Criminal Justice: Breaking the Cycle
consultation the Government response

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Overview

The Ministry of Justice has published a response to its consultation on the Green Paper, Breaking the Cycle, setting out the government’s plans to reduce offending. News reports have focused on the Justice Secretary’s having back-tracked on proposals to reduce time served on prison sentences to 50%; in practice a wider range of issues are covered, many of which are of direct relevance to local government, either as a result of their specific responsibilities, or because of their interest in promoting safer communities.

Kenneth Clarke has shown his sympathy for measures that balance punishment and rehabilitation and reduce the prison population by reducing reoffending, and again emphasises that “Punishment is essential in a fair society, but on its own it does not stop people reoffending”. The solution indicates an intention to rebalance prison, community sentences, and financial penalties, deploying prevention measures in each context. These plans show that the rehabilitation agenda is not lost, although it is inevitably constrained by the funding implications in adopting resource intensive solutions. It is plain that there will be a reliance on payment-by-results employing commercial and third sector suppliers as a means of addressing the funding gap in the justice sector.

Some elements of the plans are included in the Legal Aid Sentencing and Punishment of Offenders Bill, others are the subject of other policy initiatives or will be subject to further consultation.

This briefing outlines the main elements of the proposals that are of relevance to local government, and provides comments that draw on LGiU’s own proposals for local solutions to reducing offending, increasing support for victims and addressing the concerns of the public more generally. Links to relevant documents are provided.
BACKGROUND

Government data show that nearly half of adult offenders released from prison are reconvicted within a year, and overall one in five offenders spent some time in custody in the year after they were released from prison or started a non-custodial sentence. The key findings of the LGiU and All Party Parliamentary Local Government Group (APPG) in an inquiry into justice in communities in 2009 demonstrated that the criminal justice system faces serious problems, including:

- excessive costs
- high rates of offenders going on to commit new crimes
- needs of victims not being met
- ineffective relationships between professionals in different organisations
- professionals distanced from the public, leading to distrust and lack of confidence

The government has reached similar conclusions, that “the same criminals are endlessly recycled through the courts, prison and community sentences, creating new victims of crime and extra costs to society. This vicious cycle costs the economy between £7 and £10 billion per year”. To cut crime, it has been concluded, “…we need to be far more successful at getting prisoners to go straight after serving their sentence”.

The economic argument for such success is underlined by other findings of the LGiU / APPG Commission, that:

- The UK spends more on law and order as a percentage of GDP than any other OECD country.
- England and Wales have the highest per capita rates of imprisonment than any other Western European Country apart from Luxembourg.
- The prison estate is running at ten per cent over capacity.

There has been a common agreement that solutions need to be found with both local and national dimensions. At local government level, Integrated Offender Management schemes are bringing together police, local authorities and probation services to find ways of reducing offending and a wide range of locally devised solutions have been adopted. The LGiU / APPG Commission made a number of recommendations that were summarised as ‘Primary Justice’:

The key recommendations of the report include:

- Creation of a new system of primary justice: shifting control of prisons and key supporting services away from Whitehall to a local level.
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- Creation of a local ‘safety and justice’ budget to fund, amongst other things: local prisons and neighbourhood policing.
- Designing a system underpinned by the principle that offenders should be helped to get work and up-skill with business and voluntary sectors, taking a much greater role in helping to open up employment opportunities for ex-offenders.
- Improving accountability by providing information and support to victims, witnesses and members of the public.

OUTLINE OF GOVERNMENT RESPONSE

Punishment

The punishment regime is to be adjusted to include a focus on work.

For those in custody, there will be a move towards a working week of up to 40 hours, along the lines of schemes introduced in prisons such as HMP Altcourse, which runs a regular working week of 38 hours, which applies to around 120 prisoners who work in recycling, laundry and metal fabrication. At HMP Forest Bank, the private sector provider is proposing the launch of a Social Enterprise employing prisoners for 40 hours a week in a professional print-shop. The majority of profits in this case will go to victim support organisations. A small number of other prisons either run, or have plans to run employment schemes and a full working week.

An implementation strategy for taking this policy further will be launched this autumn. The plan is to remove barriers for organisations from all sectors to collaborate with prisons to develop work opportunities, avoiding displacing jobs in the local community. A Business Advisory Group will ensure the plans are run on business grounds. Collaboration with the Department of Work and Pensions will link these proposals to the Work Programme so that work inside can lead to work outside.

