

Justice Committee

Community Justice (Scotland) Bill

Written submission from Northern Community Justice Authority

1. *Will the proposals in the Bill transform the community justice system in the way envisaged by the Commission on Women Offenders in its 2012 report, (“the CWO Report”), such as addressing the weaknesses identified in the current model, tackling reoffending and reducing the prison population?*

Will the proposals in the Bill address weaknesses of the current model as identified by the CWO?

1.1 S311 of the CWO Report summarises its view of the weaknesses of the current model: “Despite the many bodies and individuals working in the field, there is a leadership vacuum; no one organisation or individual has overall responsibility for the delivery of criminal justice services in the community. There is also a lack of a shared vision or common goal directed at delivering the best outcomes for women offenders; fragmented and short-term funding; and an absence of any systematic measurement of outcomes or of what programmes are effective in reducing reoffending.”

1.2 In summary, the draft Bill should address the issue of a ‘shared vision’ – via the requirement for a national strategy for community justice (s13 of the draft Bill) – and should go some way to address the ‘absence of any systematic measurement of outcomes/effectiveness of programmes’ – via the requirement for a national performance framework in relation to community justice (s15). (Although the ‘effectiveness of programmes’ is not specifically referenced.) The draft Bill does not address issues in relation to funding – it is silent on this – and does not address the lack of ‘one organisation or individual’ who has overall responsibility for the delivery of criminal justice services in the community.

1.3 A detailed summary of the extent to which the draft Bill addresses the weaknesses identified in the current model by the CWO Report follows.

1.3(A) ‘cluttered landscape’ (s290 of CWO Report) – also a finding of the Christie Commission. In terms of ‘community justice’, the landscape will be no less cluttered. 32 CPPs and Community Justice Scotland (“CJS”) will take over the role played by 8 CJAs. [Although CPPs were referred to as ‘having an interest in the management of offenders’ (s285 of CWO Report), the reality is that their ‘participation’ in this agenda was very variable across the country.] National ‘community justice partners’ as defined in the Bill, will have to work out how they will link in with all the CPPs and CJS. Scottish Government will have to link in with 32 CPPs rather than 8 CJAs in relation to s27 funding, as CJS has no role here.

1.3(B) ‘short term funding’

- i) **lack of financial incentive for CJAs to change offenders’ behaviour/reduce reoffending, due to favouring activity over**

outcomes (s294 of CWO Report) – one of the functions of CJS is ‘to oversee and keep Ministers informed about performance in the provision of community justice ...’. The Bill envisages a ‘national outcomes-lead performance framework’ (s15), which is being developed, which should go a long way to increasing the focus on outcomes. However, as stated, CJS’s role in relation to this is to ‘oversee’ and ‘keep Ministers informed’. CJS is not responsible for ensuring the national outcomes are achieved. It is not clear who is responsible for this. A review of how community justice is funded is also underway, but issues in relation to funding are not identified as a function of CJS (funding of Community Justice is not covered by the Bill). The lack of single responsibility for both areas will not facilitate the addressing of this issue.

- ii) **lack of ability to shift resources to early intervention/prevention** (s294 of CWO Report) – as stated above, funding of community justice is not covered by the Bill, and CJS has no proposed function in this regard. In addition, the Bill defines ‘community justice’ (s1 (1) b, c and d of the draft Bill) with reference to ‘offenders’. ‘Offenders’ are further defined in the draft Bill (s1 (3)) as “persons who have at any time been convicted of an offence”. The Bill therefore does not cover those to whom ‘early intervention/ prevention’ may apply, which is potentially a significant flaw in the Bill, raising questions over the inclusion of ‘interventions’ etc (such as Diversion from Prosecution, alternatives to remand, Police and Fiscal Direct Measures, etc) within the remit of ‘community justice’, a national CJ Strategy, performance framework, etc.
- iii) **most of funding is allocated to statutory functions over which CJAs have little discretion, which impacts on their ability to fund new approaches ... and no mechanism for managing funds between prison and the community** (s295 of CWO Report) – the above references to funding not being covered by the Bill apply.
- iv) **concerns that CJAs tended to allocate funding to local authorities based on historical levels, without taking a regional or strategic perspective** (s296 of CWO Report) – the above references to funding not being covered by the Bill apply. It is difficult to see how the new arrangements will encourage ‘regional’ initiatives.
- v) **concerns from practitioners, especially from third sector, about the short-term and fragmented nature of funding, and the impact on staffing, training etc** (s297 of CWO Report) – the above references to funding not being covered by the Bill apply.

