

Justice Committee

Community Justice (Scotland) Bill

Written submission from South West Scotland Community Justice Authority

Introductory Comments and Executive Summary

0.1 South West Scotland Community Justice Authority (SWSCJA) welcomes the invitation by the Justice Committee to submit evidence on the Community Justice Bill. To date we have played an active role in the consultation process. Our previous consultation responses are at:

<http://www.swscja.org.uk/latest-news/future-model-of-community-justice-in-scotland.html>

0.2 This submission complements our previous responses and also the national response to the Justice Committee submitted by the Convenors of Scotland's 8 CJAs. In this response we focus on local issues, challenges and concerns in respect of the Community Justice Bill.

0.3 Over the last nine years of available data, SWSCJA area has moved from having one of the highest reconviction rates in Scotland to being amongst the lowest, from 33.9% of people convicted being reconvicted within a year to 27.5% - a reduction of almost a fifth. This is a very positive trend which is also reflected in the reconviction frequency rate (the average number of reconvictions per person convicted). SWSCJA area now has the second lowest reconviction frequency rate in Scotland, at 0.46 reconvictions per person convicted compared to 0.65 per person when this data was first made available in 2007 – demonstrating a decrease of around 30%, or 0.19 offences per person.¹

0.4 Building on this sustained improvement in reconviction rates, our partnership continues to be forward looking and ambitious, and we are strongly committed to building on our collaborative achievements to date and increasing the rate of improvement in reducing reoffending. However there is no evidence that the Bill's proposals will deliver an enhanced rate of local progress in the future. With robust foundations, change can of course bring opportunities and improvements, however with these proposals there is a risk that our rate of progress will in fact slow down, due to the lengthy transitions process followed by a considerable settling in period for the new arrangements.

0.5 Our specific recommendations in relation to the Bill are as follows:

- a. Remove reference to the Commission on Women Offenders and the Audit Scotland reports from all Bill documentation as justifying these proposals, as both made quite different recommendations.
- b. Redefine 'community justice' around outcomes for people, and ensure any definition of 'offenders' is proportionate to the task.

¹ Reconviction Rates in Scotland (March 2015) <http://www.gov.scot/Publications/2015/03/9783>

- c. Re-consider whether there is sufficient added value in the proposals for Community Justice Scotland or whether there are more appropriate alternative mechanisms to deliver these national functions, e.g. formal national partnership arrangements; national networks operating within formal partnership agreements; or existing Scottish Government arrangements. This could be supported by a joint community justice/ prisons board, and complemented by existing assurance, improvement, inspection and academic bodies.
- d. Articulate (within the Bill itself) a clear commitment to Community Planning Partnerships by giving them the leadership, governance and accountability functions for local community justice matters. This should replace the list of essentially free-floating 'Community Justice Partners'. Ensure CPPs have the local flexibility to organise themselves as appropriate around these functions, including working across CPP boundaries and involving relevant local partners.
- e. Clarify that 'Scottish Ministers' also includes the Crown Office and Procurator Fiscal Service'.
- f. Ensure the requirement for local partners/ partnerships to 'send' relevant reports to the national body is replaced by a requirement to 'publish', i.e. make available to all interested parties.
- g. Remove reference to the National Strategy, Performance Management Framework and funding and strategic commissioning arrangements as these do not require legislative change.
- h. Include a stated role for Elected Members and the Third Sector, including placing a statutory duty on those charged with leadership and governance to include the third sector as equal partners.
- i. Consider the Commission on Women Offenders' proposal for a joint board for community justice and prisons, which would also act as a forum for resource reallocation to properly support community justice as a prevention and early intervention approach.
- j. Ensure funding for local partnership support and development for community justice within community planning is equitable to funding for national community justice arrangements.

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, such as addressing the weaknesses identified in the current model, tackling reoffending and reducing the prison population?

