct custodial provision and community orders for young adults.
- The White Paper refers to the successes of Family Drug and Alcohol Courts as evidence for the increased use of problem-solving courts for people who use drugs. However, it is not this model it seeks to replicate. The evidence relied on is for the international drug courts. The government should provide greater clarity and transparency around this.
- Any proposals relating to the treatment of people who use drugs should carefully consider Dame Carol Black's review into the prevention, treatment and recovery of problematic substance use.

## **Fines**

- The efficacy of the fine as a court sanction needs to be reviewed.
- Rehabilitative measures should be available for summary-only, non-imprisonable offences cases which are too serious for diversion, but not serious enough to merit a community sentence. Currently the only option is a fine.

## **Remand**

- Proposals to reduce the overuse of remand for adults should be implemented to mirror those proposed for children.
- Justifications for remand decisions should be made in full and in writing, addressing any protected characteristics.

## **Restorative Justice**

- The government should commit to developing a national action plan for RJ.
- More details should be given on how greater use of deferred sentencing will provide opportunities for restorative justice to be deployed.

# Appendix one

## JUSTICE

JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.



### **What were you pleased to see in the White Paper (WP) and why?**

JUSTICE commends the aims of certain policy proposals in the WP; for instance, striving to ensure that custody is a last resort for children. We therefore welcome reforms to [remand and bail](#) in the youth justice system, as well as the commitment to remove the requirements for automatic disclosure of youth-cautions, reprimands and warnings. In addition, the WP's proposal for a national 'call for evidence' to examine the way neurodivergent individuals experience the Criminal Justice System (CJS) is very welcome, to ensure that such individuals get the support that they need. Equally, the WP's goal of delivering 'timely and high quality' Pre-Sentence Reports (PSR) is well-received. The proposed re-introduction of problem-solving courts, which sees court's working to solve complex healthcare and socio-economic factors of individuals that could lead to re-offending, could benefit potential victims and those convicted. JUSTICE looks forward to increased investment and commitment to improving the probation system by unifying sentence management.

### **What were you disappointed or concerned to see and why?**

JUSTICE is concerned by the WP's focus on expanding punitive measures, especially proposed increases in tariff lengths. Longer sentences are more costly, are more likely to have a detrimental effect on those imprisoned, and the blanket and automatic increase is undoubtedly discriminate. This approach risks neglecting a considered examination of the underlying drivers of crime and accompanying rehabilitative measures. JUSTICE is also concerned with potential retrospectivity; for instance, as was the case in the recent Terrorist Offenders (Restriction on Early Releases) Act 2020, which contemplates extending custodial sentences for those in prison. Retrospectively increasing tariffs could result in a [breach of Article 7 ECHR](#). Increasing tariffs for children is also deeply concerning, given that children have greater capacity for change than adults. JUSTICE strongly believes all sentences should reflect this.

The potential for probation staff to have increased discretion in varying electronic monitoring requirements is also worrying. JUSTICE has previously highlighted issues with [discretionary decision making](#), and have recommended regular training to ensure consistent, fair and reasonable use of such powers. The WP does not address this.

### **What would you have liked to have seen that was missing?**

The WP presents too greater focus on tougher community sentences, rather than utilising diversionary methods. Further, any measures that do increase sentencing must be matched by increased funding for rehabilitative activities within prisons. The proposal of the 'Prisoner Education Service' policy must be a priority.

Moreover, we are deeply concerned by the absence of measures to deal with the significant backlog of court cases and the increasing number of individuals on remand. The [current nightingale system](#) is [not sufficient](#). JUSTICE has recommended [virtual courts](#) to assist with this, particularly during the COVID-19 pandemic.

### **Any other reflections or comments on the White Paper, Impact Assessment or Equality Statement?**

JUSTICE believes the Government has not fully assessed the disproportionate impact increased sentencing would have on Black, Asian and minority ethnic individuals. We consider that a more fulsome assessment must be undertaken to avoid any risk of the WP's measures exacerbating existing disparities within the CJS.

## **Circles UK**

Circles of Support and Accountability are an innovative and successful community contribution to reducing sex offending, working in close partnership with criminal justice agencies. Circles UK is the national body supporting the development, quality, coordination and effectiveness of local Circles.



### **What were you pleased to see in the White Paper and why?**

Circles UK was pleased to see the focus on reducing disclosure periods for people with criminal records. We also welcome the intention to pilot problem solving courts given evidence of their effectiveness in addressing factors which underpin offending behaviour, such as drug addiction and mental health difficulties. We also welcome the additional funding for Community Sentence Treatment Requirements and the commitment to improve Pre-Sentence Reports for people with complex needs.

### **What were you disappointed or concerned to see and why?**

Circles UK was disappointed that the proposal to reduce criminal record disclosure periods was not extended to include the significant number of people sentenced to four years or more. We also believe other proposals in the White Paper will result in people being kept in prison for longer than is necessary or purposeful for rehabilitation purposes, including those convicted of particular violent and sexual offences, those on life sentence tariffs, those sentenced for repeat offences of drug or weapon related crimes and children convicted of specific types of offending. The UK already has one of the largest prison populations per capita in Europe and average prison sentences have continued to increase over the last decade.

Well documented evidence demonstrates that overcrowding in UK prisons has resulted in unsafe conditions, an increase in violence, a reduction in prisoner access to rehabilitation programmes and a rise in self harm and mental health issues. Extending the amount of time people spend in prison is likely to exacerbate these issues.

The proposed changes are also likely to lead to a further rise in the number of older people in prison. Older people are the fastest growing age group in prison, the majority having been convicted of sexual offences. The number of prisoners aged over 70 is predicted to increase by 19% by 2022 (*'Flexibility is vital'*, Clinks, 2019). At present 38% of people who receive a Circle of Support and Accountability are over the age of 50 (Circles UK data, March 2020). It is well documented, however, that the prison estate is not equipped to provide the health and social care most older prisoners require. On the other end of the spectrum are young people. Research has clearly shown that longer sentences for young people are counter-productive and hamper rehabilitative efforts.

There is no evidence that longer prison sentences deter people from committing crime or effectively rehabilitate those that serve longer sentences. A prison sentence is already a costly solution and longer sentences will serve to increase this cost. Circles UK would rather that funding for longer prison sentences be channeled to resettlement and community interventions to ensure that offenders are better able make the transition from prison to community, reintegrate successfully and desist from reoffending.

### **What would you have liked to have seen that was missing?**

Circles UK would have liked to have seen a presumption against short custodial sentences in favour of community sentences and diversionary initiatives. Research has clearly shown that community sentences are far more effective than short periods of imprisonment in reducing reoffending. There is compelling evidence that short sentences do little to rehabilitate or to reduce the likelihood of reoffending. Conversely, they disrupt or destroy factors known to help individuals desist from further offending, for example, housing, employment and family stability.

