

November 2019



CLINKS  
BRIEFING

# Sentencing in England and Wales

The key facts, the impact on the voluntary sector and an update on sentencing policy. (Updated February 2020).

## Introduction

The briefing summarises the key facts and issues around various sentencing types, considers the impact this has on the work of the voluntary sector in criminal justice, and provides an update on recent policy developments. In it, we outline three key asks for sentencing reform made by campaigners and voluntary sector organisations and explore the evidence and arguments for these. The aim is to equip the voluntary sector with the relevant information that will enable them to engage in current debates and future policy in this area. In particular the briefing will highlight where sentencing policy has an unequal or disproportionate effect on particular groups of people that the voluntary sector works to support.

## Policy context

There is growing debate around the need for sentencing reform in England and Wales. Short sentences continue to be used heavily, but they can be highly disruptive and damaging. They do not facilitate a successful transition back to the community, creating a revolving door in and out of prison. Alongside this, sentences for many offences have inflated significantly, contributing to an overcrowded, ageing prison population and fundamentally effecting resettlement and the delivery of services.

Pressure has been mounting to restrict use of short custodial sentences, thanks in no small part to the campaigning, research and hard work of voluntary sector organisations working in criminal justice. In his final speech, in July 2019, as Secretary of State for Justice, David Gauke MP called on his successor to consider reducing the use of short prison sentences and Secretary of State for Justice Robert Buckland QC MP in his former role as Minister of State for Justice outlined to the Justice Committee his intention to review the use of short sentences.

Less than a month after David Gauke's speech, a rather different policy direction was signalled with the announcement of a sentencing review to explore a change to legislation so that people who have committed serious violent and sexual offences spend longer in prison.<sup>1</sup> Following the review, at the Conservative party conference, Robert Buckland MP announced the Conservative government's pledge to abolish automatic early release at the halfway point of a sentence for people convicted of serious violent and sexual offences and to instead ensure that they spend two-thirds of their sentence in prison. These commitments were subsequently outlined in the Queen's speech, with the announcement of a sentencing bill.<sup>1</sup>

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<sup>i</sup> This review took place as a rapid internal review within the Ministry of Justice (MoJ). Clinks took part in a telephone interview to inform the review and raised concerns about its process and transparency. We also raised concern about the impact of the proposed changes on disadvantaged groups, the youth justice system and in particular black, Asian and minority ethnic (BAME) people who are already significantly overrepresented in both youth and adult custody.

### Key facts and trends

- The prison population has more than doubled over the past two decades. The prison population in England and Wales has exceeded 80,000 people for over a decade.<sup>2</sup>
- For indictable offences, the average prison sentence has increased by 23.5 months in the last ten years, now standing at 56.6 months. More than three times as many people were sentenced to over 10 years in prison in 2017 than a decade ago.
- The average sentence length and tariff (i.e. the minimum period of time that must be spent in prison) for murder has also risen significantly, from 12.5 years in 2003 to 21.3 years in 2016.<sup>3</sup>
- Around 2,500 people in the prison system, and in some cases revolving in and out of it, are serving sentences of Imprisonment for Public Protection (IPP). These are indeterminate sentences with no automatic release that were designed to detain people in prison who were deemed to pose a significant risk of serious harm to the public but whose offence did not carry a life sentence. IPPs have been discontinued but those who received them remain subject to their conditions.
- As of 30 September 2018, 4,896 prisoners were serving Extended Determinate Sentences (introduced in 2015 and require at least two thirds of a sentence to be served in prison with an extended licence period). 4% more than the previous quarter and a 21% increase from the same time last year.<sup>4</sup>
- The latest Bromley Briefing factfile by the Prison Reform Trust highlighted that the UK has a higher life-sentenced prisoner population than any other country in Europe. Moreover, life-sentenced prisoners in the UK make up more than 10% of the total sentenced prison population, which is a higher proportion than for any other European country and the United States.<sup>5</sup>
- In 2018, 58,955 people were received into prison to serve a sentence.<sup>6</sup> Of those, 46% were sentenced to six months or less in custody and a further 10% were sentenced to serve between six and 12 months. That amounts to over 30,000 people that entered prison last year on a short custodial sentence.<sup>7</sup>
- The use of community sentences has more than halved in the last 10 years.<sup>8</sup>
- Although women make up a far smaller percentage of the overall prison population, the majority of women in contact with the criminal justice system (CJS) commit minor, non-violent offences and they are disproportionately likely compared to men to receive short custodial sentences. Of the 5,820 women who were sent to prison to serve a sentence in 2018, 72% were sentenced to 12 months or less in custody.<sup>9</sup>

