

The Justice Committee inquiry on public opinion and understanding of sentencing



Our response

Submitted July 2022

About Clinks

Clinks is the national infrastructure organisation supporting voluntary sector organisations working in the criminal justice system (CJS). Our aim is to ensure the sector and those with whom it works are informed and engaged in order to transform the lives of people in the CJS and their communities.

We are a membership organisation with over 600 members, and our wider national network reaches 4,000 voluntary sector contacts. Through our weekly e-bulletin Light Lunch and social media activity, we have a network of over 15,000 contacts with an interest in the CJS and the role of the voluntary sector in rehabilitation and resettlement. The National Criminal Justice Arts Alliance (NCJAA) is embedded in Clinks, plus we support a network of women's centres and services and a network of organisations led by and focused on racially minoritised people.

About this response

We welcome the opportunity to respond to this inquiry and welcome the committee's interest in the role of public opinion in the formation of sentencing policy. We have responded to the questions relevant to our areas of work. This response is informed by consultation with the voluntary sector working in criminal justice in England and Wales as well as our experience of supporting the voluntary sector working in prisons and the community, and those delivering resettlement support.

Summary of response and recommendations

There is a lack of public understanding of the long-term implications of sentencing and criminal records disclosure. At present, sentencing policy is uneven, resulting in disparities between groups such as women, racially minoritised people, young adults, and people with multiple disadvantage. Before asking the question of whether public opinion should inform sentencing policy and practice, it is imperative that government inform the public of the reality of effective sentencing by adopting the expertise and research of the voluntary sector working with people in the CJS. Evidence-based sentencing policy will lead to better public understanding and confidence in sentencing.

Clinks recommends sentencing policy be evidence-based and developed in consultation with the voluntary sector working in criminal justice and people with lived experience.

What does the public know about the current approach to sentencing in England and Wales?

The public's perceived level of understanding of sentencing guidelines does not match their actual level of understanding. A 2019 Sentencing Council report showed people regularly underestimate the impact of sentencing, not because the public are not capable of understanding what sentences mean in practice, but because of a failure of the CJS and media to explain it to them. However, the government tends to use public outcry to justify its 'tough on crime' stance. This makes it harder for the voluntary sector to do its job, since effective rehabilitative work is not being understood and results in counter-intuitive populist policy. This also creates challenges for voluntary sector fundraising for effective criminal justice sector services, because it is not popular or well-understood.

Groups with protected characteristics - including women,¹ racially minoritised people,² young adults, and people with multiple disadvantage - continue to have disparate outcomes at every stage of the CJS. The public is not always aware of contextual factors that should be taken into account when sentencing but, when they are made aware, their opinion is less punitive. In 2018, the Home Office's Serious Violence Strategy³, outlined the link between exposure to violence as a child and perpetration of violence in adulthood. Similarly, Edinburgh's study on youth transitions and crime how the links between childhood trauma and poverty, and offending in adulthood.⁴ However, data on the prevalence of adverse childhood experiences young adults aged 18-25 who are either charged or sentenced with an offence is not collected by the Ministry of Justice (MoJ), neither is data that would allow it to say what proportion of young adults convicted for serious offences were themselves past victims of the specified offence types, suggesting these factors are not considered when developing sentencing policy.⁵

How does the public access information on sentencing?

It is difficult for the public to find impartial information about sentencing in the public domain. Media coverage contributes to the overall perception that sentencing is too lenient.⁶ The long-term impacts of sentencing for individuals are not well understood.