## **KeyRing**

[KeyRing](#) supports people with a range of needs to live in the community. We are commenting on the White Paper as an organisation which supports (among others) people who have experience of using the Criminal Justice System with learning disabilities, autism, or both.



### **What were you pleased to see in the White Paper and why?**

We welcome the planned launch of a national 'Call for Evidence' to obtain a clearer picture of prevalence and the current national provision to support offenders with neuro-divergent conditions in the criminal justice system as this recognises the need to better serve this cohort and we believe a review of current provision is urgently needed. We were also pleased to see the continued embedding of NHS Liaison and Diversion services and the emphasis on partnership working.

This service needs to mature to become all that it should be but properly resourced and fulfilling its [‘all vulnerabilities’](#) brief, it could be a powerful tool to reduce reoffending through the provision of appropriate support. We also welcome the inclusion of neurodiversity expertise within CSTRs as courses and treatments need to be accessible for people with a range of needs.

### **What were you disappointed or concerned to see and why?**

We were concerned to see little direct reference to people with learning disabilities made within the White Paper and would seek assurance that people with learning disabilities will sit under the neurodivergence banner and have their needs considered in the planned review. We believe this is imperative as this cohort is poorly served in the Criminal Justice System. For example, people with learning disabilities are still not being referred to Liaison and Diversion as frequently as they should be (this assertion is based upon research comparing referrals with expected prevalence) and pre-sentence reports and assessments do not [always adequately reflect their needs or vulnerabilities](#).

### **What would you have liked to have seen that was missing?**

We believe that joint working between Criminal Justice and Social Care services leaves much to be desired for people with learning disabilities and would have liked to have seen a clear pathway for people to gain the support they need. We know of individuals who have been through the Criminal Justice System several times and who remain vulnerable to cuckooing and exploitation but who are not eligible for support under the Care Act. This group generally have mild to moderate learning disabilities and with community-based support would be likely to desist or significantly reduce offending behaviour. However, with the reduction of preventative services there is little provision for this cohort before they offend, and once in the Criminal Justice System, the support they receive is often insufficient in terms of input and duration. We believe that The Care Act should be reviewed to take into consideration offending history or vulnerability and provision made for people to be required to engage with a package of community based, social support as part of their sentence. Once people have secure housing, appropriate friendship and support groups, improved daily living skills and structure to their day, they are more resilient and therefore better able to make good choices.

We believe that Women’s Centres are a great example of a supportive, multi-disciplinary approach which can address the range of needs that people present. Whilst we recognise these centres serve a discrete group, a similar sentencing option, designed to meet the additional needs of people with neurodivergence and learning disabilities, should have been considered.

## **Prisoners’ Education Trust**

Prisoners’ Education Trust (PET) is a charity that has supported prison education for over 30 years. PET funds and supports prisoners to study through distance learning courses in subjects or at levels that are not available through mainstream prison education. PET also works to influence policy and practice to improve prison education.



### **What were you pleased to see in the White Paper and why?**

PET was pleased to welcome the call for evidence on neurodiversity in the criminal justice system. The prevalence of learning difficulties and disabilities in the prisoner population is clearly a major issue. Official figures show that over a third of people (34%) were identified as having a learning disability or difficulty following assessment on entry to prison in 2017–18, but provision remains patchy. People with Id/ds need to be properly identified, their needs understood and addressed. PET also welcomed improvements to the Rehabilitation of Offenders Act. A shockingly low proportion of prisoners are successful in getting employment in the 12 months after their release (although statistical analysis of prisoners helped by PET shows that education improves their chances). Prisoners need hope for their future in order to engage effectively with rehabilitation in custody (vitaly including education). For many that means the prospect of good quality employment on release. Any steps to reduce the barriers to prisoners obtaining employment though less onerous disclosure requirements must be welcomed. However, the changes do not go far enough – a widespread review of the criminal records system and particularly the implications for children and young people is needed.

### **What were you disappointed or concerned to see and why?**

In conjunction with the majority of voluntary and community sector organisations working in the prison system, PET was dismayed to see a suite of measures in the White Paper that will have the effect of prisoners (and including younger prisoners) on already long sentences spending longer in custody. There is little or no evidence that longer sentences provide an effective deterrent to crime; the larger prison population produced by longer sentences is hugely costly; and the prison service already struggles to provide meaningful and constructive purposeful activity (education in particular) to progress people through such long sentences. We were also very concerned to see the proposal regarding legislation to change charity law to enable operating a custodial establishment to be a charitable activity. Holding people in custody is a function of the criminal justice system not charity. If the Ministry of Justice intends to pursue proposals to allow a charity to run pilots for a secure school, they need to find a legislative route to allow that which recognises the educational and socially supportive role of charities in such a pilot rather than perverting the legal definition of charitable activity.

### **What would you have liked to have seen that was missing?**

The impact assessment of the White Paper recognises additional costs of having a larger prison population; but it does nothing to recognise the greater investment in terms of money but also in imagination, staffing and digital technology that will be needed to provide meaningful educational progression for prisoners facing so many more years in custody. In particular, without access to effective digital learning in cell, prisoners face the prospect of being released into the community without the skills or ability to equip them to live fulfilling lives as law abiding assets to our communities.

The prison population already shows large over representation by some minority ethnic and religious groups; it is hard to see how increases in sentence length and size can fail also to disproportionately affect such groups adversely.

We were disappointed that there was too little emphasis on racial disparity at every stage of the system – recognising that the situation needs to change is inadequate; measures need to be built into legislation to ensure disproportionality does not continue.

### **Any other reflections or comments on the White Paper, Impact Assessment or Equality Statement?**

See above for the lack of sufficient recognition for the additional investment required to provide a meaningful regime including educational progression for a larger prison population serving longer sentences. We note that from June 2021, NPS will commission rehabilitative services such as accommodation and education, training and employment from other providers. Our experience is that education and training are often not commissioned alongside employability services and we hope that they will be seen as steps to employment, and commissioned through the Dynamic Framework.

## **Revolving Doors Agency**

Revolving Doors Agency is a national charity that aims to change systems and improve services for people 'in the revolving door'. We work to create a smarter criminal justice system that makes the revolving door avoidable and escapable. We do this by working alongside national and local decision-makers. We combine lived experience insight, robust research and system knowledge to create policy and practice solutions that work.