1.1. It is important to note that the Commission on Women Offenders did not propose that local community justice planning should become the responsibility of a list of Community Justice Partners (nor indeed the responsibility of Community Planning Partnerships), nor that a new national improvement and assurance body should be established in the form of Community Justice Scotland. It is unlikely therefore that the proposals in the Bill will deliver the changes envisaged by the Commission who recommended a quite different "radical transformation of the existing structural and funding arrangements", including a national Community Justice Service with both operational *and* strategic functions, governed by a joint Board with the Scottish Prison Service.

1.2. On that basis we feel it is misleading to repeatedly refer to the Commission as justification for the Bill's proposals. (Similarly Audit Scotland's 2012 report is

repeatedly referred to as evidence for the proposals, despite not recommending any structural reform at all, but instead calling for improved funding, performance management, offender management, service planning/ design/ delivery, and understanding of unit costs).

1.3. Improvements sought by the Commission on Women Offenders in relation to governance, accountability, leadership, reducing reoffending and reducing the prison population will not necessarily follow further structural reform. In our experience as SWSCJA, such improvements are instead dependent on genuine partner commitment to working together; strong and longstanding personal relationships based on trust and honest communication; a joint ambition to create and implement a Whole System Approach to reducing reoffending; robust evaluation and performance frameworks; and the redirection of shared resources to the right parts of the system, in particular in relation to prevention and early intervention.

1.4. In our view, impending structural reform may in fact threaten the good progress made by SWSCJA to date, for example by introducing an element of uncertainty amongst partners in terms of current longer term planning; introducing a national oversight body which undermines confident local leadership in community justice; and diluting the potential to build stronger links with Community Planning Partnerships by introducing a parallel process around a list of named 'Community Justice Partners', most of whom are national bodies governed from the centre.

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

2.1. No. There is a focus on agencies and services which is contrary to our own SWSCJA focus on outcomes for people. The definition of 'offenders' as any person with any conviction at all will include a quarter of the adult population, which is neither manageable nor appropriate in terms of risk and need.

2.2. Our Area Plan 2014-17 ('Working in Partnership to Reduce Reoffending') is based on six Local Outcomes which articulate our local definition of community justice:

- The use of *community approaches* to reducing reoffending is promoted and increased.
- *Perpetrators of domestic abuse* address their offending behaviour.
- *Community integration* is improved.
- *Families* are respected, supported and included.
- *Victims' voices* are heard in the criminal justice system.
- The value of a *partnership-based approach* to reducing reoffending is maximised.

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. There is no *guarantee* that the creation of a new national body will deliver any of these improvements. Indeed the minimal improvement and assurance role of Community Justice Scotland (which quite rightly includes no accountability for, or

governance over, local performance) is so limiting that it questions whether this body adds any value at all.

3.2. Whilst a national body may potentially attract status and profile, the national functions of Community Justice Scotland could arguably more effectively, and certainly more efficiently, be delivered via alternative, well-tested mechanisms. These include formal national partnership arrangements; national networks operating within formal partnership agreements supported at Chief Executive level; or existing Scottish Government arrangements.

3.3. Such arrangements could be supported by our previous recommendation of a Community Justice Board (potentially combined with a prisons board as per the Angiolini Commission). Rather than establishing a £2.2 million per year agency, this would provide proportionate and collaborative oversight and assurance for the Cabinet Secretary – also freeing up resources to deliver community justice outcomes. This would be complemented by existing assurance and improvement bodies such as Audit Scotland, the Improvement Service, relevant Inspectorates and existing academic centres of excellence.

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 surprise appearance in the Bill of a distinction between ‘Community Justice Partners’ and ‘Community Planning Partnerships’ (which in themselves are not mentioned in the Bill and are barely mentioned in the accompanying documents) was not anticipated in *any* of our communications with the Scottish Government prior to the Bill’s publication. We do not accept the Scottish Government’s suggestion that CPPs cannot be mentioned in the Bill as they cannot be legally accountable for delivering outcomes. *Almost every other policy area* which involves joint local strategic planning is the clear responsibility of CPPs through the Concordat agreement and Single Outcome Agreement/ Local Outcomes Improvement Plan process, from economic development to health improvement to safer communities and beyond. Other legislation – including the recently passed Community Empowerment Bill – has no difficulty articulating a clear commitment to, and responsibilities for, CPPs.