Almost 12 million people in the UK have a criminal record which can impact on access to housing, employment, education, insurance and membership of trade bodies. Half of employers say they wouldn't employ someone with a criminal record⁷ despite a majority of employers who do reporting a positive experience.⁸ These impacts are not exclusive to those convicted to serious crimes or sentenced to prison.⁹

Some groups are particularly affected by the criminal records regime; women are twice as likely as men to have their criminal records disclosed on a Disclosure and Barring Service check,¹⁰ while disparities in sentencing mean that racially minoritised people may have to disclose a criminal record for longer.¹¹

Public understanding of sentencing is important, since it is members of the public who make decisions about and act as gatekeepers to employment, education and services. If their decisions are not informed, it can lead to discrimination and exclusion of people with convictions. Currently, official communication of sentencing policy does little to mitigate for these detrimental long-term outcomes. Changes to the disclosure rules in the PCSC Act exclude Schedule 15 offences from rehabilitation, despite no evidence that these offences are more likely to result in reoffending.¹²

What are the barriers to improving public awareness of how sentencing works?

The reactive and often emotive way in which sentencing policy is produced makes it difficult for the public to critically assess, or for campaigning organisations to communicate the need for reform to the public.¹³ Too much decision-making is the result of polarised opinions and political expediency rather than evidence-based intervention to address the root causes of offending through sustained investment and monitoring.

Clinks chairs and coordinates the Reducing Reoffending Third Sector Advisory Group (RR3), a formal advisory group to the MoJ and Her Majesty's Prison and Probation Service (HMPPS). The RR3 has a wealth of experience providing essential services across the justice system to some of society's most vulnerable people. The RR3 has long made offers of support to the MoJ to feed into the development of their sentencing policy, including an internal sentencing review by the MoJ to inform the 2020 Sentencing White Paper, but these offers were not taken up and the final review was never published.

The government is answering calls for safer communities with a prison-building programme, including 500 new prison places for women which contradicts the government's own policy to reduce the number of women in prison.¹⁴ This is a lost opportunity to invest in community support both at the point of prevention and sentencing, especially that provided by voluntary sector organisations. Even where alternatives to custodial sentences are used, in the context of the huge court backlog, courts try to process people without relevant contextual information being provided, for instance through written pre-sentence reports, contributing to sentencing disparities. The voluntary sector can help to reduce disparities in sentencing through early engagement with people who offend.

Importantly, if the government pivoted from a prime focus on the severity of sentencing to investing in prevention and victim support, it would save money and create more value for society.

To what extent does public understanding of sentencing affect public confidence in the criminal justice system?

As pointed out by a former Justice Minister, there is no evidence that longer sentences make any difference to public safety, or public confidence.¹⁵ Scotland, England and Wales have the highest rates of imprisonment in Europe, caused largely by sentences that have got longer over the years despite no evidence of a correlating decrease in crime. For indictable offences, the average prison sentence has increased from 16.8 months in 2011 to 24.9 months in 2021, while from 2020 to 2021, there was a 10% decrease in the use of out of court disposals.¹⁶

Despite this, over half (56%) of people surveyed believed sentences were shorter now than in the past, rising to three-quarters (75%) if those who said they didn't know are excluded.

What could be done to improve public understanding of sentencing?

As it stands, the de facto outcome of sentencing policy in England and Wales is public exclusion. Those subject to a criminal conviction and the resulting criminal record may face time in prison, exclusion from employment and education, and barriers to participating in civic life. As a result, rehabilitation takes a back seat. Many voluntary sector organisations work to fill this gap, supporting individuals through resettlement and rehabilitation services, and campaigning for reforms which improve public safety and have a positive impact on both individuals and the wider community. Greater use of alternatives to prison sentences, such as community sentences or liaison and diversion, would enable the role of the voluntary sector to expand this work and create better outcomes for everyone. There is a host of evidence proving the success of these alternatives.

Evidence shows that when offending is contextualised, public thinking is expanded and yields more productive conversations around criminal justice reform. In other words, the more the public understands about sentencing, the less punitive they are.¹⁸ There is valuable work being done by voluntary organisations to change the narrative around criminal justice. For instance, Transform Justice's work with the Frameworks Institute shows how criminal justice can be reframed to foster more empathetic attitudes towards people who offend.¹⁹ The government has a job to do in informing the public about the reality of sentencing, and it could use the rich evidence base in the voluntary sector to do so.