### **Sentencing reform and vulnerability**

In their sentencing white paper this government has chosen to draw a line in the sand, on the one side it aims to hand out severe and longer punishments for serious crimes, on the other side it wants to address vulnerability and address the causes of crime. Although this is an artificial divide, the men and women we engage with at Revolving Doors Agency fall squarely into the category of vulnerable, with multiple unmet needs, and multiple previous convictions. They commit repeat offences, often non-violent and low level (mostly theft and summary non-motoring offences). They are crimes of despair, triggered by life-long traumatic events, sustained and often crippling poverty, and for some systemic discrimination and racism that drags them into the criminal justice system deeper and quicker. These issues manifest in a [toxic mix](#) of mental ill-health, substance misuse, and homelessness. The question is, do the proposed sentencing options address these vulnerabilities in a way that will prevent this revolving door of crisis and crime? A direct quote from the [white paper](#) suggests more work is needed, "*There are some offenders that we consider to be 'prolific'. These offenders commit a large number of generally low-level crimes, and often fail to respond to existing interventions by the court. For these prolific offenders we will continue to consider whether there are innovative ways in which we could tackle their persistent offending*". There are solutions, and we need to build them in.

## **Doing justice in the community**

Before anything reaches court, we need to divert people away from our system to avoid them becoming stuck within it, especially young adults. We will focus our attention on the two tier Out Of Court Disposals (OOCs), to make sure it doesn't exclude repeat offenders from diversion into support, without criminal sanctions. We believe the Community Resolutions could be transformative, if applied to repeat low-level offenders in the way that the [LEAD model](#) has done in the USA. These measures alongside other diversion options, such as deferred prosecution and problem-solving courts, could set out clear hurdles that need to be cleared prior to entry into our probation or prison services. The white paper sees increased confidence in community sentences, delivered by a reformed probation service, as a large part of the solution. This should have been paired with a presumption against short prison sentences of less than 6 months; these prison sentences are, using the Department's [own evidence](#), significantly less effective at reducing re-offending than community sentences. In the absence of a presumption against short prison sentences the effort to curtail their use will be slower.

Ultimately, we will influence probation reform through co-production, showing the reform team and the NPS the value of designing services alongside those with lived experience. We believe this is the most effective way for us to shape the future of probation. The aspects of probation reform that this Sentencing reform allows us to push are, better and fuller Pre-Sentence Reports (PSRs) and the need for the right investment in probation that allows them the time at court to do PSRs more comprehensively. Ramping up pre-existing options like Liaison and Diversion (L&D) services and building the RECONNECT model into the system. Continuing to ramp up Community Sentence Treatment Requirements (CSTRs), and the need to source the right level of investment.

## **Monitoring alone will not reduce re-offending**

The sentencing white paper shows enthusiasm for monitoring and curfews, believing it can be a vital rehabilitative tool for repeat offenders. This is concerning. Without the right support these measures are more likely to increase breach rates of community orders or licence conditions and increase the number of convictions for people in the revolving door. We will challenge this approach.

The most extreme example of this is the House Detention Order, which is targeted specifically at repeat low-level offenders. Quite simply, this sentence is targeted at the wrong cohort. It may be suitable as an option for those facing longer custodial sentences, as an alternative to prison, but this level of restriction and surveillance for relatively minor offences is a recipe for disaster, and we should not allow magistrates the power to hand down such a punitive and non-rehabilitative sentence. We need solutions that understand and address people's vulnerabilities, needs and aspirations. Putting people under house arrest for repeat minor offences is not the smart option.

# Transform Justice

Transform Justice is a national charity working for a fair, humane, open and effective justice system.



## **What were you pleased to see in the white paper and why?**

We were pleased to see:

1. Commitment to the use of out of court disposals which have been declining in usage compared to court disposals. However, we have some concerns about the proposals (see attached document)
2. Proposals to reduce the unnecessary use of child remand
3. Proposals to reduce rehabilitation periods for some offences.
4. Commitment to improve access to justice and support for defendants and those convicted who have neurodivergent conditions
5. Commitment to increase usage of community sentences and implication that these should be used instead of short prison sentences.

## **What were you disappointed or concerned to see and why?**

We were disappointed that a number of the recommendations seemed to be missing a solid evidence base. Evidence for the efficacy of electronic monitoring is very mixed, and the community sentence treatment requirement (which the government proposes to roll out) has no outcome evaluation. Ideally only interventions which have had a positive outcome evaluation would be endorsed wholesale, while untested interventions would be piloted. We also have concerns about how the two-tier framework for out of court disposals may be framed:

- That too much emphasis may be placed on conditions (programmes) for conditional cautions. The evidence is that less is more. The simple caution (with no conditions) had a positive record in reducing reoffending.
- That the emphasis on enforcement of compliance may be counter-productive, leading to increased prosecutions.

The future balance between use of the community resolution and conditional caution is critical. The old simple caution was a very effective sanction, with the lowest recidivism rate of any sentence/sanction. In the evaluation of the two-tier system, the conditional caution was effective in reducing recidivism, but no more so than the simple caution. We recommend that the new legislation and/or the guidance should clarify the criteria for use of the two formal out of court disposals, and that the conditional caution should not always be used in place of the simple caution.

## **What would you have liked to have seen that was missing?**

The fine is the most used magistrates' court sanction but is not mentioned in the white paper. This is a gap, given the problems with the fine regime including the lack of engagement of defendants with the single justice procedure and the high rate of non-payment of fines. The efficacy of the fine as a court sanction needs to be reviewed.

Reference to the main levers to prevent offending and reoffending were missing, as was a strategy to access these levers. An individual's risk of committing crime or reoffending reduces if they have a home, stable family ties, a job and good health. This was acknowledged by the Lord Chancellor when he launched his proposals: "The drivers are clear – it's a lack of prospects, chaotic lifestyles, ill-health and addiction. All these underlying causes of crime can so often be addressed much more effectively by looking beyond custody, to the right interventions that really will support offenders to change their ways". The most powerful interventions often have nothing to do with sentencing. If people have no home on leaving prison, they are more likely to commit crime.

The white paper refers to housing, but the interventions put forward are all formal criminal justice measures. Only when we can force or incentivise social housing providers to help those who have committed crime can we hope to reduce offending. The most straightforward way to do this would be to delegate criminal justice budgets to local authorities or PCCs. But such measures are independent from sentencing.

We would have also welcomed proposals to reduce the over-use of remand for adults, to mirror those proposed for children.

The conditional caution cannot currently be used for domestic abuse cases, without the special dispensation of the DPP. There are very successful programmes such as [Cara](#) for those who admit to domestic abuse and are suitable for dealing with out of court. We would recommend that, when the simple caution is abolished, all forces are allowed to use the conditional caution for domestic abuse. Usage should be subject to rigorous scrutiny and independent research.

We would recommend eliminating the rehabilitation period associated with the conditional caution so those who receive it are not forced to disclose this record to potential employers. The simple caution had no rehabilitation period, so the introduction of the conditional caution has, in effect, increased the barriers to employment faced by those who are diverted from court.