Since 2013 the Wales Governance Centre at Cardiff University has been collecting Wales-only data on sentencing and imprisonment.<sup>10</sup> Criminal justice is not a devolved area of policy in Wales but a number of areas that impact it are devolved including education, housing, and health and social care. The data produced by the Centre shows that since it started being recorded, Wales has consistently had a higher rate of imprisonment than England and in 2019 Wales was found to have the highest imprisonment rate in Western Europe.<sup>11</sup>

- In 2018 there were 150 Welsh prisoners per 100,000 people, compared to 137 English prisoners per 100,000 of the population.
- Sentence lengths have also inflated in Wales. The average custodial sentence length in Wales has increased from 13.3 months in 2013 to 14.5 months in 2018. However, a higher proportion of longer-term sentences (four years or more) were handed out at courts in England in 2018 (10.4% compared to 8.2% in Wales).
- In 2018 a higher proportion of sentences of less than 12 months were given out in Wales (67.7%) compared to England (62.6%).
- The use of community sentences in Wales has fallen by 18% since 2015.

## Three key asks:

In response to current sentencing trends and policy developments, campaigners and voluntary sector organisations have made three key asks for sentencing reform. The following sections will analyse each of these in turn, why they are necessary, and the impact of potential developments in each of these areas.

### 1

## Reverse sentence inflation

Increasingly long – and indeterminate<sup>ii</sup> – sentences continue to put mounting pressure on an overcrowded prison estate that lacks the resources to meet need and whose ageing infrastructure is ill-equipped to cope. This is impacting the wellbeing and outcomes of those in prison, leading to high levels of drug use, self-harm and self-inflicted deaths in what the Justice Committee has described as an ‘enduring crisis’.<sup>12</sup>

Reversing sentence inflation is key to avoid the projected increase in the prison population, reduce overcrowding and improve the conditions and safety of prisons. It is also necessary for the mental health and wellbeing of prisoners, their motivation to engage with their sentence and their desistance journey as well as the effective delivery of services in prison that are able to provide people with the right support.

ii. Indeterminate prison sentences do not have a fixed length of time. There is no set date that a person will be released. Instead the court will set a minimum amount of time that must be served in prison – known as a ‘tariff’ – before they can be considered for release. The Parole Board is responsible for deciding if someone on an indeterminate sentence can be released.

iii. It is important to note here that short sentences are not the main driving force behind the large prison population in England and Wales and prison overcrowding. Reducing the use of short sentences is a legitimate goal in its own right but will not however lead to a significant reduction in the overall prison population unless sentence inflation of longer sentenced prisoners is also addressed.

# What does sentence inflation mean for the prison estate, those kept in it and the delivery of voluntary sector services?

## The functioning of prisons

Sentence inflation and the resulting consequences are restricting access for voluntary sector organisations to engage with prisoners and deliver vital, rehabilitative services. Putting people in prison for longer is exacerbating the current overcrowding in institutions<sup>iii</sup>. This is putting pressure on staff and infrastructure, leading to conditions such as increased lockdowns and an inability to move prisoners around the estate. This can foster tension and increase the likelihood of unrest and assaults.

The latest quarterly statistics on safety in custody show prisons to be at their most unsafe, with the levels of assault against other prisoners and staff, at the highest on record.<sup>13</sup> This means services and interventions are often cancelled over security concerns or lack of resources to transport people from their cells to interventions. The Chief Inspector of Prisons continues to find that prisoners are spending too much time in their cells – this year nearly a quarter of those surveyed by the inspectorate said they spent less than two hours out of their cells on weekdays, preventing them from engaging in meaningful activity.<sup>14</sup> This is supported by Clinks own State of the sector research which found, in 2019, that voluntary organisations delivering in prisons are experiencing increased difficulties reaching prisoners to deliver services and activities for these reasons. When they are able to access prisoners, they are presenting at their services with worsening, unmet mental health needs that they are not equipped to support.

