



Ministry
of Justice

The Right Honourable
Robert Buckland QC MP
Lord Chancellor & Secretary of
State for Justice

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Dear Nina,

RESPONSE TO THE SENTENCING WHITE PAPER

Thank you for your letter and for sharing the feedback of your member organisations on our recent Sentencing White Paper, *A Smarter Approach to Sentencing*. I read your response with interest, and I would like to thank you and your members for their thoughts on the adult and youth sentencing framework.

Sentencing plays a crucial role in the criminal justice system - it is a key means through which the public, victims, and offenders see justice being done. There are five key principles of sentencing: punishment, reduction of crime, reparation, rehabilitation and public protection. If our criminal justice system is to work for everyone, then the public needs to be confident that each of these principles is upheld. To do this, we need a sentencing framework that targets specific groups of offenders in a smarter, more nuanced way.

That is why the White Paper announced reforms that will ensure that serious sexual and violent offenders spend longer in custody, while it also proposed new measures aimed at tackling the underlying causes of criminal behaviour and improving the rehabilitation and supervision of offenders in the community. We recognise that public confidence is not just about better use of custody. In many cases – particularly for low-level offending – effective community supervision keeps the public safer.

I am confident that the proposals set out in this paper will create a more effective, and fair, system. We have already delivered on certain commitments. On 18 December, for example, we launched our call for evidence on neurodivergence. As you know, we are now working to prepare legislation to deliver on the other measures set out in the White Paper. My officials would be happy to meet with you to discuss these proposals in more detail before it is introduced.

I attach to this letter an annex which addresses the points raised by your member organisations, focussing in particular on the recommendations that relate to the policies set out in the White Paper.

Yours ever

RT HON ROBERT BUCKLAND QC MP

ANNEX A

Protecting the Public from Serious Offenders

1. This Government is clear that serious sexual and violent offenders must serve sentences that reflect the severity of their crimes – helping to protect the public and giving victims confidence that justice has been served. That is why we are delivering on our manifesto commitments to introduce tougher sentencing for the worst offenders, end automatic halfway release from prison for serious crimes, and toughen community sentences. Our proposals will ensure that those convicted of some of the most serious sexual and violent crimes, such as rape, manslaughter or attempted murder, spend a longer portion of their sentence in prison.
2. We will address your recommendations on the following below: *Whole Life Orders; discretionary life tariffs; the power to refer dangerous offenders to the Parole Board; and minimum terms for repeat offenders.*
3. We believe that our plans to give courts the discretion to impose Whole Life Orders on younger adults, aged 18-20, in exceptional circumstances strikes the right balance between recognising there may be exceptional cases where it is warranted and continuing to take the relative lack of maturity of younger adults into account. It will still be the case that Whole Life Orders will not ordinarily be given to offenders under the age of 21, but it is fair that judges should be able, in rare cases, to impose this most severe punishment if that is appropriate.
4. We have no plans to apply changes to discretionary life tariffs retrospectively.
5. On the power to refer SDS offenders who become dangerous to the Parole Board ahead of halfway release, as we develop this policy for legislation we will ensure that the test that the Parole Board will be applying is clear and transparent, and appropriate safeguards are in place. We intend that this power will be used only in exceptional cases.
6. In relation to minimum sentences for repeat offences including domestic burglary, the importation of illegal drugs and knife possession, it is already set out in legislation that whilst these are not mandatory, they are a mandatory consideration that the court must make before passing a sentence. We are proposing to amend the criteria for courts to depart from giving the minimum sentence for these serious crimes to ensure it only occurs in exceptional cases, clarifying any ambiguity in the current law. Judicial discretion to depart from the minimum is retained, as we recognise this will not be appropriate in all cases.

Supervising Offenders in the Community

7. While the White Paper's measures will ensure that the most serious offenders spend longer in prison, we are also clear that custody should always be a last resort. That is why we have set out reforms to ensure that community sentencing is effective, offers punishment, and responds to the underlying causes of offending, so that it can offer a viable alternative to custody for less serious offenders.
8. We are pleased to note your members' support of a number of our measures to improve the community sentencing framework and provision. We will address your recommendations on the following below: *evidence for Problem-Solving Courts;*

evaluation of Electronic Monitoring; Senior Attendance Centres; and House Detention Orders.