We are supportive of deferred prosecution programmes, which have been piloted in some police force areas. The white paper welcomes evidence-based development of these initiatives but given good evidence already exists, we wonder whether deferred prosecution programmes would benefit from being put on a firmer legislative footing. For example, deferred prosecution programmes are recorded by police under Outcome code 22 – 'diversionary, educational or intervention activity, resulting from the crime report, has been undertaken and it is not in the public interest to take any further action.' This code should be counted as a positive outcome to better reflect reality and to encourage use of deferred prosecution where it is available.

### **Any other reflections or comments on the White Paper, Impact Assessment or Equality Statement?**

The white paper is a curates' egg – a mixture of good and bad. Given this, it's a pity that it was not preceded by a green paper, which would have allowed time and space for proposals to be consulted on and adapted accordingly.

We would advocate consideration of the funding settlement for the new framework of out of court disposals. The impact assessment suggests a significant cost for police forces in implementing the new framework and mentions a £1.5m three-year programme aimed at supporting police forces to access local intervention services, identify gaps in available provision and help prioritise what services are needed that are not currently available. We are concerned that £1.5m is insufficient to set up new programmes across 33 police forces and that there remains a strong financial disincentive against the use of out of court disposals by police forces. We recommend the government considers a mechanism for funding such programmes particularly if forces can demonstrate they are saving MoJ money by diverting low-level cases from the court process.

## Magistrates Association

The Magistrates Association (MA) is an independent charity and the membership body for the magistracy. With 13,000 members across England and Wales, we are the only independent voice of the magistracy and a unique source of information and insight on the courts and the broader justice system.



### Response to the White Paper

The MA welcomes the white paper on sentencing, as it demonstrates the government's commitment to ensuring that appropriate and effective sentences are available to the courts. In particular, we are pleased to see the government's commitment to ensuring that there are appropriate community sentences available as alternatives to custody.

The stated focus on those with complex needs, along with piloting of problem solving courts for this cohort, is in line with previous MA proposals. However, it will also be important to ensure that suitable disposals are available for less serious cases. When summary-only, non-imprisonable offences come to court, the only option available is a fine. While we support early intervention through diversion, it is unfortunate that rehabilitative measures are then not available for those cases too serious for diversion but not serious enough to merit a community sentence. This white paper is a missed opportunity to address this.

Further, while we welcome robust community alternatives to custody for the most challenging cohort, it is important that the proposed Home Detention Orders (HDOs), which are more punitive than existing community orders, are accompanied by targeted rehabilitative measures. It is also not yet clear how the process for using HDOs appropriately would work. High-level community orders are already used in place of a custodial sentence, wherever possible, and sentencers can suspend a prison sentence if appropriate. It will therefore be important to find a mechanism to ensure that HDOs are genuinely only used in cases where people would otherwise receive a prison sentence. There is also currently no limitation on a community sentence being used for those who have previously received a custodial sentence; it would be disappointing if this limitation was added for HDOs.

Another notable element of the white paper is the aim to reduce the use of remand for those in mental health crisis. It is now agreed by all those working in the justice sector that prison is not an appropriate place of safety for those in mental health crisis. It is therefore vital that courts are given alternatives so they do not have to remand people into prison solely to address mental health needs. Recognition that there needs to be a review into those coming before courts to understand where neurodivergence is relevant is also welcome. Identification of this cohort is key, so that appropriate support can be provided at the right time.

We also welcome the focus on community options for children and young people, although we are concerned about the use of 'toughness' – sentences for this cohort should focus on the welfare of the child along with reducing reoffending. It is also disappointing that the referral order framework is not being looked at in order to increase sentencer discretion. The Justice Committee is now supporting our proposal that sentencers should be able to order a youth rehabilitation order as well as a referral order or detention and training order for first time young offenders who plead guilty. It is also a pity that the government has not taken this opportunity to ensure that those who turn 18 while waiting for their case to come to court remain in youth court, rather than being dealt with in the adult jurisdiction, which is an MA priority.

Overall, we appreciate the wide remit of the paper, which illustrates an understanding that to reform sentencing, different elements have to be considered together, as they often interact and interrelate. It is therefore vital that the impact of each reform individually and on each other is understood and taken into account when drafting any new sentencing legislation.

## Sentencing Academy

Launched in 2019, the Sentencing Academy is a research and engagement charitable incorporated organisation dedicated to developing expert and public understanding of sentencing in England and Wales.

The logo for the Sentencing Academy, featuring the words "SENTENCING" and "ACADEMY" in a light blue, sans-serif font, stacked vertically on a dark teal rectangular background.

SENTENCING  
ACADEMY

### **What were you pleased to see in the White Paper and why?**

We were pleased to see the inclusion of the House Detention Order as we believe there is scope to create a more robust non-custodial option for sentencers which could eventually develop into an alternative to custody – particularly an alternative to short sentences. We also believe that deferred sentencing is another area that should be supported. Giving offenders the opportunity to make rehabilitative and/or reparative steps before the court imposes sentence may reduce the necessity for more punitive and potentially ineffective sentences where the offender has already made efforts to atone for the offence. We also welcome a renewed focus on effectiveness in relation to community orders. More research is required into which community order requirements are most likely to reduce reoffending so that sentencers can tailor community orders with greater confidence about their likely effectiveness.

### **What were you disappointed or concerned to see and why?**

The Sentencing Academy opposes the proposed amendments to release arrangements for certain offenders that will see them spending a larger proportion of their sentence in custody. Not only will this further complicate sentencing, and make the true effect of a custodial sentence less readily comprehensible, but the Government failed to provide any evidence to support the contention that these proposals will either protect the public or restore public confidence. We are also concerned about the plans to raise the threshold required for a sentencing court to impose a sentence below the minimum sentence in those circumstances where a presumptive minimum sentence applies. As with many of the proposals in the 'Protecting the public from serious offenders' section of the White Paper there was an absence of evidence justifying why such reforms are necessary.

### **What would you have liked to have seen that was missing?**

We would have liked to have seen more ambition for the proposed House Detention Order as this could be used as a viable alternative to custody but, at present, it is seen only as an alternative to existing non-custodial sentences. More generally, we would have liked to have seen a greater evidence base used to justify and underpin the proposed reforms and perhaps plans for a wider inquiry into the effectiveness of the whole sentencing system as opposed to these piecemeal reforms.

### **Any other reflections or comments on the White Paper, Impact Assessment or Equality Statement?**

The Sentencing Academy has produced a fuller response to the White Paper's publication, available [here](#) and also co-hosted a discussion event considering its implications, a video of which is available [here](#).

## **Women in Prison**

Women in Prison (WIP) is a national charity that delivers support for women affected by the criminal justice system in prisons, in the community and through our Women's Centres. We campaign to end the harm caused to women, their families and our communities by imprisonment.