## The wellbeing of long-term sentenced prisoners

The impact of long, and indeterminate sentences on mental health is highly damaging and can be a uniquely painful experience. When combined with poor conditions and levels of violence in prisons, as well as the amount of time spent in cells and difficulties accessing meaningful activity, this can trigger and exacerbate mental ill health. Considered alongside the lack of mental health support to identify and meet need<sup>15</sup>, it is perhaps unsurprising that levels of self-harm and suicide in prison are so disturbingly high and continue to rise.<sup>16</sup>

In a new study on the experience of long-term imprisonment from young adulthood, participants described the feeling of their life being lost or wasted as one of the most severe problems they experienced. Prisoners struggled to come to terms with the length of time they faced in prison and managing time was experienced as a significant burden. In the earlier years of their sentences in particular, many of them had disengaged from the prison regime and could find little purpose or meaning in life, as though they were 'stuck in time' or 'just existing'. The research also found that many participants appeared to have 'over-adapted' to the environment, becoming emotionally over-controlled and socially withdrawn, in ways that might negatively impact their resettlement and make life more difficult on release.<sup>17</sup> This could affect trust and engagement in resettlement services and be a barrier to accessing much needed support that would improve outcomes.

## Sentence planning and engaging with support

In evidence to the Justice Committee<sup>18</sup>, chair of the Parole Board, Caroline Corby, spoke about the hopelessness of those on indeterminate sentences and the difficulties of getting them to engage with their sentence. Long and indeterminate sentences have serious implications for the purpose of the individual's sentence plan, and fundamentally undermines services that are designed to rehabilitate, prepare for release, and support resettlement.

The impact on the mental health, hope and motivation of those that have been in prison for a long time, and especially those that have no discernible or close release date, also means they are less likely to engage with voluntary sector services. Long-term sentenced prisoners may also have engaged with a number of programmes, courses and various other services on offer throughout their time in custody but then are still faced with many years left to serve. The prison has little else to offer and motivate them and it raises questions about the meaningfulness of the activity and what it is working towards.

### Young adults

The transition to adulthood for 18-25 year olds is a period where young adults can have distinct needs, characteristics and vulnerabilities arising from their social backgrounds and the maturation process – which is now understood to be a neurological process that continues well into people’s mid-twenties.<sup>19</sup> Young people who are during this time transitioning into the adult prison estate, either from the youth estate or the community, can have profound needs for support. Research highlighted by the Transition to Adulthood (T2A) Alliance also shows that this is at exactly the point in their development and maturity that they are more likely to move away from offending behaviour. So the appropriate intervention is essential – the wrong response at this time could negatively impact their desistance journey.

Young adult men are increasingly serving longer prison sentences, with a growing proportion being sentenced as children and serving the initial part of their sentence in the youth estate but not due to be released until well into adulthood. Having spent the entirety (or almost entirety) of their early adulthood in custodial institutions, this could have profound impacts on young people’s mental health, development and emotional wellbeing including their ability to cope with and engage in their sentence. It also presents distinct resettlement needs and places significant barriers to successful resettlement and adjustment to life on release. Reversing sentence inflation is key for improving outcomes for young people who face spending much of their early adult life in prison.

### Older people

Older people are the fastest growing age group in the prison population. There are triple the number of people aged 60 and over in prison than there were 16 years ago, and one in six people in prison (16%) are aged 50 and over. The number of people aged over 50 in prison is projected to rise by 3% by 2022 and the number of people aged over 70 is projected to increase by 19%. The most common offences for older men in prison, including in historic cases, are sexual offences. The ageing prison population has been driven by a number of factors but sentence inflation will continue to exacerbate this issue.