It is intended that community orders will become ‘credible punishment’, with the courts having extended powers to impose restrictions on movement and longer curfews. Fines will be made harsher through provisions for bailiffs to seize personal property such as cars and televisions in default: pilots are to be run in Cheshire and Norfolk from summer 2011.

Payback and restitution

Deductions from earnings in prison and from income earned by those working on licence in the community prior to release will go to victim support services. Plans are to be published in the autumn.

For those offenders not in custody, there is to be an emphasis on greater use of financial penalties, Community Payback, and compensation.

Tackling reoffending

The aim is to target particular issues in a bid to reduce reoffending: drug and alcohol abuse; offenders’ mental health problems; support for offenders into work; and reducing barriers to resettlement.
Drugs and alcohol abuse: Drug recovery wings are to be piloted in five prisons, Bristol, Holme House, Brixton, High Down and Manchester. Security measures to reduce the illicit supply of drugs and alcohol in prison will be increased. Further options are being considered and pilot projects on a payment by result basis are hoped to produce positive results.

Support into work: It is intended that where possible offenders gain skills and aptitude to work in prison and obtain and keep employment on release. In addition, on-line employment and learning services will be available in prison to those who show a commitment to reform.

Mental Health: The main thrust appears to be to work in the community, relying on a number of initiatives already under way with the Department of Health and Home Office. Six pilots for young people have clearly shown some success; they will be followed up with schemes on a further 30 sites.

Payment by results

The initiatives outlined will be based on payment by results – projected by the Ministry as pioneering a world first – “a system where we only pay for results, delivered by a diverse range of providers from all sectors”. Several pilots are in place, and a competitive process will be launched this summer to commission further pilots. It is clear that it is intended to rapidly build on these pilots: a commitment is made that the government will no longer provide rehabilitation services directly without testing where the private, voluntary or community sectors can provide them more effectively and efficiently. A wider Offender Services Competition Strategy will be published shortly, which will set out “an ambitious timetable for taking payment by results forward and the wider competition strategy”.

HMP Doncaster will run a four-year pilot from October 2011. The contract includes reducing reoffending on release, with 10% of the contract value at risk. The scheme will include those on short sentences. The private sector contractor has subcontracted with Catch 22 and Turning Point – a charity and a social enterprise – in order to provide services on release.

In parallel to the consultation response, the Ministry has published a report on the early stages of the first social impact bond – a payment by results scheme – launched in Peterborough in September 2010. The report usefully identifies the resources and skills that have been required to set up the scheme, and highlights some challenges that are likely be involved in any such scheme, whether run by a charity, or social or commercial enterprise. The scheme is as yet untested, from the perspective of reducing offending, but also in terms of effective transfer of risk in practice. Measurement of outcomes also presents a number of challenges, including identifying responsibility when a number of different factors or agencies may have had an impact on improved outcomes. It is not possible at this stage to draw conclusions on whether this model for funding initiatives will lead to savings.

Out of court cautions and penalties
A national framework for dealing with offences out of court will be published in late 2011. In addition, the current youth out-of-court disposals will be replaced with a system of youth cautions, and youth conditional cautions; youth penalty notices for disorder will be repealed, and informal restorative disposals promoted. A police officer will be able to authorise a conditional caution without referral to the Crown Prosecution Service, and the option of paying to attend an educational course be added to adult penalty notices for disorder.

Pre-trial procedures and arrangements for young offenders

Remand in custody puts pressure on the prison system, so that plans to place restrictions on remand in custody – to ensure that remands are for public protection and not to make sure that an offender accesses medical services - must be intended to reduce the prison population and reduce costs.

All young offenders will be treated in the same way for the purposes of secure remand – at present 17-year-olds are treated as adults. Under future reforms, all under-18s on secure remand will become "looked after" by the local authority, which will become financially responsible for all youth remands, commissioning and placements remaining the responsibility of central government. The Ministry believes that this will be “a powerful incentive for local authorities to invest in alternative strategies for this group of young people”.

The bigger picture for youth justice is also changing. Subject to the passage of the Public Bodies Bill, the functions of the Youth Justice Board will be transferred to a newly created Youth Justice Division in the Ministry of Justice (distinct from the arrangements in place for adults, and led by the current Chief Executive of the Youth Justice Board). The government will also set up an advisory board of stakeholders and experts to advise on youth justice issues and to provide challenge and scrutiny.