4.2. The wording in the Bill and accompanying documentation suggests a lack of appreciation of the ‘sovereign’ local role of CPPs in terms of leadership, governance and accountability for the planning and delivery of shared outcomes in their area. Given that CJAs were to be disestablished in any case, SWSCJA supported the proposal for CJAs’ local strategic planning and reporting functions to move into CPPs. However the Bill establishes an unacceptable and confusing parallel process, whereby the named Community Justice Partners (the majority of whom are in fact national organisations governed centrally) can essentially do as they wish, as long as they ‘consult’ the CPP as a stakeholder.

4.3. This arrangement will ensure that the many advantages of locating community justice in CPPs (most notably the links across all policy areas) will be lost, as CPPs will have neither clear ownership of (or accountability for) community justice outcomes, nor responsibility for governance around planning and service delivery.

4.4. The CPP should more correctly (and more effectively) be specified as having the leadership, governance and accountability function for local community justice matters, as was communicated and indeed agreed throughout the earlier consultation process. How the CPP then decides to organise itself around this (including whether to work across CPP boundaries and which partners to include in governance arrangements) is a matter for local determination.

4.5. There is no explicit mention in any of the documents of the Crown Office and Procurator Fiscal Service (COPFS) who are *essential* partners in delivering better community justice outcomes. Whilst our understanding is that they are included under 'Scottish Ministers' along with the Scottish Prison Service, this is not clarified in any of the accompanying documents. This is a serious omission which should be rectified.

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

5.1. No. One of the most disappointing aspects of the proposals is that it is a re-enactment of the kind of unhappy local / national compromise that led to the creation of CJAs in the first place. As Audit Scotland concluded in 2012, "the way CJAs were set up" has continued to limit our effectiveness. So it is disappointing to see that an opportunity to create a decisive local or national model has (regardless of our preference for one over the other) again proposed a 'fudged' model which is neither one thing nor the other.

5.2. The proposals risk the creation of a new, competing local and national 'industry', involving a raft of performance and reporting requirements around community justice, duplicating and cutting across existing Single Outcome Agreement/ Local Outcomes Improvement Plan processes for CPPs. This will not only divert effort and resource from actually developing and delivering improvements in community justice, but will also lead to a heightening of local versus national tensions around who is responsible for what.

5.3. There is also an implicit tension in requiring (as stated in the legislation) that local partners/ partnerships must *send* relevant reports to Community Justice Scotland, despite the national body having no governance role over local arrangements. This requirement is inappropriate and should be replaced by reports simply requiring to be *published* (and therefore made accessible to any interested parties).

5.4. Interestingly there is no information anywhere in the Bill or accompanying documents as to what sanctions would apply if the local Community Justice Partners refuse to "comply with any reasonable request" by Community Justice Scotland.

5.5. It is not possible at this stage to assess a significant part of the national responsibilities – the National Strategy, Performance Management Framework and funding and strategic commissioning arrangements all remain under development at this critical stage. It is unclear in fact why any of these require legislation to be progressed, as all could be (and should have been) introduced previously within the existing arrangements.

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. As noted earlier, structural reform does not guarantee any of these improvements.

6.2. We have particular concerns around the absence in the proposed reforms of any stated role for Elected Members or the Third Sector. CJA Elected Members and their Substitute Elected Members have provided SWSCJA with strong community leadership, good governance and clear accountability for almost a decade. The Third Sector have been active and effective SWSCJA partners at all levels, contributing significantly to delivering better outcomes as equal partners with our statutory and private sector partners. Although statutory responsibilities cannot be placed on the third sector, statutory responsibilities *can* be placed on those charged with leadership and governance to involve the third sector as equal partners.

6.3. Accountability arrangements are much more ambiguous in the proposals than within our current CJA arrangements, whereby the Cabinet Secretary for Justice or his staff can contact the SWSCJA Convenor or Chief Officer to discuss any concerns about community justice in South West Scotland. Within the new arrangements there is no single point of contact, lead organisation or even a clear governance structure for the Cabinet Secretary's assurance.