Our report, *Flexibility is vital*<sup>20</sup>, highlights how ill-equipped the prison system is to meet the health and social care needs of this group, who are more likely to suffer health problems, and are more vulnerable to isolation in prison. They have higher rates of physical disability and mobility difficulties and the regimes have not been designed to take their needs into account. Therefore older people in prison can struggle to access activities and services or complete everyday tasks because the prison lacks the appropriate facilities or resources to support them. The nature of the offending profile of older people significantly increases the challenges of meeting this group’s needs.

# Reduce the use of short-term custody

On the other side of the spectrum, short custodial sentences also create a challenging prison environment, drawing people unnecessarily into an under resourced prison system. Often people given short sentences have high level of needs, experience multiple disadvantage and have fallen through the gaps of support in the community.

Short custodial sentences fail to support people to address the drivers behind their offending and can even exacerbate them. It is particularly challenging to provide effective resettlement support to people serving short sentences, making it more likely that people will continue to be stuck in a cycle of serving short sentences.

Sentencing policy must be reformed in order to curtail the use of short custodial sentences. One of the key tools for achieving this, which has received a significant amount of recent attention, is a presumption (or ban) against short periods of imprisonment.

## What does the evidence say? Making the case against short custodial sentences

Short sentences have been repeatedly proven to be ineffective and to have worse reoffending outcomes than community alternatives.

The Ministry of Justice (MoJ) recently published new research analysing the impact of short custodial sentences, community orders and suspended sentence orders on reoffending rates. It found a higher one year reoffending rate – and a higher number of reoffences – following short term custodial sentences than if a court order<sup>iv</sup> had been given. Further analysis found the one year reoffending rate to be just as poor when compared to community orders, regardless of whether the custodial sentence was less than three, six or 12 months.<sup>21</sup>

These findings reiterate evidence from previous research commissioned by the MoJ in 2013<sup>22</sup> and again in 2015<sup>23</sup> - both of which found that those who receive short term sentences of under 12 months are more likely to re-offend and commit more offences than individuals with similar cases who receive a community or suspended sentence order.

Further research found that for people with larger numbers of previous offences, court orders were significantly more effective at reducing further reoffending than short custodial sentences.<sup>24</sup> These findings undermine the argument for using custodial sentences for those dubbed 'persistent offenders' of minor crimes.

## The impact on service users and the voluntary sector's work

Short custodial sentences<sup>v</sup> can be highly disruptive and have a disproportionate, long-lasting impact on people's lives, causing loss of homes, possessions and employment, or disruption to benefits. They can also cause serious and long-lasting impacts on family and community relations and future opportunities such as employment. The experience of imprisonment itself can also be traumatic and exacerbate or trigger mental health issues. The short-sentenced prison population can be incredibly vulnerable – prison reception is one of the most vulnerable times for people in prison where there is increased risk of self-harm and suicide.<sup>25</sup> Resettlement support is also challenging for people serving short custodial sentences, with limited time

iv. Court orders refers to both community sentences and suspended sentences.

v. For the purposes of this briefing short custodial sentences refers to sentences of 12 months or less in custody, unless specified otherwise.





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to organise practicalities such as accommodation, healthcare, welfare or employment. The overuse of short custodial sentences impacts the voluntary sector working in criminal justice and its ability to deliver services to those affected. There is not sufficient time in a short sentence to develop trusting relationships with people and deliver meaningful interventions and activities such as educational courses. Similarly if an individual is engaging with voluntary sector services on release in the community, recall back to custody can disrupt and undermine that work.

The impact of short custodial sentences has been exacerbated since the Offender Rehabilitation Act (ORA) 2014 which made all people sentenced to less than 12 months in custody subject to mandatory 12 months' probation supervision on their release. This change was intended to ensure that those with potentially high levels of need received support on release where previously they did not. However, it also meant that more individuals, and in particular those with often high levels of complex need, were subject to potential recall if they did not comply with the terms of their supervision. Following the ORA 2014 coming into force, there was a massive rise in the number of people recalled to prison,<sup>vi</sup> a large proportion of which were recalled for administrative purposes such as missing appointments rather than committing a further offence.