### **What were you pleased to see in the White Paper and why?**

The inclusion of better use of effective community sentences, use of deferred sentences, out of court disposals and Liaison & Diversion services are welcome given the multiple harms caused by custodial sentences. All of this could contribute to better outcomes for women facing multiple disadvantages.

The proposed changes to disclosure periods for criminal records are welcome as this would help with lowering barriers for women to access employment. Increasing the quality of pre-sentence reports would also be beneficial in making sure they account for the specific needs of women coming in contact with the criminal justice system.

## **What were you disappointed to see and why?**

The White Paper is a missed opportunity to radically reduce the number of women in prison in accordance with the [Government's strategy on women](#), overshadowed by increasing prison sentences for some people. This would only lead to more people in prison, for longer periods of time, despite a lack of evidence that this helps keep our communities safe. This fails to recognise the significant problem of sentence inflation that has helped create the crisis in prisons.

The proposals fail to turn the tide on sentencing policy towards measures that reduce reoffending, such as introducing a legal presumption against the use of short prison sentences (which 80% of women in prison are serving) and promoting alternatives to custody that are trauma-responsive and address the root causes of offending. This represents the wrong direction of travel overall in terms of sentence inflation, and particularly around strengthening the criteria for imposing minimum sentences for repeat offences (like drug or weapon-related offences) which we know Black people are more likely to receive a custodial sentence for. This also needs to be contextualised in terms of gender, as following conviction Black women are 25% more likely than white women to receive a custodial sentence.

We have concerns around electronic tagging and the impact on women accessing support in the community in limiting their ability to engage with services, especially for women who have a range of care responsibilities.

## **What would you have liked to have seen that was missing?**

The following areas particularly relate to women, and signal the right direction of travel but require further improvement:

- Deferred sentences and community sentences (including treatment requirements) will only work if backed by proper funding for support services to address the root causes of offending and we urge that more consultation with the voluntary sector is needed (including women's specialists).
- Changes planned for diversion and community alternatives such as trialling problem-solving courts are also welcome but need further exploration because they rest on admissions of guilt which statistics show Black people are currently less likely to give due to a lack of trust in the system.
- We welcome the mention of the Whole System Approach in Manchester as an example of good practice for locally driven criminal problem-solving models producing positive results. However, the current funding arrangements disadvantage gender-specialist holistic providers and proposals should tackle this if Government is serious about delivering its [Women's Strategy](#).
- With respect to Residential Women's Centres, we have concerns around the detailed arrangements and implications for support services provided by charities and their independence from punishment.
- There should be further consideration of the impact of sentencing on primary carers and pregnant women to ensure alternatives to custody are used to minimise harm to children and families.

## **Any other reflections or comments on the White Paper, Impact Assessment or Equality Statement?**

As mentioned, the EqIA should fully consider the impact of longer sentences on Black, Asian and minoritised women and their children, as well as that of the imposition of minimum sentences for repeat offenses and use of problem-solving courts. Ensuring the independence from enforcement and punishment of charities and support services is also an important equalities issue given the low levels of trust which many minoritised communities have in state agencies, often due to previous discrimination and abuse.

## **Why me?**

Why me? are the national charity delivering and promoting access to Restorative Justice for everyone affected by crime.



### **What were you pleased to see in the White Paper and why?**

We're pleased that the Government highlights Restorative Justice as a positive intervention which we should try to encourage or increase. For example, on Page 104 "We believe restorative justice is an important part of the justice system and has significant benefits both for the victim and for the rehabilitation of offenders."

These statements of intent show that the Government looks positively on Restorative Justice - at least in theory - and this is a good foundation on which we can build further improvements to its provision.

The plans to increase the use of deferred sentencing seem positive, and could offer an increased opportunity to utilise Restorative Justice.

### **What were you disappointed or concerned to see and why?**

With regards to Restorative Justice, the concerns are more relating to missing details which are covered in the next point. With regards to the bill in general, we share concerns raised in other parts of the criminal justice sector about the increased emphasis on longer sentencing, despite a lack of evidence that this is effective.

### **What would you have liked to have seen that was missing?**

There are a number of details about how increased Restorative Justice can be achieved in practice which are missing from the White Paper. The paper states that: "The greater use of deferred sentencing will also provide opportunities for restorative justice practices to be deployed" (Page 52). But it doesn't give further details about how this opportunity will present itself. Questions remain such as:

a) When would the process take place? Would the whole Restorative Justice process be expected to take place during the period of the deferment? Or are they only suggesting that the process would start during this period? b) Who is responsible for instigating Restorative Justice post-conviction but pre-sentencing? c) Would the offender be pressured to take part in Restorative Justice under the illusion that doing so could reduce their sentence? If so, how can we address the fact that that violates principles of consent that are important with Restorative Justice?

Moreover, it would have been more helpful if the paper had addressed the issue of backlog in the court system and how deferred sentencing will work in this context. If this backlog is still in place, then suggesting a restorative intervention post-conviction would mean contacting victims of crime a very long time after the incident occurred. This will greatly reduce the likelihood of them being willing to take part.

We would therefore like to see the government commit to a renewed National Action Plan for RJ. This would enable the positive intention to increase access to Restorative Justice to be translated into practice. The last national RJ Action Plan ran until March 2018, so a new plan is long over-due.

### **Any other reflections or comments on the White Paper, Impact Assessment or Equality Statement?**

The White Paper proposes abolishing Reparation Orders. Reparation Orders are designed to contain a restorative element, so this could theoretically reduce one method with which people can access Restorative Justice. However, people who we consulted within the youth justice sector agreed with the Government view that these orders are now largely redundant, and other orders are used instead to achieve the aims that the reparation order was designed to achieve. The removal of them does not give us cause for concern for this reason.

## **Unlock**

Unlock is an independent award-winning national advocacy charity that provides a voice and support for people who are facing stigma and obstacles because of their criminal record, often long after they have served their sentence.



### **Summary**

Unlock's overall reaction to the white paper is quite mixed. Some changes will reduce employment discrimination by reducing the need to disclose a criminal record and this will help a good number of people return to a normal life after conviction. We are happy to support these proposals. However, the changes are still quite minor and several critical issues are not addressed in a meaningful way. The proposals are an iterative improvement, not a true reform.

### **What were you pleased to see in the white paper and why?**

- Shortened disclosure periods
- Limited changes to life disclosure
- Stronger argument for reforms
- Focus on employment

Unlock are pleased to see policy targeting specific issues that fuel reoffending, and that the system of disclosure will become generally more liberal. The MoJ has also made a more positive case for reform, arguing that less disclosure improves both public safety and the life chances of those with criminal records.

### **What were you disappointed or concerned to see and why?**

- Retaining life disclosure
- No clear evidence base

Despite liberalising in some ways, life disclosure was again retained without a serious challenge. Both in this area and for the amended disclosure periods, no evidence was offered to support the choices made. The shortened periods are better but they are still arbitrary numbers formulated for political convenience rather than to deliver on policy goals. As a result, we believe the changes will have at best a modest impact on reoffending.

