

Justice Committee

Community Justice (Scotland) Bill

Written submission from the Convention of Scottish Local Authorities

Introduction

1. COSLA has been closely involved in the Redesign of Community Justice and has engaged proactively in the consultation process. From the outset, we have seen this as a debate about creating a framework for national and local agendas to exist in a complementary fashion.

2. Broadly speaking we see the redesign as being in keeping with COSLA's four key principles which are as follows:

- The empowerment of local democracy;
- Integration rather than centralisation;
- Outcomes rather than inputs; and
- The protection of local choice and accountability.

3. That said, COSLA members are not satisfied that the detail of the Bill reflects the principles we initially signed up to. The reasons for this are outlined below with 'key concerns' set out ahead of our response to the specific questions posed by the Justice Committee.

4. The mandate for our response comes from a number of political meetings, regular contact with member councils' political leads on community justice and, most significantly, COSLA Leaders' consideration of the Bill in May 2015. The response has been signed off by Cllr Harry McGuigan, Spokesperson for Community Well-being.

Key concerns

5. It is vitally important to Local Government and the communities we serve that the Bill creates a model for community justice which allows for services to be tailored to the needs of local communities.

6. While COSLA is broadly signed up to the Future Model for Community Justice, we are not satisfied that enough has been done for the Bill to deliver the required change to address reoffending. What is more, parts of the Bill actively contradict the principles of the model COSLA endorsed.

7. Our key concerns are as follows:

Local community justice partnerships must have a robust footing so that partners can be properly held to account for community justice services at a local level. The Bill currently does not offer this.

Community Planning Partnership (CPP) arrangements were put in place to deal with complex local problems that individual public bodies could not deal with on their own. They have taken sometime to grow and mature. The local community justice partnership arrangements are not to be adequately embedded in existing structures which risks diminishing the engagement of non-local authority partners.

Our proposed solution to this would be a specific amendment to the Bill requiring local community justice partnerships to have a formal relationship to either CPPs, the Integration Joint Board or another formal governance structure as deemed locally appropriate. Partnerships would be locally accountable with locally elected members playing a key role. The strength of local partnership arrangements could also be enhanced by explicitly empowering the arrangements to make appropriate variation in the membership of the 'community justice partners', and to appoint a lead partner and/or lead officer by local agreement.

Community Justice Scotland (CJS) threatens to be overly directional and the Bill lays the foundations for it to take on limitless functions.

COSLA is deeply concerned about the potential for CJS (in Sections 3 and 4) to encroach upon Local Government competency to the detriment of local service delivery and joint working. At the moment we have no clear description of how CJS will operate and Sections 3 and 4 should be amended to prevent future expansion of CJS. A working group should be established, involving key partners, to develop the role and remit of the national body ahead of the appointment of the chair and chief executive.

The creation of new public sector arrangements always creates a period of time when uncertainty over who has responsibility for what is clarified and acted on. We would want to prevent the ministerial power to transfer Local Government responsibility to CJS interrupting the progress that has been made in reducing reoffending.

The ability for CJS to commission services must neither duplicate work at a local level nor undermine local prioritisation.

Scottish Local Government already has a sophisticated approach to local and national commissioning. We have Scotland Excel which produces procurement frameworks in a diverse area of specialist service provision. While we see the need for CJS to be able to commission certain services we would want this to be limited to functions currently delivered by the Scottish Government and its agencies.

The commissioning role must not creep into the work of Criminal Justice Social Work nor the intended role of the Local Community Justice Partnerships. COSLA will seek constraints around the commissioning functions of CJS (Section 26).

Local Government must be involved in the national assurance process.

As partners in the delivery of the national community justice strategy and its associated outcomes, Local Government has an important role to play in national oversight alongside Scottish Ministers.

Scottish Local Government should also be engaged by the assurance process that Community Justice Scotland (CJS) will facilitate. This would deliver on the Scottish Government's December 2014 response to the consultation which states that CJS would provide assurances to COSLA Leaders as well as Scottish Ministers. COSLA will be seeking – through legislation or statutory guidance – that local councillors are involved in a periodic review of the progress made nationally.

The planning and reporting of local outcomes threatens to be overly burdensome and may contradict the wider public service reform agenda.

We have significant concerns over the potential burden of the reporting requirements, particularly given no resource has yet been allocated to support this. It is important that the outcomes and performance management framework should be flexible enough to allow for local prioritisation. Similarly they should not undermine the established process of reporting through Single Outcome Agreements using locally applicable indicators.

There is a need a need for proportionality in these arrangements. It is our concern that the Bill places an emphasis on planning and reporting rather than action.

The local partnerships must be adequately resourced to perform their functions.