While Her Majesty's Inspectorate of Probation found these recall decisions to be sound in the majority of cases<sup>26</sup>, it has led to some campaigners and voluntary sector organisations questioning the appropriateness of a compliance focused approach for a group of people with high levels of complex needs. Desistance theory has highlighted that moving away from offending behaviour is a process which can require long term support to address the underlying drivers behind offending. The more complex those drivers are, the longer that journey is likely to be. When someone is recalled, it disrupts their desistance journey and reinforces the cycle of prison.

## What are the solutions?

Despite the evidence, use of short-term imprisonment for minor offences remains stubbornly high and there is no substantive policy or strategy that could meaningfully reduce their use. One of the current prevailing suggestions from campaigning organisations to achieve this, is to implement 'a presumption against short sentences', as recommended by the Justice Committee.<sup>27</sup>

## How might a presumption work in practice?

In 2010 Scotland brought in legislation that introduced a presumption against custodial sentences of less than three months. It means that Scottish courts should only give a custodial sentence of less than three months where they consider 'no other method of dealing with the person to be appropriate' and must state on record the reason for the decision.<sup>28</sup> Almost a decade after the initial presumption was brought in, Members of the Scottish Parliament voted in favour of extending it to custodial sentences of less than 12 months<sup>vii</sup>. The change will apply to cases where the offence was committed on or after 4 July 2019.<sup>29</sup> The effects of this will have to be closely monitored over time.

## The impact in Scotland

The impact of the original presumption is debatable. For a number of years it appeared to be having a minimal impact. When reviewed in 2017, Reform Scotland found that sentences of three months or less still accounted for 30% of all prison sentences given.

vi. Last year, 8,927 people who served less than 12 months in custody were recalled. The most cited reasons for recall were non-compliance and failing to keep in touch.

vii. In June 2019, Members of the Scottish Parliament voted 83 to 26 in favour of extending the presumption against short sentences to sentences of 12 months or less.



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As the Centre of Crime and Justice Studies (CCJS) highlights in its analysis, a key issue is that even with the presumption in place, whether or not prison is 'appropriate' is still left largely up to judicial discretion. As prison should already be a last resort, in theory, the judicial decision would not be affected having the presumption in place.

A more recent analysis of the statistics however indicates that the presumption against three month sentences has had a positive impact on the use of short sentences. Its introduction appears to have correlated with a decline in the use of short sentences and an increase in community sentences.<sup>30</sup> However, the presence of a number of other justice reforms at this time makes it hard to say for certain that the presumption is the reason for this change.

### Potential unintended consequences

There were concerns before its implementation in Scotland that the presumption could lead to community orders becoming more punitive, with greater requirements loaded on to the individual to serve as a greater punishment, thus increasing the likelihood of breach and them ultimately ending up in custody. There were also concerns that the move would lead to up-tariffing where sentencers would give higher custodial sentences in order to ensure a person still went to custody.

These concerns do not appear to have occurred in Scotland. Recent analysis showed that as well as a reduction in the use of sentences of less than three months, sentences of less than six months and 12 months have also decreased. However, increasing the presumption to 12 months may increase the risk of up-tariffing. The voluntary sector should bear these in mind as potential concerns to be monitored if a presumption were to be implemented in England and Wales.

### Children

When advocating for sentencing reform that is intended for adults, consideration must be given to potential conflicts with the voluntary sector's policy aims for youth justice; particularly with regards to policy that aims to restrict (or ban) the use of short sentences, such as a presumption. Where custody is seen as the only option for a child, campaigners from the voluntary sector have long been reiterating the importance of this being for the minimum amount of time possible. There needs to be caution that a presumption or ban against short sentences does not negatively impact youth justice and lead to more children receiving longer sentences.

### Women

As women disproportionately receive short custodial sentences, reform of sentencing policies that could reduce the use of short custodial sentences would support policy aims – as laid out in the government's Female Offender Strategy – to divert more women from unnecessary custody and promote the use of community solutions. A holistic approach grounded in the community and the work of women's specialist services is more effective at meeting the needs of women that come in to contact with the CJS and addressing the drivers of their offending, than looking to prison as the answer.