6.4. By way of an enlightening illustration, in Audit Scotland's 2012 report, our own SWSCJA Board table was reproduced as Exhibit 13 (see Appendix) to illustrate the large number of CJA partners and their individual accountabilities. Based on the new proposals in the Bill, this exhibit could be redrawn to list the new named Community Justice Partners and show their separate (generally centralised) accountabilities, but *without* the benefit of Elected Member, third sector or service user involvement, and in fact without a table to group around, given there is no requirement to form a partnership with any leadership or governance structure.

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 community justice system remains significantly under-resourced in comparison to the custodial system (i.e. the part which the Christie Commission would describe as 'failure demand'). As noted in the national CJA response, community justice funding in 2015-16 is three and a half times lower than funding for

the Scottish Prison Service, despite 29% more community than custodial sentences being imposed by the courts.

7.2. The Commission on Women Offenders' proposal for a joint board for community justice and prisons is worth reconsidering as a useful forum for the kind of mature resource debate and resource reallocation which is required to properly fund Christie's vision as it applies to justice expenditure.

k. In terms of day to day partnership resourcing, we have benefitted locally from the funded resource of the SWSCJA team. Although the resource only supports three staff (Chief Officer, Partnerships and Performance Officer, and Business Support Officer/ PA) this team performs an essential role in supporting and driving forward our partnership working around reducing reoffending. It is notable in the new arrangements that, whilst Community Justice Scotland will be funded at a higher rate than all the CJAs put together, local partnership arrangements will be expected to be self-sustaining once the CPP transitions funding comes to an end in March 2017. 'You get what you pay for' may be an apt description of this situation. It is essential that funding for local partnership support and development for community justice within community planning is equitable to funding for national community justice arrangements.

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

8.1. The pace of change has been extremely frustrating and demoralising for SWSCJA staff and partners. The delays by the Scottish Government at each stage are inexplicable, amounting for example to a whole year between the publication of the first consultation paper and the Government's response.

8.2. On this basis, whether or not the timetable is now under pressure, we would not support further delay.

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

9.1. Remove reference to the Commission on Women Offenders and the Audit Scotland reports from all Bill documentation as justifying these proposals, as both made quite different recommendations.

9.2. Redefine 'community justice' around outcomes for people, and ensure any definition of 'offenders' is proportionate to the task.

9.3. Re-consider whether there is sufficient added value in the proposals for Community Justice Scotland or whether there are more appropriate alternative mechanisms to deliver these national functions, e.g. formal national partnership arrangements; national networks operating within formal partnership agreements; or existing Scottish Government arrangements. This could be supported by a joint community justice/ prisons board, and complemented by existing assurance, improvement, inspection and academic bodies.

9.4. Articulate (within the Bill itself) a clear commitment to Community Planning Partnerships by giving them the leadership, governance and accountability functions for local community justice matters. This should replace the list of essentially free-floating 'Community Justice Partners'. Ensure CPPs have the local flexibility to

organise themselves as appropriate around these functions, including working across CPP boundaries and involving relevant local partners.

9.5. Clarify that 'Scottish Ministers' also includes the Crown Office and Procurator Fiscal Service'.

9.6. Ensure the requirement for local partners/ partnerships to 'send' relevant reports to the national body is replaced by a requirement to 'publish', i.e. make available to all interested parties.

9.7. Remove reference to the National Strategy, Performance Management Framework and funding and strategic commissioning arrangements as these do not require legislative change.

9.8. Include a stated role for Elected Members and the Third Sector, including placing a statutory duty on those charged with leadership and governance to include the third sector as equal partners.

9.9. Consider the Commission on Women Offenders' proposal for a joint board for community justice and prisons, which would also act as a forum for resource reallocation to properly support community justice as a prevention and early intervention approach.

9.10. Ensure funding for local partnership support and development for community justice within community planning is equitable to funding for national community justice arrangements.

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12 August 2015

APPENDIX:

SWSCJA Board Table

Reproduced as 'Exhibit 13' in Audit Scotland (2012) Reducing Reoffending in Scotland, p33