The resources needed for the local partnership aspect of the new model are still not adequately covered. Our initial estimate suggests that each partnership should receive at least £100k to employ staff equipped with additional funds for this to be delivered. This is of a similar order to funds provided to Local Government for the police and fire scrutiny arrangements. A failure to address this while earmarking over £2m for CJS contradicts the message that the redesign of community justice represents a shift to a local model.

Additional burdens are being placed on Local Government and its community justice partners. For the local community justice partnerships to deliver the new model requires support for the secretariat, reporting, analytical and training services.

Response to questions set by the Justice Committee

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?

8. The Bill alone does not address the concerns of the Angiolini Commission on Women Offenders nor of the Audit Scotland report¹ on Reducing Reoffending (to which the new model is also intended to respond). While the local element of the new model is a welcome response to the Angiolini Commission's recommendation to create a new national service to "commission, provide and manage adult offender services in the community", we believe the Bill currently does not place enough emphasis on the local partnership arrangements.

9. The Bill will not have a direct impact on reducing reoffending, although we hope it can go some way towards laying the foundations for this. We believe person-centred, integrated and locally delivered community justice services are the best way to achieve positive outcomes. This is supported by the findings of the Commission on Strengthening Local Democracy² and if the model is to be a success, local partnerships should have the teeth and freedom to be able to plan services tailored to the needs of local communities.

10. The Bill does not currently do this. Rather, it provides powers and resources to Community Justice Scotland which may undermine this principle. The role and scope of the national body, particularly with regard to commissioning, should be limited and prevented from undermining local prioritisation and use of discretion if it is to be successful.

11. More broadly, the list of 'community justice partners' set out in the Bill should complement current partnerships at a local level rather than be seen as separating community justice partners from the wider community planning process. A key message from the Audit Scotland report was that "There is an urgent need for a more strategic approach to planning, designing and delivering services at both a national and CJA level".

12. Keeping with the list of partners, if the Bill is to have a discernible impact on reducing the prison population, it is imperative that the Crown Office and Procurator Fiscal Service and the Scottish Prison Service are named statutory community justice partners. As introduced, the Bill does not do this and we are not satisfied that the duty placed on 'Scottish Ministers' is enough to guarantee that COPFS and SPS will meaningfully engage in the local partnership arrangements.

13. Similarly, the judiciary should be as closely involved as appropriate in local community justice planning and the role of the third sector should also be enhanced by the new model, responding to the Audit Scotland recommendation that "there is a more coordinated and strategic approach to working with the third sector". The legislation does not address these two points.

14. On the specific questions raised over leadership and accountability, we would welcome a view from Audit Scotland who recommended the development of "clear accountability and a mechanism to promote collective responsibility for reducing reoffending" and from members of the Angiolini Commission. Although the cultural and professional benefits provided by CJS will be welcome, the question of

¹ http://www.audit-scotland.gov.uk/docs/central/2012/nr_121107_reducing_reoffending.pdf

² <http://www.localdemocracy.info/wp-content/uploads/2014/08/Final-Report-August-2014.pdf>

accountability remains unanswered. COSLA would maintain that accountability for services should be to local communities.

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

15. We are not content with the definition of community justice contained within the Bill. The focus on the management of offenders and delivery of orders does not reflect the wider range of activities involved in community justice services particularly those relating to prevention and early intervention. This is at odds with the specific requirement on CPPs to focus on prevention.

16. If this remains unchanged, it will be a missed opportunity to put in statute a definition of community justice which represents the cultural change the redesign sets out to achieve. COSLA had supported the short yet useful definition of community justice included in the consultation response i.e.

"The collection of agencies and services in Scotland that individually and in partnership work to manage offenders, prevent offending and reduce reoffending and the harm that it causes, to promote social inclusion, citizenship and desistance."

17. The definition offered in the Bill was not consulted on and appears to have come as a surprise to stakeholders and, importantly, the statutory partners. The meaning of community justice should be developed and agreed with these partners at the very least to ensure the meaning set out in the Bill is consistent with their own working practices and definitions.

18. We would support including in the definition a recognition that not all service users will have necessarily been convicted e.g. by including reference to diversion from/alternatives to prosecution and reduction of remand through supervision (central features of the Angiolini report). The definition could also be improved by referring to the social work ethos set out in the Social Work Scotland Act 1968 and reflecting the spirit of the Christie Commission.

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

19. The nature of the national body cannot be clearly represented in the legislation alone and we have deep concerns about the national body's functions and the potential for expansion. In particular, we have significant concerns around Section 3 and 4 of the Bill which allow additional functions to be placed on CJS without limit (even if subject to an affirmative process preceded by consultation). In order to protect local services, the Bill should draw clear parameters around the 'territory' of local and central government and possibly agencies of government involved. That said, COSLA does recognise that a national body could promote cultural and professional leadership and improvement for community justice in Scotland.