As there is no women's prison in Wales, short custodial sentences can be even more disruptive and damaging for women sentenced in Wales than most people. The number of immediate custodial sentences handed to women in Wales increased by 18% between 2010 and 2018 compared to a 23.1% decrease in England.<sup>31</sup> As in England, women sentenced in Wales disproportionately receive short custodial sentences compared to men.<sup>32</sup>

- 69% of women handed immediate custodial sentences in Wales were sentenced to less than six months in custody in 2018 compared to 54% of men
- One in five (22%) of all women sentenced to immediate custody in Wales were handed sentences of one month or less in 2018.

This creates huge disruption to their lives for a number of reasons, including:

- **Distance and family contact:** as women from Wales can be held much greater distances from their homes, it can make it more difficult to maintain contact with loved ones.
- **Through-the-gate support:** being held in another country makes it more challenging to engage sufficiently with probation prior to release and other services intended to support women in their transition back into the community. It can be impossible for women to link with community-based services, especially in rural parts of Wales.
- **Part devolution:** Women from Wales serving custodial sentences in England must navigate the complicated relationship between criminal justice – a non-devolved area of policy – and devolved policies such as health, social care and housing. This makes the process for arranging accommodation – and ensuring continuity of health and social care as women transition to prison and back to the community – far more complex.

To achieve a community-based approach for women, it is important not to rely solely on a presumption against short sentences on an assumed basis that it will have the same impact on men and women. It is worth noting that recent analysis of the presumption against short sentences in Scotland indicates a potentially negative effect on women, with increases in sentences of less than three months.<sup>33</sup> If a presumption against short sentences is implemented in England and Wales it therefore needs to be used equitably for women, with clear guidelines developed to support this.

## A presumption against short sentences: not the sole solution

On its own a presumption against short sentences does not offer the answer to reducing the prison population and ensuring people are supported on their desistance journey.

A fundamental shift in the understanding of, and attitudes towards, sentencing is needed. For example, a presumption against short sentences will be undermined if new legislation continues to be brought in for offences which carry short custodial sentences and if sentencing guidelines for offences are set more punitively towards short custodial sentences. To support the aims of a presumption against short sentences, there must also be greater understanding, sustainability and support of community alternatives and knowledge of the provision available and the wraparound support needed.

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## Increase the use of community sentences

Increasing the use of community sentences is vital for reducing the use of short custodial sentences and ensuring more proportional sentencing that enables people convicted of minor offences to remain in the community to serve their sentence. This is necessary for people to get the support they need to address the drivers of their offending, meet their wider welfare needs, and to improve reoffending outcomes. Improvements to court and probation processes, and greater investment in community alternatives, are needed to increase the use of community sentences. There also needs to be recognition of the vital role that the voluntary sector can play in supporting people serving community sentences, how this can help achieve better outcomes and in turn improve confidence in community alternatives.

### The decline of community sentences

One of the main reasons often cited for the continued use of short custodial sentences is a lack of sentencer confidence in community alternatives. This has been put down to a handful of reasons, including:

#### Changes to the nature and process of courts

The emphasis on speedy justice has impacted the nature and provision of pre-sentence reports (PSRs)<sup>viii</sup> and the speed at which decisions are made. Between 2012-13 and 2016-17 there has been a 22% decrease in PSRs produced, and a rapidly increasing proportion of them are fast PSRs delivered orally. Cases with PSRs are more than 10 times more likely to receive a community sentence. The Centre for Justice Innovation estimates that if the number of PSRs had remained stable over this time, there could have been 33,000 more community sentences a year.<sup>34</sup> Time pressures on courts to speed up processes create a culture in which sentencers feel less able to call for adjournments for more information or to defer sentencing. The lack of full (or any) PSRs has impacted on courts' ability to properly understand people's needs, risks and circumstances, as well as the available and appropriate provision in the community that could meet their needs and support them to address the drivers of their offending. This lack of information and knowledge inevitably leads to a lack of confidence.