9. Historically, various problem-solving approaches have been trialled, including Liverpool Community Justice Centre, Family Drug and Alcohol Courts, and Greater Manchester's female-focused approach. However, a comprehensive problem-solving court model incorporating all the problem-solving components has not previously been used. Where some elements have been integrated into previous initiatives, evaluations were either limited in scope or did not take place. We therefore want to pilot the full model of PSCs across various cohorts to properly test whether it works in our jurisdiction, incorporating internationally recognised problem-solving components, such as regular judicial monitoring, the use of graduated sanctions and incentives, and tightly co-ordinated supervision and support.
10. We share your desire for an increased evidence base around Electronic Monitoring (EM). Whilst it is proven to be an effective tool in some areas, continuing to build and improve our evidence base is key, and is built in to our approach for expanding the use of EM set out in the White Paper. For example, we are undertaking a significant test of the effectiveness of location monitoring to deter and detect further offending through the Acquisitive Crime project which commences next year. This project will impose location monitoring on offenders who have committed offences such as burglary and robbery, for up to a year, after release from custody. We will be conducting an evaluation of this project which will be published.
11. Judges have been using Senior Attendance Centre requirements in declining numbers since the introduction of Rehabilitation Activity Requirements (RARs). Since 2017, approximately only 80 offenders a month have been sentenced to a SAC. We are therefore removing it from the menu of community requirements, streamlining options and maximising use of other requirements which are more responsive to the rehabilitative needs of individuals. We believe that young adult offenders' needs can be better addressed by other available requirements which promote rehabilitative outcomes. This includes Unpaid Work and Rehabilitation Activity Requirements targeted at education, employment, relationships, lifestyle and more. Under the Probation Reform Programme, we will also be introducing evidence based Structured Interventions and the Dynamic Framework which will provide consistency and be commissioned locally to meet demographic requirements.
12. The House Detention Order would be served in the community and the key element would be a lengthy and robust curfew, which could support rehabilitation and stability for suitable offenders. Alongside this courts would be supported to impose additional requirements to tackle criminogenic issues. We are currently considering the details of this initiative, and how it can be tested, and we will work with stakeholders to refine plans. We fully recognise the importance of only using such an approach with offenders for whom it is likely to be beneficial, and recognise that there are many offenders who will be unsuitable for this approach.

Empowering Probation

13. These reforms to the community sentencing framework will be underpinned by our ongoing probation reform, to deliver effective, tailored and responsive supervision of offenders in the community. In May 2019, we announced that we will be unifying probation to bring services together under the National Probation Service from June 2021, and the White Paper reiterated this commitment.

14. Our reforms will deliver a platform for tougher community sentences by strengthening supervision and support for offenders while providing a critical level of resilience and stability for core services. We are already delivering on our commitments to hire more Probation Officers, to transform probation leadership and to draw on the expertise of the private and voluntary sectors to provide rehabilitation services.
15. The National Probation Service will be managed through 12 regions across England and Wales, however significant operational autonomy will be vested in the c100 Probation Delivery Units across England and Wales. Every Unit will have an operational head with responsibility for the delivery of probation services.
16. The implementation of the Unified Model means that the current National Standards, issued in 2015 and designed to set the expectation on how staff will deliver key probation services, need to be up-dated. Consequently, a working group has reviewed the current document and identified amendments needed, including the development of a methodology to ensure consistency of standards, both now and in the future. These standards are due to be implemented in February 2021.
17. The new model for commissioning resettlement and rehabilitation interventions, the Dynamic Framework, has been designed to facilitate co-commissioning with other key partners including Police and Crime Commissioners, local authorities and health partners. The Dynamic Framework has been established to provide an easy route for the National Probation Services and partner agencies to commission resettlement and rehabilitation services, either solely or together.
18. Through the Dynamic Framework, rehabilitation support will be commissioned at sub-regional levels where appropriate. For example, Dynamic Framework contracts for wellbeing and for women's services will be tendered at PCC level because these services benefit from localised delivery.
19. As well as formal co-commissioning, PCCs and other partners can be involved in other ways. For instance, they have provided feedback on specifications and in some areas they are contributing to bid evaluations. We expect this form of working together to continue and develop. This will be for Regional Probation Directors and partners to develop through appropriate local forums.
20. Furthermore, improving the quality of Unpaid Work placements by better understanding community needs has an important part to play in the rehabilitative process, helping to reduce the risk of reoffending. By requiring probation officials to consider local needs we hope to ensure strong community participation in UPW, both from key agencies and members of the public.
21. The design of the Dynamic Framework has been informed and shaped by the service user feedback sought at appropriate opportunities, including service user forums and national surveys. For example, the Target Operating Model has been subject to review by BAME service users, through a challenge process conducted via the Revolving Doors Agency.

Reducing Reoffending

22. Reducing reoffending remains a top priority for this government and we are taking a cross-government approach to address this complex issue, as this is not something the Ministry of Justice can do in isolation.
23. This month we announced that drug treatment services in England are to receive an extra £80m to increase the number of treatment places for prison leavers and offenders

diverted into community sentences. We will provide further updates on other areas of our work on reducing reoffending shortly.