Sentencing must be evidence-based and meaningful in order to not only improve public understanding of sentencing, but to maximise the potential for rehabilitation. There are many examples of effective diversionary and rehabilitative projects being carried out by the voluntary sector that yield positive outcomes and support people to move on from offending.

- A Fairer Chance and Beating Time's Inside Job partnership with HMP East Sutton Park worked with 95 women over 12 months from 2020-2021, delivering 57 job starts through ROTL and post-release. By providing many hours of emotional and practical pre-and post-release support and maintaining strong relationships with the prison, managers of a national retailer, and women in prison, they achieved positive results.
- The Home Office, Department of Health and Social Care and the Office for Health Improvement and Disparities have launched Project ADDER (Addiction, Diversion, Disruption, Enforcement and Recovery) to pilot a whole-system response to combatting drug misuse. The programme takes a holistic approach in 13 local authorities across England and Wales with a focus on key partners such as the police and treatment providers working closely together to address drug misuse locally. The project involves coordinated law enforcement and enhanced treatment and recovery provisions, including housing and employment. As of February 2022, the project had offered over 4,300 out of court disposals and delivery partners reported increased collaboration and strengthened relationships between police, local authorities and service providers and better person-centred support.
- The Greater Manchester Women's Support Alliance provides gender specific one-to-one and group support to women at risk of offending, at the point of arrest, serving community orders, and leaving custody. By taking a whole systems approach, they provide holistic support for women to support them to move on from offending, while achieving a cost-effective service. For every £1 invested in the programme, there is a £12.24 return over a two-year period on a public value Cost Benefit Analysis.
- Unlock's Disclosure Calculator allows people to find out when their criminal record becomes spent, and whether they need to disclose it to employers or others. It is a free and effective tool to support both people with criminal records and employers to understand the complex rules in the absence of government guidance or tools to do so.²⁰
- Revolving Doors works in collaboration with people with lived experience to bring expertise by experience to criminal justice policymaking. They work with lived experience forums and teams to platform the voices of lived experience and showcase innovative policy around policing, diversion, sentencing, probation, and multiple disadvantage.

To what extent should public opinion inform sentencing policy and practice?

Clinks would argue that rather than public opinion informing sentencing policy and practice, it is the government's rhetoric that shapes public opinion. Thus the government has a duty to ensure that its decisions about sentencing policy are evidence-based and communicated accurately to the public.

The public's understanding of sentencing policy, as explored above, is poor, and often conflicts with the evidence. Moreover, there is little public understanding of the long-term, exclusionary effects of criminal sentences which hamper people's efforts to move on positively with their lives. Instead, the evidence overwhelmingly shows that reoffending can be reduced through alternatives to custody, such as community sentences and diversionary and rehabilitative support. The lack of public understanding of sentencing creates a challenge for voluntary organisations to communicate their impact.

Clinks believes that a smarter approach to sentencing would pro-actively engage the voluntary sector as a valued partner in policy making. The government should facilitate open consultation on the development of sentencing policy to reflect the knowledge held within the voluntary sector about what works to support people who have committed crime, reduce reoffending, and ultimately keep communities safe. This approach would also help to create a fairer system, by tackling the disparities that are seen in sentencing outcomes for certain groups. Basing sentencing policy on the evidence of what works would improve public understanding and increase public trust in the criminal justice system.

End notes

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Our vision

Our vision is of a vibrant, independent and resilient voluntary sector that enables people to transform their lives.

Our mission

To support, represent and advocate for the voluntary sector in criminal justice, enabling it to provide the best possible opportunities for individuals and their families.

Join Clinks: be heard, informed, and supported

Are you a voluntary organisation supporting people in the criminal justice system?

Join our network of over 600 members. Clinks membership offers you:

- A voice to influence change
- Practical assistance to be effective and resilient
- Support from a community of like-minded professionals.

Membership starts at just £80 per year and is free for organisations with little income.

www.clinks.org/membership

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