#### The split in probation caused by the Transforming Rehabilitation (TR) reforms<sup>ix</sup> and the nature of Rehabilitative Activity Requirements (RARs)

Under the current TR probation model, the probation staff advising the courts are from the National Probation Service (NPS) but these are not the same staff who are supervising those on community sentences, as this falls under the responsibility of Community Rehabilitation Companies (CRCs). This means sentencers do not currently get to engage at the court stage with staff responsible for overseeing sentences in the community and therefore find it hard to trust in the sentences and the advice being given. This is exacerbated by the generally poor supervision arrangements that CRCs have been shown<sup>35</sup> to have for individuals under their care<sup>x</sup> – something which has not gone unnoticed by sentencers. The split in probation

viii. Pre-sentence reports are reports put together by the National Probation Service for the sentencer. It provides the court with probation's assessment of the risks posed by the individual, their relevant circumstances and the factors behind their offending. It will also include a sentence recommendation. This supports sentencers to be informed of the available options that can support people to desist.

ix. The Transforming Rehabilitation reforms, introduced in 2014, split probation so that offender management for those considered high risk would be the responsibility of the National Probation Service, and private companies known as Community Rehabilitation Companies would be responsible for the offender management of low-medium risk people, by extension that means all those serving community sentences. The National Probation Service was given responsibility of advice to courts.

x. In 2018/19, 80% of CRCs inspected by Her Majesty's Inspectorate of Probation were rated 'inadequate' for the implementation and delivery of probation supervision.

responsibilities also means that NPS staff are less likely to engage with community services that support people serving court orders because they do not deliver those sentences. Therefore NPS staff may be less knowledgeable of the provision in the community for people serving community sentences which could limit the advice they are able to give the courts.

In 2014 RARs were also introduced. These are generic requirements of the court which can cover a range of rehabilitative activities. A sentencer can include a RAR as part of a community order but can only specify the maximum number of days a RAR should cover, not which type of activity should be undertaken. Deciding specific activities currently falls to CRC probation staff to determine after the sentencing stage based on their assessment of the individual. It means little is known at the time of sentencing what the content of the community order will look like. Sentencers have raised the lack of transparency and generic nature of RARs as an issue for them in deciding to give a community order.

The government recently announced that all offender management will once again fall under the responsibility of the NPS, under a new probation model due to be implemented in 2021. This may begin to address some of these issues. However, though it may offer a step towards rebuilding sentencer confidence in community options, the decline in community sentences began many years before the TR reforms and implementation of RARs. There must be caution in assuming the impact that changes in the probation model will have on the use of community orders without further strategy for increasing their use.

## Investment in community alternatives

Community alternatives can be far more effective, but too often lack sufficient investment. For the use of community sentences to increase, there must be a concurrent increase in investment, to ensure they provide people with the support they need. Investing in community alternatives will also support previous commitments made by the MoJ – such as those in the Female Offender Strategy – to ensure their effective provision.

The government has recently announced a wider roll out of the Community Sentence Treatment Requirement (CSTR) programme. CSTRs are community sentences where the individual is required to attend and complete a treatment programme for a mental health, drug and/or alcohol problem. They can include one or more of:

- Mental health treatment requirement
- Drug rehabilitation requirement
- Alcohol treatment requirement.

Treatment is arranged by the court as part of the sentence, with the consent of the person being sentenced. We find strong support for CSTRs amongst our members and people with lived experience of the CJS. CSTRs were previously underused by courts, due to a lack of sentencer confidence which led the MoJ, the Department of Health and Social Care, NHS England and Public Health England to pilot a programme in five areas across England to encourage their use. The subsequent evaluation showed an increase in the use of mental health treatment requirements in particular. There was less success though for substance misuse treatment requirements and once again funding was found to be an issue. Replicating the success with substance misuse treatment will require greater investment in those services.

## The role of the voluntary sector in supporting community sentences

Voluntary sector services in the community have valuable, localised knowledge about the needs of a diverse range of people and the provision available in the community to support people

xi Net-widening refers to changes which draw more people into the CJS. For example creating additional offences or expanding the definition of existing ones, increasing sanctions or lowering the threshold for criminal sanctions, or where breach of a civil order results in action from the CJS such as the recently announced Knife Crime Prevention Orders (see [here](#) for more information).

through their sentence. As non-statutory services, voluntary organisations are often in a better position to build positive and more trusting relationships with people than statutory providers. This can help encourage them to engage more with services and can support them to meet their court order conditions, ensuring a more effective delivery of community sentences. We know the voluntary sector plays a vital role in ensuring effective community sentences can be delivered. The voluntary organisations which deliver community services have expressed that they previously had better relationships and visibility with magistrates, who understood their value and the interventions they could offer, but in recent years this relationship has been eroded – in part due to TR, speedy justice and the format of oral PSRs.