24. The priorities we set out in the White Paper to reduce reoffending, focussing on accommodation, employment and substance misuse, are reinforced by the Prime Minister's Crime and Justice Taskforce, which was established last year to consider matters relating to the prevention of crime and the effectiveness of the Criminal Justice System, including driving progress across government on reducing reoffending.
25. The MoJ has also established an official-level Cross-Government Reducing Reoffending Board with representatives from a wide range of Government departments. This Board will drive progress and support the delivery of rehabilitative interventions across government and further explore a wide variety of opportunities to build on the work already underway.
26. We were pleased to see that proposals to reform criminal records were broadly welcomed by a number of your members. These reforms will introduce a rehabilitation period for some custodial sentences of over 4 years so that, for the first time, such sentences will not need to be disclosed when a person is applying for most roles and positions.
27. However, as well as the risk of reoffending, it is important to consider the level of harm caused by the individual's offence, and the level of further harm should they offend again. We therefore believe that it is right that those convicted of serious violent, sexual and terrorist offences and sentenced to over 4 years in prison should be excluded from this change.
28. We have also considered whether an individual review system should review cases and concluded it would not be necessary and could lead to a significant and ongoing financial burden. This aligns with the recent ruling on aspects of the disclosure regime, in which the Supreme Court were clear that such a mechanism was not necessary for a proportionate system.
29. The government has already implemented legislation to change the rules governing disclosure for sensitive roles (those working with children, vulnerable adults or in a position of public trust) by removing the disclosure of youth cautions, reprimands and warnings and the multiple conviction rule (which meant that, if an individual had more than one conviction, all their convictions will be disclosed on standard or enhanced certificates irrespective of the nature of the offences or the time separating them).
30. The result of this legislation, which was implemented in November 2020, is that youth cautions, reprimands and warnings will no longer be automatically disclosed for standard or enhanced criminal records checks. By removing youth cautions from automatic disclosure, we will enable young people to move on from their previous offending.

Youth Justice

31. Some of the recommendations in the briefing reflect those of previous Justice Select Committee reports on the Treatment of Young Adults in the Criminal Justice System (2016) and Children and Young People in Custody (2020). We responded to these reports in January 2017 and January 2020 respectively.
32. We were pleased to see that several of your members welcomed the White Paper's proposals to tighten the criteria for resorting to custodial remands of children. These proposals reflect the fact that we have a separate justice system for children and young

persons where custody is a last resort, in recognition of their different needs, level of development and vulnerability.

33. We note that a number of your recommendations centred around the transition to adulthood, and we will address the following recommendations below: *those who turn 18 while waiting for their case to come to court should remain in the youth courts; and the government should commit to extend detention in Young Offender Institutions to 25 years of age.*
34. Where a child turns 18 after an offence is committed but before conviction, they will be tried in adult court and, if found guilty, the maximum sentence available will likely be higher than that which would have been available at the time the offence was committed. This does not, however, necessarily lead to significantly longer sentences in practice. Youth and maturity continue to inform sentencing decisions even after the offender turns 18, and the Sentencing Council's definitive guideline, Sentencing Children and Young People, states that in these cases courts should use the sentence that would have been given at the time the offence was committed as a starting point. Overarching guidelines for sentencing adults similarly list age and/or lack of maturity as a mitigating factor when determining the sentence.
35. Younger children have very different needs to young adults, and the special measures that exist in youth courts - such as the right to anonymity - are intended to protect vulnerable children. That is why they are not automatically available to defendants over the age of 18, regardless of when the offence was committed. However, assistance (including the Registered Intermediaries scheme) does exist to support adult defendants who are determined to be vulnerable. Throughout court proceedings, consideration is given to the age - both chronological and developmental - of the defendant, and measures exist to ensure that those who turn 18 before trial are supported.
36. In our response (January 2017) to the Justice Select Committee's report on the Treatment of Young Adults in the Criminal Justice System, we rejected the recommendation to extend the Detention in a Young Offender's Institution (DYOI) to 25 years of age. This was on the grounds that if we wish to properly consider maturity, the focus should be on the concept rather than altering the chronological age range. We did however, recognise that young adults are a group with distinct needs relating to their maturity which may require a more tailored-approach, following strong evidence that the brain does not develop fully until the age of 25. Our policy and operational focus has therefore been on developing and improving practice which takes maturity and brain development into account.
37. In addition to our response in January 2017, there are a number of measures already in place to take into account the issues affecting this cohort. An evidence-informed resource pack and screening tool is available across prisons and probation areas to assess and support young adults whose psychosocial maturity is still developing. The new Offender Management in Custody (OMiC) model in prisons means that young adults will have more consistent key worker support. A specialist Model of Delivery (MOD) that reflects the evidence of the needs and risks of this cohort has also been developed to support prison staff.
38. We are committed to improving support for young adults to help them rehabilitate back into society and turn away from crime. We will continue to work across government and with our partners, to develop our approach to addressing the needs of this cohort. For example, we are also working in partnership with the Mayor for London's Office for Policing and Crime (MOPAC) and other Government Departments and agencies to fund

a three-year pilot to meet the needs of young adults (18-25) and 17-year olds due to transition from youth offending services to adult probation services in London.