This new approach “will be based on the principles that youth justice services will be locally determined and driven, maximise value for money, be publicly accountable through a Minister, and be lighter-touch”. The Ministry will target those Youth Offending Teams that are seen to be underperforming, and allow the best performing teams some leeway to innovate. Options in the Green Paper included introducing a version of payment-by-results for youth offending teams: this is not specifically included in plans following the consultation, but is likely to be implied in the creation of some freedom for innovation.

Public awareness and accountability

Measures to improve public awareness include:

- publishing more information about sentencing, justice outcomes, and local justice services  
- introducing measures to allow decision-makers to assess the impact of crime on community life and to understand local priorities  
- increase the information available on volunteering in the sector
supporting community involvement in finding resolutions to low level crime, and continuing tests of Neighbourhood Justice Panels.

Victims of crime

A consultation with victims of crime has been planned, and will include improving the scheme in which victims can make a personal statement to the court on the sentencing of an offender about the impact upon them of the crime.

The government’s plans emphasise restorative justice, and an expansion of the scheme, and increased flexibility in its application, are indicated.

Comment

Publicity about the government’s proposals for reform of the criminal justice system has focused on opposition to plans to reduce the prison population by reducing the number of offenders remanded in custody, and reducing the length of time served on a prison sentence to 50%. Debate on key issues, such as where responsibility for reducing offending should lay, the need to plan for rehabilitation as well as punishment, as well as the ramifications of the government’s approach to funding criminal justice outcomes, has been obscured. While aspects of the proposals are becoming concrete – in the Legal aid, Sentencing, and Punishment of Offenders Bill and the many pilot studies mentioned in this briefing – much is still to emerge.

Insufficient time has passed for more than implementation issues to be learned from pilot studies, and important consultations, such as on further provision for victims of crime, and sentencing reform, have been signposted.

Any failure in the government’s proposals to reduce prison numbers is likely to have significant implications, making it difficult to achieve what are, on the scale of the problems faced, a relatively limited set of objectives, or, more remotely, perhaps demanding that savings are made elsewhere in the Ministry of Justice budget.

The lack of acknowledgement of existing locally-based responsibilities (other than for young offenders) and recognition that the contribution of the main public sector agencies is essential to local offender management is disturbing. Schemes established by local authorities and partner agencies, supported by the MoJ, have been shown to have value, and will remain essential to reducing offending and supporting the interests of the public and of victims of crime. Local authorities and partners will be aware of the need to remove barriers to local Integrated Offender Management, and will without doubt continue to raise potential issues with ministers and in practice to work closely with MoJ officials.

With all discretionary schemes under national and local budget pressures, it is perhaps not surprising that this Secretary of State for Justice is placing reliance on payment-by-results contracts. Untested and presenting considerable challenges to implement and achieve appropriate measureable outcomes, the success of such
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schemes are necessarily unproven. The case for the alternative, of locally managed solutions based on shared devolved budgets, remains as strong as ever, although it is clear that payment-by-results contracts are expected to play a part here too. Local partnerships will want to learn from the Peterborough research when considering how and whether to enter into such relationships themselves. The solutions, in finding accommodation, work experience, and resolving family breakdown will not be fully addressed without the continued integrated activity of public sector partners, and this will necessarily emerge in practice.

The LGiU/APPG commission identified those serving short sentences, those on remand, and young offenders as in particular benefitting from integration of services and budgets at local level. The government has not fully grasped the nettle of the lack of provision for offenders serving sentences of 12 months or less, a group for whom no probation support is provided and among which individuals rarely benefit from in-prison services, and will most benefit from integrated local solutions. It is attempting to reduce the number of prisoners on remand whose jobs, accommodation and family ties may be at risk (for example by providing that offenders unlikely to receive custodial sentences should be granted bail) and is extending local authority responsibilities towards young people.

It may be difficult to quantify any change in level of responsibility for those remanded on bail – although they will undoubtedly present with accommodation, drug, alcohol and mental health issues calling on local services. The MoJ apparently envisages that new responsibilities for young people will involve costs for local authorities to be offset by long-term reductions in offending. Local authorities may want to note that the recently revised New Burdens Doctrine – under which ministries are required to fund such new responsibilities – will apply to the new policy. It seems unlikely that the arguments in the Impact Assessment published at the time of the Green Paper would stand up to the revised set of rules, and should be revisited.

In conclusion, one is left wondering about the substance of many of the government’s proposals, and how much is aspirational and how much achievable.

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