1.3(C) ‘lack of accountability and leadership’

- i) **lack of performance framework or baseline data set of offender outcomes** (s298 of CWO Report) – this should be addressed by s15 of the draft Bill, which introduces a ‘statutory’ performance framework for

community justice (although bear in mind earlier comments about the Bill's definition of 'community justice' and 'offenders'). This should also address the concerns raised in s299 of the CWO Report (lack of target for reduced reoffending among women), in s301 of the CWO Report (effectiveness of individual CJAs and differences between them – although 'benchmarking' performance of individual CPPs should be treated with caution), and in s302 of the CWO Report (use of reconviction rates alone for measuring success).

- ii) **lack of overall strategic and operational responsibility for the delivery of offender services in the community** (s304 of the CWO Report) – the functions of CJS as set out in the draft Bill (s3) do not confer on it 'overall strategic responsibility for the delivery of offender services in the community'. Its role is 'to promote the national strategy' (as published by Scottish Ministers), 'to oversee and keep Ministers informed' about performance, 'to promote and support' improvement in provision, making best use of facilities, etc, and 'to promote public awareness' of the benefits of community disposals/managing offenders in the community, etc.

1.3(D) 'inconsistent service provision'

- i) (s305 onwards of the CWO Report) – it is not easy to see how the proposals in the draft Bill will specifically address this, although the provisions relating to the promotion of good practice may contribute to the wider sharing of good practice/consistency in provision of services. The Bill makes no reference to the role of third sector partners (s306 of the CWO Report notes that "we heard evidence that women often respond more positively to staff in the third sector than the statutory sector.") with regards to the lack of "a comprehensive picture of the offender services and programmes available in the community" which is referred to in s306.
- ii) **the lack of a nationally agreed framework of performance indicators** – is being met by the draft Bill.
- iii) **community reintegration arrangements vary from prison to prison and only half of the prisons and councils that provided services had formal arrangements outlining what services would be provided** (s309 of CWO Report). Given the potential disparity in arrangements for community justice locally which could be implemented under the draft Bill, and lack of 'overall strategic and operational responsibility' as described above, it is hard to see how the addressing of these issues will be facilitated.
- iv) **CJSW Services not always integrated with prison and other community-service providers, such as 3rd sector, impacting significantly on continuity of care from prison to the community** (s310 of CWO Report). Neither SPS nor '3rd sector partners' are listed as 'community justice partners' (s12) or referenced in the draft Bill. [In

the Management of Offenders etc (Scotland) Act 2005, with regards the 'duty to cooperate', clarification was given (s1(3)) that the reference to Scottish Ministers was with regards to their functions under the Prisons (Scotland) Act 1989. No such clarification is given in the draft Bill.]

1.4 The only actual requirement Community Justice Partners have in relation to CJS is to comply with requests for information from CJS.

1.5 The Appendix to these comments attempts to capture the governance/reporting structure of the new arrangements – as can be seen this is fairly complex and does not make for clear lines of responsibility/accountability.

1.6 CJS must monitor performance in achievement of national and local outcomes locally, and from time to time report to CJ partners in each local area on its assessment of their performance in achieving national and local outcomes (s23), and may also provide guidance as to action that CJS considers necessary or helpful (s23(3)). CJ partners must notify CJS of any action they propose to take in response to the report (s23 (4) (b)). (There is no requirement on the part of CJ Partners.) It is therefore hard to see how CJS can be said to have any national 'overall strategic ... responsibility' for community justice. *[NB Oxford English Dictionary definitions of 'responsibility': The state or fact of having a duty to deal with something or of having control over someone; The state or fact of being accountable or to blame for something; The opportunity or ability to act independently and take decisions without authorization; A thing which one is required to do as part of a job, role, or legal obligation.]*

1.7 CJS has no operational responsibility for community justice – s26 (8) states specifically that "Nothing authorises CJS to provide a service in relation to community justice itself".

1.8 The role of CJ partners (as identified in s12 of the draft Bill) may be interpreted as them having strategic and operational responsibility for the delivery of offender services in local areas. The role of CJ partners according to the draft Bill:

- to publish a plan in relation to community justice (s17) as to whether and to what extent the national outcomes are being achieved locally, whether they require to be prioritised for action, the actions planned, and any other material considered appropriate, ie locally determined outcomes and related actions;
- (s18) to have regard to strategy, performance framework and 'local outcomes improvement plan' (SOA), to consult CJS and community bodies, and to make reasonable efforts to secure the participation of relevant community bodies;
- to review the plan (s19);
- publish an annual report (s20).