20. It is therefore imperative that the statutory guidance relating to CJS and its activities are developed with key stakeholders. A working group should be formed to allow the work of the national body to be developed collaboratively, to ensure its

work is of value to the community justice partners and to the community justice system. This would also foster a sense of investment in the new national body and help to allay concerns (valid or not) that CJS is a threat to the work of some agencies.

21. Similarly, oversight of community justice would be enhanced if CJS and Scottish Ministers did not do this alone. Locally elected members should be involved in overseeing the delivery of the National Community Justice Strategy and its associated national outcomes. We have discussed this with the Minister and look forward to a positive response. COSLA believes that a duty should be placed on the Minister to convene meetings from time to time to overview the progress being achieved with bodies representing the partners nationally. Our preference is for this to be on the face of the Bill.

22. Regarding the national body's commissioning abilities, the provisions as set out in the Bill are unclear and appear to offer CJS carte blanche to commission services without recognising local need or responding to locally elected members. This is set out in Section 26 which provides that CJS may identify a desirable service and "design an appropriate model" of service. Although there is a duty to consult with statutory partners and others, this is not robust enough. The Audit Scotland report recommended that community justice funding should ensure "there is more flexibility to meet local needs and priorities". CJS should not be an obstacle to this.

23. In order to ensure harmony between local and national commissioning, a mechanism should be set up – through CJS – to facilitate collaborative commissioning to be done. This should be formal and set out in legislation and should fit in with the governance structures of COSLA Leaders, as discussed throughout the consultation process.

24. Finally, COSLA would warn against creating a new national body with an overly-close relationship to Scottish Ministers which may lead to unnecessary politicisation or the appearance of such. We would also recommend a greater number of CJS Board Members in order to achieve an appropriate spread of skills and knowledge.

25. It may be useful for the Scottish Government to reaffirm the reasoning behind creating CJS to the Justice Committee given the current scrutiny of public bodies in the education sector.

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?

26. COSLA welcomed the proposals in the Community Empowerment (Scotland) Act to improve the Community Planning process by requiring all statutory partners to participate equally and fully in the process, through legislation.

27. In the context of the Community Justice Bill, however, the most important point to make is that it does not place community justice services within CPPs in the same way the consultation material had initially indicated. While COSLA does not believe

the Bill should be prescriptive in ordering CPPs to form a community justice partnership, we still consider the default governance mechanism to be the CPP unless partners agree locally that another structure is more appropriate (e.g. the IJB or community safety partnership).

28. A specific amendment to the Bill which may answer this question would be to require local partners to specifically form a partnership (rather than just a plan) and to inform CJS or Ministers how this will be formally constituted within existing governance arrangements.

29. COSLA believes the Community Empowerment (Scotland) Act could have gone further by putting CPPs on a more robust footing, enabling them to take on 'duties' such as the planning of CJ services. The redesign consultation material appeared to have been predicated on this assumption.

30. There is also no mechanism to compel community planning partners to contribute funds to the planning or delivery of community justice services. The current duty on public bodies to allocate resources towards the delivery of priorities in the SOA is not necessarily enough to overcome this. While we recognise the wider challenges involved, Section 30 of the CJ Bill could be strengthened to require a contribution of resource from partners.

31. Notwithstanding the question of the role of the CPP, the fact that the Bill does not refer to CPPs has created a new risk within the transition process that CPP managers and/or CPP Chairs may consider the Community Justice Bill to be out with their remit. We feel it is important to make the Justice Committee aware of this.

32. The transition work is being rolled out primarily through CPP Managers who originally had the impression – along with everyone else – that local strategic planning would be done *through* CPPs. All consultation materials implied this was the case until the Bill was published with no mention of CPPs.

33. Finally, we would be concerned about the implications for the wider community planning agenda of the lack of reference to CPPs within the Bill. The Future Model for Community Justice had been seen as an early example of CPPs taking on responsibility for the planning of a service with the identification of community justice partners merely strengthening the collaborative approach by bringing in agencies who are not statutory Community Planning Partners. However, the Bill may read to some as though community justice will be a separate function with no clear relationship with CPPs. This is not and should not be the case and it is important that Scottish Ministers' commitment to the community planning agenda is not undermined by the Community Justice Bill.

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

34. No. The model agreed between COSLA and Scottish Government and the model outlined in the most recent consultation document was supposed to represent a local model supported by a national body. This was the policy intent and had been the basis on which COSLA lent its support.

35. However, the proposals in their current form offer too much power to the national body and provide the potential for it to override and undermine local priorities. If the Scottish Government were serious about making this a local model, resources would have been provided for the local partnerships to perform their functions properly. That a budget of over £2m will be given to CJS while the local partners receive nothing, does not suggest that priority is being placed on the local dimension.³

36. That the local partnerships may not have a sufficiently robust footing compounds the imbalance between the local aspect and the more dominant national.