### **What would you have liked to have seen that was missing?**

Criminal record sealing: Once a person is subjected to a disclosure period this is unchangeable, regardless of their circumstances. There is a clear need for a judicial process to review criminal records and declare them spent when appropriate.

Youth offenders sentenced as adults: Whether the youth or adult tariff is used for sentencing is decided by their age at conviction. Long delays means many youth offenders are eventually convicted as adults and face much longer disclosure periods, which undermines the purpose of having a youth tariff.

Driving convictions: Motoring convictions follow their own sentencing regime, not the general criminal tariff. This was a concession to insurers in 2012, but it is clearly unjust and needs to be addressed.

## **Transition to Adulthood Alliance**

The [Transition to Adulthood Alliance](#) (T2A) is a collaboration between 12 leading criminal justice, health and youth organisations, including the Criminal Justice Alliance. T2A produces and promotes evidence for effective ways of working with young adults (aged 18-25) who commit crime.



### **Reflections on the Sentencing White Paper**

The Alliance, convened and funded by the Barrow Cadbury Trust, has been making the case for a distinct approach to sentencing for young adults for over a decade based on an [irrefutable body of evidence](#) from neuroscience that the brain is not fully formed until the mid-20s. We know that young adults typically have more psychosocial similarities to children than to older adults in their reasoning and decision-making. In young adulthood, there is a crucial window of opportunity where a pro-social identity and desistance from crime can be cultivated.

The 'plasticity' of their brains means that it is a particularly good time for learning, personal growth and the development of pro-social identity. However, by virtue of their stage of development young adults can quickly become disillusioned and disengaged from professionals if support is not forthcoming, appropriate or timely. Young adults' experiences of the justice system are therefore of utmost importance in determining their capacity to build a crime-free future, develop their potential, and contribute to society. This conclusion has not only been reached by T2A, but also by the House of Commons [Justice Select Committee](#), by Lord Toby Harris in his [review of self-inflicted deaths](#) of young adults in prison custody and David Lammy MP in his [review of the treatment of and outcomes for BAME individuals](#) in the justice system.

Whilst we welcome some of the proposals in the White Paper—particularly the commitment for detailed pre-sentence reports for young adults—we are disappointed that the government has not taken the opportunity to establish a coherent, rational and strategic approach to sentencing young adults which we and others have long advocated. Examples of the inconsistency in approach include, testing 'house detention' for young adults aged 18-20 without any rationale for why it might be effective for this cohort; abolition of Attendance Centres (a dedicated community sentence for young adults) without any alternative proposals; sidestepping consideration of long-standing concerns about the sentence of detention in a young offender institution for 18-20-year olds, which the Justice Committee proposed extending up to 25 years of age; increasing the duration of custodial sentences which will impede unnecessarily the natural maturation process; and, strengthening the 'robustness' of out of court disposals and community orders.

Some of these measures are counter to the government's [own evidence](#) on young adult males which specifies that approaches known not to work with this cohort are "punitive or deterrence-based approaches" and "interventions that reinforce a criminal identity".

We are encouraged to see that the government has recognised in the proposals on tariff reviews for life sentences the importance of dealing with children who commit crime in ways which reflect their maturational development ([para 330](#)). What is not clear to us is why this important acknowledgement does not also apply to such sentences received by young people up to the age of 25 and to other sentencing provisions for people aged 18 to 25 for whom there is equally strong research evidence on the impact of maturity on criminal behaviour. Indeed, the government states, directly counter to the neuroscientific evidence, that age 18 is past "the age where significant development occurs".

Perhaps the government does not accept the validity of the evidence or does not accept the need to apply this to sentencing practice, including as part its obligations under the Equality Act 2010 regarding the [protected characteristic of age](#). Should it be indicative of caution towards the implications of the evidence base for sentencing policy for young adults then the White Paper could have provided an opportunity to build on and strengthen our collective understanding by investing in piloting, further research and evaluation of distinct custodial provision and community orders.

# EQUAL

EQUAL National Independent Advisory Group works collaboratively to improve outcomes and champion race equality in the criminal justice system (CJS) for black, Asian and minority ethnic (BAME) and Muslims.



## **What were you pleased to see in the White Paper and why?**

Firstly, we want to highlight some of the positives that came out of the White Paper, which includes the enhancement and expansion of Community Sentence Treatment Requirements (CSTR's). CSTR's are intended to provide a range of treatment options and tailored interventions to support the rehabilitation of those with a range of treatment needs. This is a positive step in the right direction given that BAME offenders can have complex needs.

A proposed improvement in the delivery of pre-sentence reports (PSR's) is encouraging to see, allowing sentencing outcomes to reflect the specific needs of the individual. High quality PSR's can play a significant role in sentencing for BAME communities more so, who are often 'adultified' making it difficult for them to convey their vulnerabilities in a court room setting. A PSR that considers all of the accused's circumstances and the reasons behind the offending behaviour may also assist the courts in assessing the individual's victim/perpetrator status.

BAME people make up over 50% of the youth custody [population](#) and although the figures are not available, there may potentially be a link between the disproportionality of the youth prison population and the unemployment rate of BAME people (as a result of previous convictions).

By removing the requirement for automatic disclosure and self-disclosure of youth cautions, reprimands and warnings and removing the 'multiple conviction' rule (meaning you must disclose all convictions where you have more than one regardless of the nature of the offence or the sentence) we are hopeful that offenders, particularly BAME offenders will have a better chance of securing employment and breaking the cycle of reoffending.

Given the current court backlog and the fact children from a BAME background make up 57% of the custodial remand population we welcome the introduction of a strengthened custodial remand threshold. The effectiveness of the current test as the paper outlines is "*questionable*" However, despite the complexity of remand decisions we believe justifications for any decisions should be made in full and in writing, addressing any protected characteristics and its potential impact on remand decision making. This would afford organisations who provide scrutiny, advice and support to CJS organisations the opportunity to really understand why disproportionality in remand exists beyond the time limited research being undertaken by the Youth Justice Board.

On some occasions bail is refused on account of one single previous incident of breaching bail. Reforming the history condition to ensure the wording reflects that only recent or significant history of breach whilst on bail should be considered is a significant improvement. This will hopefully mean that BAME children who may have breached bail in the past given their specific complex needs will only be remanded where the breach was serious or one of many breaches and/or the other thresholds are met.