1.9 The Bill is silent however on governance arrangements locally, including in relation to the role of local authority elected Members. There is no reference to responsibility for community justice locally being transferred to Community Planning Partnerships, as was envisaged by the Scottish Government's December 2014 response to the consultation on a 'Future Model for Community Justice in Scotland',

only to Community Justice Partners 'having regard to the local outcomes improvement plan in relation to the area', which is defined as "the plan prepared and published in relation to the area under section 5(1) of the Community Empowerment (Scotland) Act 2015" (s18 of the draft Bill refers). This could potentially lead to a whole range of different approaches to this locally, difficulties in trying to encourage consistency where appropriate, and challenges for national organisations linking in with the local partnership arrangements.

Will the proposals in the Bill tackle reoffending and reduce the prison population?:

1.10 The definition of 'community justice' in the draft Bill does refer to reducing reoffending, and to the facilitation of access by those who have been convicted to 'general services' – recognising the need for a holistic, 'whole system' approach which will support individuals to address the wider range of needs recognised as potentially contributing to 'offending behaviour'.

1.11 The draft Bill requires the publication of a national performance framework in relation to community justice, which is to set out national outcomes and indicators, and requires community justice partners to take account of these when developing local plans. The draft Bill is silent on the promotion of an evidence-based approach to this, however, and provides no incentive for 'services' to focus on the collation/ sharing of evidence about 'what works to reduce reoffending' which could play a huge part in informing the effectiveness of services in reducing reoffending going forwards.

1.12 As mentioned above, the definition of 'offender' in the Bill only refers to those who have been convicted, and excludes those who may benefit from early intervention and prevention, diversion, direct measures, alternatives to remand etc, and thereby potentially reduce the prison population. Although one of the key functions of Community Justice Scotland is to promote public awareness of the benefits of community disposals and managing and supporting offenders in the community, there is nothing further in the draft Bill to support this, such as a requirement for a national Communications Strategy to accompany the national Community Justice Strategy. Effective communication of the relevant messages is vital in changing attitudes which will facilitate the integration of people who have offended or are at risk of offending into their communities, via 'community-based' solutions, and thereby reduce both reoffending and the prison population.

2. *Are you content that the definition of 'community justice' in the Bill is appropriate?*

2.1 No - The definition of 'community justice' in the draft Bill excludes any reference to individuals who may be at risk of offending, who may benefit from 'Early Effective Intervention and Prevention' activities, who may be diverted from prosecution, receive direct interventions from Police or Procurator Fiscal, or 'alternatives to remand', or any other 'prevention-focussed' activities.

2.2 One of the key messages of 'The Commission on the Future Delivery of Public Services' (2011) was that "We must prioritise expenditure on public services which prevent negative outcomes from arising."

2.3 Scottish Government/COSLA's Statement of Ambition (15 March 2012) stated that "Effective community planning arrangements will increase the focus on prevention in order to achieve better outcomes for communities."

2.4 The 2012 Guidance for CPPs with regards to Single Outcome Agreements stated that "new SOAs should promote early intervention and preventative approaches in reducing outcome inequalities."

2.5 The lack of any focus on prevention and early intervention also does nothing to facilitate the promotion of links between youth and adult justice services, to ensure continuity of provision where appropriate. The definition of 'community justice' should be revised to address this.

3. *Will the proposals for a new national body (Community Justice Scotland) lead to improvements in areas such as leadership, oversight, identification of best practice and the commissioning of services?*

3.1 The proposals for a new national body should lead to improvements in oversight via the national performance framework. As stated above, this does not encompass any requirement around 'evidence-based' provision, and the collation of evidence which could inform best practice. It is not clear from the draft Bill that the new arrangements will lead to improvements in the commissioning of services – it just facilitates the national body to undertake this.

3.2 The Appendix to these comments attempts to capture the governance/reporting structure of the new arrangements – as can be seen this is fairly complex and does not make for clear lines of responsibility/accountability.

3.3 It is not clear what is meant in the question by '... improvements in areas such as leadership, ...'? What is meant by 'leadership'? See earlier comments in response to Question 1, under 1.3 (C) above.

4. *Taking into account the reforms set out in the Community Empowerment (Scotland) Bill relating to Community Planning Partnerships, will Community Justice Partners have the powers, duties and structures required to effectively perform their proposed role in relation to community justice?*

4.1 The Northern CJA is concerned that there is no reference to Community Planning Partnerships in the draft bill. There has been concern expressed locally that without specific reference to CPPs they will not fully engage in the process.

