

Imposition of community and custodial sentences guideline – revised: consultation



Our response

Submitted February 2024

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 to transform the lives of people in the CJS and their communities. We are a membership organisation with over 500 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 13,000 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, and we support a network of women's centres and services and a network of organisations led by and focused on racially minoritised people as well as a newly formed network focused on people over 50.

About this response

We welcome the opportunity to respond to this consultation. We have responded to the questions relevant to our areas of work; sections are numbered in the order they appear in the revised guideline. 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. For further information about this response, please contact Sam Julius at sam.julius@clinks.org

Our response

Do you agree with the proposed chronological order of the guideline? Would you make any changes?

We agree but recommend adding a ninth section focused specifically on equalities and disparities to ensure that sufficient attention is given to ensuring equal treatment, specifically in support of any protected characteristics, alongside a focus on reducing disparities in outcomes that have a disproportionate impact on certain groups in contact with the criminal justice system.

1. Thresholds

Do you have any comments on the unified thresholds section?

We have one comment on the wording within the unified thresholds section, regarding the following: 'great caution must be exercised before the existence of relevant previous convictions is used as the sole basis to justify the case passing the custody threshold.'

We would recommend amending 'great caution must be exercised' to 'only in wholly exceptional circumstances should...' or 'in very rare cases should...'

This amendment would ensure that only in extremely limited circumstances would ‘relevant previous convictions’ be used as a mechanism by which cases pass the custody threshold. This safeguard is required given the prospect of legislation to suspend short custodial sentences, and concerns that such a presumption could lead to sentence inflation to overcome the presumption. This amendment would recognise the multiple and complex reasons that can contribute to non-compliance – including unmet needs around substance use, mental health, experience of abuse or trauma, and financial need.

This amendment would also ensure that any potential inequity in prior sentencing did not become further entrenched and that appropriate community alternatives that were not available to previous sentencers could be considered.

2. Pre-sentence reports

Do you have any comments on the pre-sentence reports section, other than the list of cohorts?

We strongly agree that a pre-sentence report (PSR) must be requested and considered and urge that guidance to sentencers is applied consistently so as to ensure that a uniform approach is applied. Further, wherever possible, short form written reports – rather than on-the-day oral reports – must be considered for cases with higher levels of complexity given the process of compiling written reports requires more intensive multi-agency working. This can support sentencers in attaching suitable requirements, based on more detailed information contained within written reports, for people with particularly complex needs.

Do you agree with the general inclusion of, and specific cohorts included, in the list of cohorts in the pre-sentence report section?

We agree with the specific cohorts included but would also recommend the addition of care experience as a priority cohort given the significant number of care experienced people in contact with the criminal justice system. This would reinforce the work seen across an increasing number of councils in recognising care experience as a protection characteristic. We would also recommend the inclusion of ‘an older person (over 50 years of age) with complex and multiple care needs’. Sufficient time for meaningful multi-agency working is essential for all cohorts but is particularly stark for this latter group, whose health and social care needs, and how they can be met in either prison or the community, should be considered.

3. Purposes and effectiveness of sentencing

Do you have any comments on the new section on young adult offenders?

We note that the consultation document refers to the Sentencing Council considering issues around the 'adulthood' of children, which can 'affect young adults who recently turned 18.' This reference is not then replicated within the draft guidelines, which we urge given the significance of the issue when considering sentence reduction for young adults. Clinks sits as part of the Transition to Adulthood (T2A) Alliance, which is submitting separately to this consultation, and which we have collaborated with the Alliance on. We support the specific comments on the young adults section as set out by the Alliance.

Do you have any comments on the new section on female offenders?

Courts should also be made aware of the objectives of the Government's Female Offender Strategy, and its accompanying Delivery Plan, particularly the commitment to see 'fewer women coming into the criminal justice system.' We would also urge additional emphasis on trauma informed approaches to sentencing as well as interventions – for example, that women appearing before the court are significantly more likely to have experienced domestic abuse, sexual violence and other forms of control or coercion and/or to have unmet needs in relation to substance use and/or mental health. The impact of these can be key drivers of offending behaviour. We would also like to see the specific needs of older women considered.

4. Imposition of Community Orders

Do you have any comments on the imposition of community orders section?

We strongly agree that custody should not be imposed where the purposes of sentencing could be achieved by a community order. To support the publication of the final guidelines and to ensure their effectiveness, we suggest a three-pronged focus:

- 1) Specialist input into the PSR process, enabling voluntary providers to input into the PSR process which would ensure a greater understanding of any mitigating circumstances and individual needs
- 2) Work to improve sentencer confidence in the community provision that will support the imposition of suspended sentences or community orders
- 3) Consistent provision of community services so as to avoid a postcode lottery for people receiving sentences in the community.

Further, sentencers must be confident in the efficacy of the interventions required as part of a community order. Therefore, alongside determining the requirements of a community order that align with a person's needs, we recommend the development of additional guidance for sentencers on the composition and content of specific treatment requirements. This must incorporate guidance on what these requirements entail, as well as information on what provision is available in the relevant community, underpinned by the minimum level of interventions required to ensure effective delivery.

7. Imposition of Community Orders

Do you have any comments on the Imposition of custodial sentences section? We welcome comments both on content and format/structure.

Do you agree with the restructure and new factor in the table of factors indicating it may or may not be appropriate to suspend a custodial sentence?

We welcome the guideline and the specified questions and order, and reiterate the points above in relation to the value of PSRs and multi-agency working in enabling sentencers to make proportionate and effective sentencing decisions.

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.

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82A James Carter Road
Mildenhall
Suffolk
IP28 7DE

☎ 020 4502 6774

✉ info@clinks.org

🐦 @Clinks_Tweets

🌐 www.clinks.org

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