## **What were you disappointed or concerned to see and why?**

It was disappointing to see that those with sentences of between 4 and 7 years will have to serve 2/3 of their sentence. This is likely to drive further inequality of outcomes. We know from Sentencing Council [research](#) that black people are more likely to be sentenced to custody and for longer than their white counterparts. If sentences between 4-7 years which include drug offences like possession with intent to supply (as per the sentencing council research) are no longer subject to automatic halfway release, then we can predict that young black men specifically, will face longer terms in prison than their white counterparts. This change also does not consider the impact on those who have transitioned from childhood to adulthood during their sentence and seems to go against the rehabilitative approach advocated by the wider CJS.

We are hugely concerned about the new power to prevent automatic release for offenders who become of significant public protection concern. We must be extremely careful to ensure that any public protection concerns are founded on firm facts/evidence vs uncorroborated 'intelligence'. Labelling someone a terrorist will have a significant impact on that individual's life despite the outcome of their case. Clarity is needed on the grounds that the Parole Board will use to assess cases and safeguard those individuals who are serving a sentence for non-terrorism related offences but are perceived to present a significant danger to the public. Given that the paper provides no detail on how these offenders will be assessed there is a risk that offenders who appear Muslim or are practicing Islam will be unfairly assessed as presenting a significant danger to the public. We would ask that further information on this be made publicly available.

The proposed inclusion of 18-20-year olds in Whole Life Orders is a step in the wrong direction, in our view. Many of our partner organisations have long championed for an increase in the age of criminal responsibility and more generally an approach that considers maturity at the time of sentencing and at the time of committing the offence. WLO's are in complete contrast with this approach, it fails to consider the maturity of an individual 18-year-old at the time of the incident.

[Statistics](#) show that black offenders had the highest rates of reoffending in 2016/17 at 33.3% despite only making up 3.3% of the [population](#). The White Paper sets out that often minimum custodial sentences are not awarded for reoffending so the proposal is that specific offences (second strike possession of a knife or offensive weapon, threatening a person with a blade or offensive weapon, third strike importation of class A drugs) have the threshold raised for not passing a minimum sentence. This will indirectly impact on BAME communities given that the reoffending rate for BAME communities are disproportionate (for various reasons, not race essentialism). BAME communities are also disproportionately victims of serious violence and we know anecdotally that young people are often forced to 'protect' themselves from the threat of violence. With the over policing of BAME communities and the requirement to hand out at least minimum term custodial sentences (unless justified) for knife/offensive weapon offences we foresee that there will be an increase in particularly black communities being affected by this rule.

The retrospective removal of automatic early release earlier this year was and still is a major concern for us, this will directly impact upon Muslim offenders (who may be stereotyped to be terrorist) and goes against the rehabilitative principles that the CJS prides itself on. This blanket approach does not take into consideration individual offender behaviour and their likeliness to reoffend.

It is imperative that Parole Boards in these cases are reflective of the prison population and are trained thoroughly on cultural competence to mitigate the risks of unconscious bias and ensure fair outcomes. We would also encourage the Parole Board to publish outcomes data to allow organisations in the voluntary sector to be able perform their accountability functions.

Through our work with young people we know that often during a stop and search if police officers are unable to find the item that raised their suspicions they can sometimes engage in what we call 'fishing' where they continue to pursue the individual for an alternative offence. In some cases, this 'fishing' expedition can escalate resulting in a charge against the individual, usually 'assault on an officer' (where nothing significant can be found). This is particularly common in BAME communities where heavy-handed policing and 'fishing' are quite common and can be used as a technique to deter individuals from making a complaint about their experience with the police. We recognise the importance of protecting frontline workers, but we are aware of the risks associated with allowing these offences to be aggravated on sentence. We believe that this may impact on BAME communities and will deter them from complaining about the police, distorting the current data picture.

### **What would you have liked to have seen that was missing?**

We would have liked to have seen the inclusion of further safeguards to protect BAME communities and reduce disparities given the most recent CJS data. This includes requiring judges to justify the reasons why they have sentenced outside of the sentencing guidelines, including specifically addressing protected characteristics in writing and orally. It is noted that this has been considered for custodial remand decisions and is welcomed however there is still no requirement to include equality and diversity issues and we would encourage the courts to consider these issues in their justifications. The courts have also not fully embraced the Lammy recommendations and we are concerned that this failure to implement the recommendations will see racial disparities increase. We would urge the courts to reconsider the recommendations and implement them without delay whilst finding ways to specifically address inequalities within the courts.

### **Any other reflections or comments on the White Paper, Impact Assessment or Equality Statement?**

We welcome the completed Equality Impact Assessments although we believe the indirect discrimination that may result from some of the proposed changes should not be justified as "*proportionate means of achieving a legitimate aim*". More generally, there seems to be a lack of clear evidence that suggests the proposed changes are required and will achieve the desired outcome. We would advocate for additional research, data and analysis to understand the evidential grounds for such drastic and punitive measures before implementation.

Overall, we are concerned that the CJS is moving towards a punitive model and moving away from the previous rehabilitative model. This shift, in our view is the wrong one. Many of those who are in the system have complex and varying needs, the focus should be people centred and rehabilitative to support individuals to rebuild their lives, and our fear is that this heavy handed approach will only increase racial disparity and disproportionality across the CJS.

# Release

Release is the national centre of expertise on drugs and drugs law in the UK. The organisation, founded in 1967, is an independent and registered charity. Release provides free non-judgmental, specialist advice and information to the public and professionals on issues related to drug use and to drug laws. The organisation campaigns directly on issues that impact on its clients - it is their experiences that drive the policy work that Release does and why Release advocates for evidence-based drug policies that are founded on principles of public health rather than criminal justice.



## **What were you pleased to see in the White Paper and why?**

We welcome a commitment to improving the continuity of care for treatment of people who use drugs (PWUD) problematically on release from prison. In their 2019 report on Custody-Community transitions the [ACMD described](#) how "custody as an opportunity to reduce drug problems and offending was often squandered by failure to provide support on release". The co-commissioning of services – if properly funded – has the potential to ensure that treatment plans, prescriptions, and support do not disappear at a moment of acute vulnerability.

## **What were you disappointed or concerned to see and why?**

We have significant concerns about the problem-solving courts being posited as a solution for PWUD problematically. Whilst the Paper refers to the successes of FDAC, it is not *this* model that it seeks to replicate. The evidence base [relied on](#) is for the international 'drug courts', the proposed core elements of which include mandatory guilty pleas, regular drug testing, and graduated sanctions and incentives. This is medical treatment by coercion, violating the principle of informed consent.

The critical review found that only 47% of participants 'graduate' from the drug courts, and that drug use and criminal behaviour were only shown to reduce while enrolled in the programme. The costs savings are largely attributed to reduced incarceration, which could be replicated by simply providing health interventions.

Our concern is that the expansion of problem-solving courts proposed here will repeat the problems of the models on which they will be based, and fail to demonstrably reduce recidivism. Research finds that their existence results in '[net widening](#)', as the police may view the courts as the best way of securing people help. This is of particular concern when combined with the proposed changes to out-of-court disposals.