4.2 CPPs will be in a better position to respond to this question.

5. Does the Bill achieve the right balance between national and local responsibility?

5.1 See response given to Question 1, under 1.3 (C) (ii) above.

6. Will the proposed reforms support improvement in terms of: (a) leadership, strategic direction and planning? (b) consultation and accountability? (c) partnership and collaboration? (d) commissioning of services and achieving best value for money?

6.1 (a): See response given to Question 1, under 1.3 (C) (ii) above, with regards to 'leadership' and 'strategic direction'. With regards to 'planning', the Bill does include some detail, though without specific reference to CPPs there may be confusion around who will lead on this locally. The Bill attempts to ensure that local plans take account of 'nationally determined outcomes' (s17(2)), although if partners/communities locally do not feel that a national outcome is relevant for their area, this goes against a desire for locally driven plans based on local issues/evidence of what is needed.

6.2 *"Reforms must aim to empower individuals and communities receiving public services by involving them in the design and delivery of the services they use."* [From the 2011 report by the Commission on the Future Delivery of Public Services.]

7. Are the resources, as set out in the Financial Memorandum, sufficient to transform the community justice system in the way envisaged by the Commission on Women Offenders in its 2012 report?

7.1 No - The Commission on Women Offenders envisaged and recommended a national Community Justice Service - putting in place a light touch national oversight body with very weak functions and responsibilities and, having 32 local (and probably very different) systems of delivering community justice being developed across the country will not transform the community justice system as envisaged. It will, as stated earlier, produce an even more cluttered and complex landscape than referenced in previous reports with the likelihood that several CPPs and Community Justice Partnerships will have less effective models of delivery than currently exist across the 8 CJA areas.

7.2 Any partnership that already exists or is to be created within a CPP area to deliver community justice will be required to prepare a Local Improvement Plan, will be required to submit annual reports, will be required to be administered in terms of coordinating meetings, keeping records, maintain accounts in terms of Section 27 grant funding etc. No provision for funding the administration and management of these new partnerships has been made in the Financial Memorandum. Whilst there is transitional funding available for CPPs for up to three years, there needs to be a commitment to realistic funding for each CPP in respect of the administration and for the delivery of community justice.

8. *Is the timetable for moving to the new arrangements by 1 April 2017 achievable?*

8.1 Yes. There should be no reason why Community Planning Partnerships cannot start to take ownership of the delivery of community justice from 1 April 2016, they will have submitted their Local Improvement Plan and have detailed the actions they will take to deliver community justice.

8.2 One barrier to this may be if not all CPP areas have an appropriate partnership structure in place to deliver community justice on their behalf by 1 April 2016. This is seen as a weakness in the transition process.

9. *Could the proposals in the Bill be improved and, if so, how?*

9.1 There is no clear role for elected Members.

9.2 CPPs are not referenced in the bill, nor are the third sector.

9.3 The definition of community justice is too narrow, referring to offenders who have been convicted of an offence. One of the key roles for Community Justice Partnerships should be to prevent people being convicted of offences and to promote diversion away from prosecution. If these are not specifically included some Community Justice Partnerships may choose to not prioritise these important areas in tackling reoffending.

9.4 The functions of Community Justice Scotland are weak e.g. they are about promoting, supporting and overseeing. They are considerably weaker than the current functions of CJAs.

9.5 Community Justice Scotland will not be responsible for the distribution of Section 27 grant funding. This is seen as a considerable weakness. If CJS had this responsibility it would then have some leverage with CPPs.

9.6 The engagement of national organisations e.g. SPS, national 3rd Sector Organisations, Scottish Courts and Tribunal Service, Victim Support Scotland, Health Boards covering multi-authority areas has been identified as potentially problematic. It is difficult to see how they will engage with all 32 Community Justice Partnerships effectively. The three Islands authority partnerships are likely to be significant losers in this regard.

9.7 Scottish Government will have a more onerous task in respect of overseeing the work of 32 Community Justice Partnerships. They will have 32 Local Improvement Plans to scrutinise, approve and monitor. Equally they will have 32 Annual Reports to scrutinise as well as those reports and plans prepared by Community Justice Scotland. Scottish Government will also have the additional work of allocating the S27 grant funding and the associated negotiations and discussions that will go along with that task. The resourcing of these functions should be taken into account.

9.8 The intention and expectation that all community justice partners will contribute resources in respect of people, time and money reads well on the response document, however, it is most likely that partners' contributions to community justice will amount to putting a figure on their current contribution to delivering community justice.

