

Finance Committee
Community Justice (Scotland) Bill
Submission from COSLA

1. We welcome the opportunity to provide evidence to the Finance Committee regarding the Community Justice (Scotland) Bill.
2. COSLA supports the redesign of Community Justice in Scotland, and in particular, the focus on local planning and delivery, complemented by the strategic benefits of a new national body. Broadly speaking, we also consider the core elements of the redesign of community justice to be in keeping with COSLA's four key principles of: the empowerment of local democracy; integration rather than centralisation; outcomes rather than inputs; and, the protection of local choice and accountability.
3. However, COSLA members have identified a number of concerns regarding both the policy detail of the Bill and its resourcing where the legislation is out of alignment with expectations, and which we are keen to see addressed so that the reform process can deliver fully against its significant potential.

Overall Comment

4. In keeping with the Finance Committee's Call for Evidence, this submission focuses on the financial implications of the Bill. However, a number of the issues it highlights are closely associated with our scrutiny of the wider policy objectives of the Bill. We have provided a detailed submission on these issues to the Scottish Parliament's Justice Committee.
5. A number of key points underpin COSLA's overall position in this regard. Firstly, the scope of Community Justice Scotland's powers are not sufficiently limited and we are concerned that the regulations set out in Section 3 and 4 risk enabling CJS to become a centralising force rather than one which encourages integration and supports local democracy. Secondly, the nature of requirements on partners to plan, report and deliver on community justice outcomes remains unclear, and while some requirements appear to be light touch, others are highly burdensome and present new resource issues to resolve. Thirdly, we want to ensure that the Bill promotes and secures joint ownership of duties across partners in line with COSLA and the Scottish Government's wider support a community planning focused approach to public service reform.
6. Finally, all of these concerns also imply the need to ensure that the new model is adequately resourced if it is to operate effectively and sustainably. The following comments are made within this context, and have been developed in consultation with member councils.

Consultation

1. ***Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?***
2. ***If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?***
3. ***Did you have sufficient time to contribute to the consultation exercise?***

7. COSLA has been actively involved in the development of the Community Justice Reform agenda, and its activities to promote and develop a local, partnership approach to reform stretch back over a long period. In December 2015, COSLA Convention endorsed the broad direction of this model, and in particular welcomed the Scottish Government's commitment to a joint approach with Local Government in developing the new proposals, a focus on preserving the local dimension of the new model, and a 'horizontal' relationship between local arrangements and the new national body.
8. Throughout this process, we have been clear that the new partnership arrangements must have a robust footing if they are to be successful. In doing so, we have been clear that delivering the new arrangements would require resource issues to be identified and understood if the local partnership model is to flourish.
9. We were therefore disappointed not to have been able to feed into the development of the Community Justice (Scotland) Bill and its associated financial memorandum. While the Bill maintains the general direction of travel around reform, our assessment is that there are several key areas where financial and other resource implications are not adequately recognised by the Bill and its supporting documentation in its current form. Chief amongst these concerns is that the Bill focuses primarily on the roles and functions of Community Justice Scotland and related accountabilities and that the legislation makes very little attempt to identify or capture the resource implications of delivering the new structure locally.
10. Nevertheless, we hope that practical solutions can now be found so that COSLA can continue to support the reform agenda going forward.

Costs

4. ***If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.***
5. ***Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?***
6. ***If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?***
7. ***Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?***

11. The Financial Memorandum devotes much of its attention to the anticipated running costs of the new Community Justice Scotland entity. While an annual budget of £2.2m will be available to this organisation (a light-touch organisation in place to support local community justice outcomes) the legislation makes no additional resource available at a local level.

12. COSLA is clear that the costs of delivering the new national body must not come at the expense of resources that could fund local partnerships, which are very unlikely to be able to simply absorb the cost of new partnerships within the current activity already being undertaken around CPPs. The Bill and its supporting documents pays little attention to resourcing the development of the new model locally, connecting this to existing Community Planning and Community Safety activities, developing an appropriate local Performance Framework, and ensuring effective oversight and co-ordination overall.
13. We are concerned that the resources needed for the local partnerships of the new model are therefore not adequately addressed. That the national body is to receive over £2m a year but the local partnerships will receive no additional funds does not seem to support the policy intention to shift to a local model. Indeed, giving so little attention to the resources needed for local partnerships risks compromising the message that the redesign of community justice represents a shift to local planning and delivery.
14. We do, however, believe that there is strong potential to build on the positive transitional work that is now beginning to take place locally. Following negotiations with COSLA, the Scottish Government made £1.5m available in transitional funding to CPPs for each of the three years of transition to prepare for the new arrangements. This has been distributed on the basis of £50k for each Local Authority. The Scottish Government's commitment to this transitional support for community planning is welcome and recognises the need for additional capacity to prepare for the new strategic planning and service delivery landscape and engage with a range of partners, some of whom will have their own capacity issues. Local authorities and their partners report that they are enthusiastic about the new model, and are already beginning to frame their approaches in this regard.
15. Despite this, we are concerned that the transitional funding is only available for three years (subject to review following the outcome of the UK Comprehensive Spending Review). We very much support the policy intention that all relevant partners actively engage in and resource the community planning model for community justice, and we are committed to delivering all of benefits of efficiency and effectiveness associated with sound partnerships, but we are clear that local authorities cannot simply absorb the ongoing resource implications of progressing this agenda.
16. Building on this concern, COSLA has secured a vital commitment that the Scottish Government will work with it to identify, understand and develop intelligence on these cost implications at a local level. This commitment is set out in the Bill Explanatory Notes at para 82:

...the Scottish Government and the Convention of Scottish Local Authorities (COSLA) recognise that the transitional period may identify potential costs around supporting partners under the new model. The Scottish Government and COSLA are committed to working together on this matter

17. We consider it vital to deliver fully on this commitment by building up a strong understanding over the period of transition of the resources required to support ongoing costs of the new community planning model for community justice locally. We are keen that joint work is successfully progressed on this well in advance of the new model coming into force, and featured as part of the development of the Bill.