We also oppose the increased use of mandatory minimum sentences for drug importation, which [remove judicial discretion particularly in relation to those who are exploited and coerced to commit these offences](#).

## **What would you have liked to have seen that was missing?**

As noted in the Foreword, discussion of drug policy is absent, which is remiss considering the amount of evidence against a criminal justice approach for drugs.

Despite evidence that tough sanctions are ineffective at reducing drug use, and that Class A drug use had remained stable over the last decade, the government continues to push the rhetoric that 'drug policy is working, drug use is falling'. Meanwhile, when it compared the legal framework of 14 countries it concluded that there was not "[any obvious relationship between the toughness of a country's enforcement against drug possession, and levels of drug use in that country](#)".

The Paper refers to the Carol Black review into the prevention, treatment and recovery of problematic substance use – we urge that this is carefully considered when determining the treatment of PWUD within the criminal justice system.

## **Any other comments about the white paper, impact assessment or equalities statement?**

Although the White Paper discusses ethnic disparity, too little attention is paid to this disproportionality, much less *intersectional* disproportionality, and there is not a sufficient assessment of the *further* harm that could be done to ethnic minority individuals through increased sentence lengths.

Research undertaken by [Release, StopWatch, and LSE](#) in 2018 identified a number of ways in which sentencing disparities for *drug* offences perpetuate injustice: with Black people being prosecuted for drug offences at more than 8 times the rate of White people in 2017, and with Black and Asian people being convicted of cannabis possession at 11.8 and 2.4 times the rate of White people, despite consistently [lower rates](#) of self-reported use.

Furthermore, evidence suggests that this disproportionality is even more pronounced for Black *women*, with analysis of Crown Court sentences for drug offences in 2014 revealing that Black women were almost [25% more likely](#) than white women to be sentenced to custody at Crown Court.

# **Probation Institute**

The Probation Institute is a centre for excellence in probation practice.



## **What were you pleased to see in the White Paper and why?**

Generally positive response recognising that we now have a Lord Chancellor with first-hand knowledge and experience of his ministerial brief. Welcome emphasis on rehabilitation.

Unpaid work – positive about intention to make more constructive use of this disposal – developing skills etc – but again this is not new as an initiative.

Positive about further changes to Rehabilitation of Offenders Act.

We welcome the proposal to reintroduce a system of more thorough (and effective) court reporting by probation on defendants – PSRs – properly prepared on adjournment in far greater numbers as used to be the case. Hopefully this leads to greater confidence in and use of community sentences.

Positive about problem solving courts – though again not new, but never properly explored and invested in originally.

### **What were you disappointed to see and why?**

Sentencing: not unexpectedly an emphasis on tougher sentencing notably for high risk offenders and serious offending (terrorism etc). Concern that this could contribute to a general up-tariffing effect. Also constant political tinkering with sentencing structures only serves to make for more confusion.

Emphasis on rehabilitation - Should be stronger on seeking to reduce short term prison population which could in turn provide funding for more probation/rehabilitation.

### **What would you have liked to have seen that was missing?**

Disappointed that (re)professionalisation of the service seemingly does not extend to developing an objective regulatory system.

Disappointed also that the opportunity is not being taken to consider whether in fact the Civil Service is the correct home for Probation – as opposed to a local structure (as was) or perhaps an NDPB. This reflects the fundamental question about separation of powers as between the executive and the judiciary.

Slightly encouraged at the implication that basic supervision is a key element of Probation but would like to see the reintroduction in legislation of supervision as a requirement – perhaps losing the little understood and fundamentally flawed Rehabilitation Activity Requirement.

Shame there is nothing about the age of criminal responsibility being raised.

### **Any other reflections or comments on the White Paper, Impact Assessment or Equality Statement?**

An overarching sense of déjà vu in many respects, notably tougher sentencing and the reinvention in the context of Probation of many actions and elements that were commonplace or standard practice prior to Transforming Rehabilitation (TR).

A number of good initiatives, but all with significant resource implications – will new funding match what is planned?

Wary of professed intention to expand use of new technology in form of EM etc but slightly encouraged that this should be more under the control of Probation supervisors.

Proposals on youth sentencing are incredibly detailed – probably more than is healthy in a White Paper.

# Nacro

We are a national social justice charity with more than 50 years' experience of changing lives, building stronger communities and reducing crime. We house, we educate, we support, we advise, and we speak out for and with disadvantaged young people and adults. We are passionate about changing lives. We never give up.



## **What were you pleased to see in the White Paper and why?**

We were pleased to see the proposal to strengthen the legal test for custodial remand for children. Currently remand accounts for almost a third of all children in youth custody, the largest proportion in the last ten years, and we know that approximately two thirds of those children will not go on to receive a custodial sentence. Custodial remand for children should only be used as a true measure of last resort.

We also welcome the announcement of additional funding for community sentence treatment requirements, as we know that community sentences are more effective at preventing further offending. Investment in robust community alternatives that address the root causes of offending and build judicial confidence in their efficacy can help to reduce the reliance on short prison sentences for low level offending.

We were pleased to see that the government intends to make changes to what is disclosed during a criminal record check but we believe that the plans do not go far enough. To create the open, transparent and fair system we need, we need to look at the whole disclosure system in the round and how every change impacts somewhere else in the system. We will continue to push for a more fundamental review.

## **What were you disappointed or concerned to see and why?**

The White Paper's focus on increasing the length of time spent in custody for serious offences and reductions in chances to get the opportunities for parole is a disappointingly punitive step. We urge Government to follow the on evidence of what works to reduce reoffending. We need to create a criminal justice system fit for the 21st century which reduces reoffending, protects victims and gives people the best chance at a second chance.

## **What would you have liked to have seen that was missing?**

We would like to have seen an acknowledgment that, in fact, sentencing has been getting tougher for three decades, and that this has had little impact on levels of crime. We need to look holistically at the justice system, and reset the balance between retribution and rehabilitation in order to build a justice system that can serve to give people the best chance at a second chance, and in so doing create a safer society for all.

Reducing reoffending should be at the heart of any reform, which has to involve reducing our reliance on the ineffective use of prison as a punishment for many, and ensuring that prisons can provide a truly rehabilitative environment for those who remain.

It must also improve the practical and personal support people need on release, to make sure people leave prison with somewhere safe and secure to live, enough money to get started; a job or training and wider support to help them move on with their lives. We look forward to the Reducing Reoffending Strategy mentioned in the White Paper and hope it takes the opportunity to reset this balance.

It would have been encouraging to have seen more of a focus on prevention and how we can divert people away from the criminal justice system by looking at the needs of people who are at risk of offending and what support could divert them from this path before they are labelled as 'criminal'.

**END.**



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