9.9 There is a risk that the identified national outcomes will not be relevant to all CPP areas. Recent discussions with CPP Members and Officers indicate that imposing national outcomes on CPPs and Community Justice Partnerships that are not relevant to some areas may see them 'switch off'.

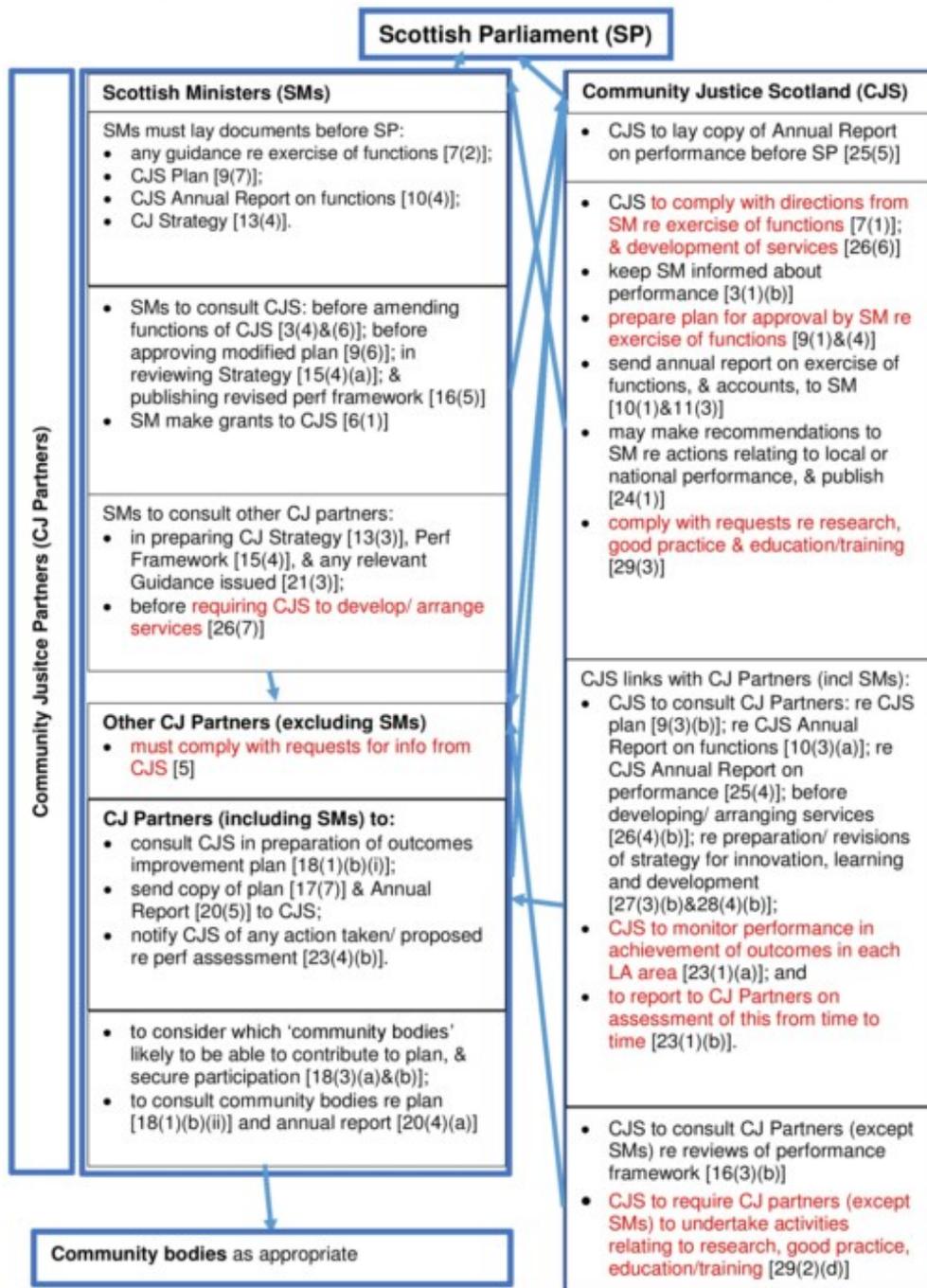
9.10 There should be more emphasis on the development of local outcomes.

9.11 Indicators in respect of national and local outcomes should be relevant and meaningful and not chosen because they currently exist for one reason or another.

Northern Community Justice Authority
24 July 2015

Appendix

Community Justice (Scotland) draft Bill – Diagram of Links/Governance



Red text indicates a requirement