More needs to be done to engage voluntary sector organisations delivering services in supporting policy aims to improve sentencer confidence in community sentences and use of them, and provide greater visibility and understanding of available interventions by the sector and their impact.

### A pause for caution

As confidence in community sentences remains low, there is a drive from the government to increase their perceived effectiveness and credibility. Caution must be exercised when taking this approach however, as there is a risk that this could lead to community sentences becoming more punitive, in a bid to increase the perception of them as an effective punishment, in turn causing up-tariffing and net-widening<sup>xi</sup>.

Overly punitive approaches to community sentences can result in disproportionately onerous requirements which can be disruptive to the support and services provided by the voluntary sector and people's engagement with services – undermining the trusting relationships organisations build with service users. The compliance-focused approach to breaches would then mean that court orders could still result in custodial outcomes for individuals.

Conditions of community orders, and the consequences of breaching, need to be proportional to the original offence.

### Black, Asian and minority ethnic (BAME) individuals

As highlighted by the Lammy Review, BAME people are disproportionately represented in the CJS, particularly in the prison population. There are racial disparities at every stage of the CJS and BAME people continue to have worse outcomes than their non-BAME counterparts. This is a far wider issue than just within sentencing, with many of the problems stemming from deeper systemic inequalities in society and starting much earlier in the CJS with the way communities are policed.

Indeed, members have raised concerns with us that young BAME people are being excluded from opportunities in the community that would divert them from custody because of bias, unconscious or conscious, which means that they are perceived as presenting a higher level of risk due to their ethnicity. It is felt that this leads to a perception that they are 'unmanageable' and results in an escalation in sentencing. Addressing the sentencing and court stage could be a step in helping to reduce the overrepresentation of BAME people in prison and provide a diversion route away from custody.

There should be specific strategies for targeted action that would improve the use of community alternatives for BAME people and divert them from custody. This would

help prevent against staff and sentencers consciously or unconsciously engaging in racial stereotyping at the court and sentencing stage and support aims to reduce disproportionality in custody, where BAME people experience unfair treatment and unequal outcomes. For example, as a result of the Lammy Review, a deferred prosecution scheme – which provides interventions before pleas are entered rather than after – is being piloted. However, without processes in place for addressing disproportionality, there is significant risk that there will be racial disparities evident in the pilot's outcomes just as there are across the wider CJS.

Alongside this there needs to be investment in local, BAME-led voluntary organisations that are embedded in communities and are better placed to engage and support BAME people. BAME-led voluntary organisations have been among the hardest hit by cuts to funding, but their expertise and community connections give them a greater understanding of the needs and challenges faced by BAME people in contact with the CJS. The support provided by them can assist BAME people in their desistance journeys and to engage in, and meet the conditions of their community sentences. There needs to be investment in building the capacity of BAME-led voluntary organisations to address the challenges they have experienced and ensure they are in a sustainable position to provide their much-needed support.

## Conclusion

The prison system is facing two polar issues. The heavy use of short custodial sentences persists, despite their failure to meet people's needs and the risk of exacerbating the drivers behind offending. This commonly results in people revolving in and out of custody. At the other end of the spectrum, sentence lengths are increasing for many indicatable offences, which is contributing to an overcrowded, ageing prison population that the system lacks the resources to support. Alongside this, we are also seeing a continuing decline in the use of community sentences which are proven to be more effective at reducing reoffending. Current government rhetoric promotes harsher and tougher responses to crime which is only likely to exacerbate these issues. The voluntary sector has long been supporting calls for evidence-based change, including a reverse in sentence inflation, a reduction in the use of short sentences and an increase in community sentences. Considered individually, none of these present a sufficient solution to challenges prisons are facing. If we are to really see effective change, we need to see a combination of all three.



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**Clinks supports, represents and advocates for the voluntary sector in criminal justice, enabling it to provide the best possible opportunities for individuals and their families.**

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