18. Our initial intelligence is that delivering the model successfully will cost in the region of £100,000 in each partnership on an ongoing basis in order to employ 2 officers and have sufficient resources to undertake planning activities, develop and provide oversight of the performance framework in line with local arrangements, and be able manage local governance activities and partnership meeting.
19. We also consider an essential part of the transition to the new model to be an assessment of the financial costs associated with the dis-establishment of CJAs, including any costs of meeting the contractual obligations of CJA staff members still in post at the time of the disestablishment. We therefore also wish to highlight comments regarding paragraph 98 of the Policy Memorandum in relation to liabilities surrounding this process.
20. COSLA has been clear that the Scottish Government must ensure that it meets any liabilities that will accrue, as set out under the terms of the Management of Offenders etc. (Scotland) Act 2005. Any other contracts held by CJAs in relation to IT, premises and other arrangements will also need to be fully addressed. We have previously written to the Cabinet Secretary for Justice, Michael Matheson, highlighting this issue, and received written confirmation that the Scottish Government will cover all costs arising from disestablishment issues.
21. This is a welcome commitment, but we note that paragraph 98 of the Policy Memorandum accompanying the Community Justice (Scotland) Bill states that Scottish Ministers are 'potentially settling this liability'. We would therefore ask that the wording is amended to confirm that previous assurances are guaranteed.

Wider Issues

8. Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

22. COSLA believes that the potential for the new model to develop and strengthen partnerships with local statutory and third sector partners (and often across local authority boundaries) will be immensely rewarding in terms of positive outcomes. We also recognise that there are significant opportunities for synergy between existing Community Safety Strategies and the successors to Community Justice Area Plans.
23. However we also know that doing so will be critically predicated upon having the capacity to analyse, identify and plan with partners in relation to local need, and the time involved in realising these opportunities and meeting these challenges should not be underestimated.
24. The opportunities presented by the Bill to take potentially transformative steps forward could therefore be lost if the resources required to undertake this work are not available. The mismatch between the planned investment in CJS as the central authority charged with oversight of Community Justice Planning & Performance Monitoring, and the local partnerships that will be charged with local strategic planning and delivery.

There are a number of associated areas to consider in this regard.

25. While we welcome that the duty of partners to cooperate includes “sharing information”; “providing advice and assistance”; “coordinating activities”; and “funding activities together,” we believe that this should therefore also include an explicit reference to planning. We also believe that the wording of section 30 needs to be strengthened in this regard to guarantee the contribution of partners, rather than simply stating that this ‘may’ happen.
26. Notwithstanding a duty to co-operate on partners, the drafting of the legislation requires outcomes planning to be done by “local authority area”. Given that many of the national partners do not organise themselves along local authority boundary lines, we consider the risk of the principal responsibility for planning and reporting on the local authority to be high. Our members have also reported concerns over the reporting of local outcomes and the potential burden of the local-to-national reporting requirements, particularly given that no resource has been allocated to support this. Moreover, there is an obligation on community justice partners to provide information, advice and assistance to CJS which is likely to have resource requirements which are neither specified nor accounted for. It is therefore important that the outcomes and performance management framework should be flexible enough to allow local priorities not to be undermined. Given the national framework is yet to be agreed, COSLA would have reservations in signing up to the prescriptive nature of Sections 17-25 as they currently stand.
27. We are also mindful that as part of the creation of single Police and Fire Services in Scotland, local authorities received funding to compensate them for the additional costs associated with carrying out their local scrutiny functions. While the policy focus is different, we believe that the workload being asked of the new local partnerships is very demanding and similar consideration ought to be given to resourcing. This is all the more important in a context within which local authorities and other partners have already achieved significant savings over the last 4 years and are on track to make even greater savings in the next 4 years.
28. Finally, we note that the policy memorandum refers to the future funding model for community justice services at paragraph 109. We recognise the need for the current funding model for community justice to be updated in line with the wider community justice reform agenda, and we are actively involved in a process to examine issues alongside the Scottish Government and a range of partners. This work is ongoing, and no recommendations have yet been identified.
29. We also note that in the opening sections, the Bill clarifies that “there will be no overall reduction in the level of funds currently provided by the Scottish Government for Community Justice”. This has been welcomed by member Councils. Feedback from a number of Local Authorities is that Section 27 funding levels often do not fund the full cost of relevant services and that Councils are having to subsidise these services from mainstream budgets. However, this section goes on to state that “there may therefore be specific improvement actions identified – by Scottish Ministers or at a local level – which are to be funded by CJS. Any such costs would be over and above those set out in Table D and would have to be met from within existing funding levels.” It will be important that any such actions are undertaken through a joint assessment of need, and do not lead to a situation where they are developed at the expense of funding for local priorities and services.
30. We are therefore concerned that the policy memorandum sets out the intention that funding provided to local authorities under Section 27 of the Social Work (Scotland) Act will include an “innovation fund” against which community justice partners would “bid for

monies to deliver improvement.” This has not been agreed with COSLA or any other partner at this stage and any decisions on Section 27 moneys should be made collaboratively through the established governance structures for doing so.

COSLA
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