Assaults on Emergency Workers

39. The number of assaults on emergency workers is on the rise. Front-line emergency workers operate in what can sometimes be life and death situations to protect the public and this may mean they place themselves at personal risk. It is in this context that the law recognises them for special protection.
40. The government's manifesto committed to consulting on an increase in the maximum sentence for assaulting an emergency worker. Last summer, the government fulfilled this commitment and launched a targeted consultation with representative groups for emergency workers, as defined by the Assaults on Emergency Workers (Offences) Act 2018, and other key stakeholders, including the judiciary, CPS and legal practitioners, on doubling the maximum penalty for assaulting an emergency worker. We sought feedback on how the legislation is operating in practice and whether the current maximum penalty provides the courts with sufficient powers to reflect the seriousness of the offending. The large majority of those who responded were in favour of doubling the maximum penalty from 12 months to 2 years to ensure that emergency workers have sufficient protection from the law to enable them to carry out their duties.

Equalities

41. We have used the best available data and evidence to look at any equality issues that might arise from the White Paper, and we will continue to review this as we develop policies for legislation.
42. To be effective, people must have confidence that the justice system is fair, open and accessible to all – one where no individual faces any degree of bias based on their background, faith or their ethnicity. But we know that there remains an over-representation of ethnic minorities in the criminal justice system, and disparities in outcomes for these groups.
43. Through the Criminal Justice Race and Ethnicity Board (set up in 2018) a greater emphasis has been placed on bringing a co-ordinated and strategic response to race disparity, building on pre-existing initiatives. These range from focusing on diversity in recruitment of front-line staff, to direct changes in day-to-day practice, or revised practice guidance. We have twice published comprehensive updates on the range of actions being taken forward in all areas of criminal justice, including the make-up of the leadership and workforce, improvements to data collection and changes in systems and practices.

Out of Court Disposals

44. We have noted your members' support of this proposal and will consider the recommendations put forward in this report as part of the implementation and broader reform of this policy. We will also be engaging with relevant stakeholders as we implement the proposed reforms to OOCs.
45. This proposal will increase opportunities for earlier diversion and out of court disposal. Referral at this early stage to relevant interventions services, such as substance misuse

services, can help address the underlying causes of offending behaviour and help reduce reoffending. We know from the Lammy Review that some BAME defendants have little trust in the criminal justice system, which can lead them to offer a no comment response interview or not admitting to the offence. This can result in an escalation of the matter resulting in a prosecution. There is therefore a risk that the requirement to accept responsibility or admit guilt would mean a BAME individual would be less likely to receive an early intervention via an OOC and would be more likely to be prosecuted.

46. We are currently running a 'deferred prosecution' pilot, Chance to Change, with two police forces, based on a recommendation in the Lammy Review. The Chance to Change model places less emphasis on admission of guilt and can divert offenders to intervention services without them accepting responsibility for the offence.
47. All forces already have independent criminal justice scrutiny panels in place in relation to OOCs. In July 2019 the NPCC published updated guidance to all forces on the panel function and advised that the panel chair should be independent of the Police. It also requires forces to undertake examination of disproportionality in respect of race and OOCs. To further mitigate against this, our new OOCs Guidance will address the disproportionately issue as highlighted by the Lammy Review.

Neurodiversity

48. The Independent Call for Evidence on neurodiversity was officially launched on 18th December 2020 and is being conducted by HMI Prisons and Probation with support from HM Inspectorate of Constabulary and Fire & Rescue Services. The review will cover a wide range of neurodivergent conditions, including autism, learning difficulties, learning disabilities and cognitive and behavioural impairments due to acquired brain injuries. We are committed to ensuring the criminal justice system treats all those who come into contact with it fairly, including individuals with neurodivergent needs.
49. Neurodivergent offenders are likely to need additional support to undertake their sentencing requirements and effectively engage with rehabilitation programmes normed to the needs of neurotypical offenders. The launch of a national 'Call for Evidence' aims to obtain a clearer picture of how prevalence is captured and the current national provision to support offenders with neurodivergent conditions in the CJS, alongside identifying any gaps in provision and areas of good practice.
50. This Call for Evidence will inform the development of effective evidence-based measures to support people with neurodivergent conditions in the CJS, including development of the neurodiversity toolkit for frontline staff that was also announced in the White Paper. These measures seek to improve awareness of neurodiversity in the CJS and provide staff with the tools and knowledge to better understand and identify neurodivergent individuals and support them to engage meaningfully with the rehabilitative aspect of their sentence.