37. What is more, the planning and reporting duties are onerous and could easily become, or be read as, directional or dictatorial rather than supportive to the local partnerships. What is currently proposed is more detailed and exhausting than the duties placed on Integrated Joint Boards and leaves a lot open to interpretation.

38. For example, although local community justice partners are not accountable to the national body, Section 23 provides that Community Justice Scotland must (in relation to the area of each local authority) monitor performance in the achievement of each locally determined outcome. Section 23 (4) then goes on to imply that local partners must comply with CJS's recommended action – unless they intend not to take such action in which case they must inform CJS. This aspect of the legislation is completely unnecessary and should be removed in order to limit the scope for misinterpretation or abuse.

39. The role of CJS in the improvement of local outcomes should be strictly limited to one of comment and support and if CJS recommends local improvements we would like a clearer idea of how this would be notified and what action would be expected. Councils are already over supervised, while more than able to create peer support arrangements to create positive change.

40. In terms of responsibility at a local level, Section 30 of the Bill should be amended to be more robust and place a duty on partners to show their contribution specifically at a local level. We would be deeply concerned if the statutory community justice partners were able to dispose of their CJ responsibilities through their national efforts alone.

41. It should be recognised that our concerns are not simply based on a tendency to protect local authority functions as an end in itself. Rather, the evidence shows that strong local partnerships are key to achieving positive community justice outcomes. The Scottish Government publication *What Works to Reduce Reoffending: A summary of the evidence* (2015) found that:

*“One of the most consistent findings of this evidence review is that one-size-fits-all interventions are ill-suited to reducing reoffending, and that there are differences between individuals who offend.”*⁴

³ Justice Committee members may wish to note that the figure offered to CJS to perform its functions is almost identical to the combined CJA administrative budget.

⁴ *What Works to Reduce Reoffending: A summary of the evidence* (2015)
<http://www.gov.scot/Resource/0047/00476574.pdf>

42. Similarly, the Audit Scotland report recommends that arrangements “allow flexible service delivery” and “meet local needs and priorities” yet the feeling among local authorities is that this will happen despite rather than because of CJS. Lastly, The Commission on Strengthening Local Democracy found that services work best where there is true local accountability and subsidiarity i.e. “decisions should be taken as close to communities as possible, and the shape and form of local governance has to be right for the people and the places it serves”.

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?

a) The proposed reforms will support improvement in terms of leadership, strategic direction and planning if they are delivered as initially envisaged i.e. combining local and national in a complementary way. Our concern is that the Bill does not represent this.

The introduction of a National Strategy for Community Justice is welcome, as is the introduction of a performance framework albeit we are not comfortable with the current proposals around the national outcomes and reporting duties. We hope that these developments, supported and championed by CJS will lead to enhanced professional and cultural leadership in community justice.

b) It is unclear how the new model will improve consultation. The duties upon CJS to consult partners should be more robust; particularly in relation to commissioning of services by CJS where it is imperative that local partnerships and partners are meaningfully consulted in a way that is not clear from the legislation. There is no duty to consult with or involve the third sector (or wider partners by agreement) and we hope the legislation can be amended to sort this out or via robust guidance.

In terms of accountability, it is fundamental that the new model is based on local accountability to local communities. While responsibility for planning and delivery of services should be shared between a wide range of partners, accountability should be via the partnership to the local community (with service users and victims being recognised as part of this).

c) A defined set of community justice partners should be seen as complementary to current community planning and other existing partnership arrangements and hence an improvement in partnership and collaboration. However, the Bill leaves the picture incomplete by leaving the relationship between the community justice partners and existing governance arrangements somewhat loose and by not naming critical partners (SPS and COPFS).

The omission of the third sector, service users and victims in the legislation is disappointing. We would support amendments to the Bill to address this.

Section 30 on the duty to cooperate could be stronger in encouraging collaboration, particularly in terms of contributions of resource and specific collaboration at a local

level. Finally, if the national body is to become the directional central force afforded by the legislation, this would not lend itself to true partnership and collaboration.

d) In relation to commissioning, it is imperative to recognise that the national body will not be a success if it is able to commission in a completely unilateral way. Any proposed national or pan-Scotland services should be commissioned in collaboration with local partnerships and should support and take into consideration local need.

For true 'best value' to be achieved a commissioning strategy would be adopted which focuses on the cross-cutting and preventative benefits of CJ services. The fact that the definition of community justice outlined at the top of the Bill is purely focused on the management of 'offenders' and giving effect to community disposals is a potential obstacle to this.

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?

43.No. The significant planning and reporting duties set out in the Bill and the other new duties on partners at a local level are not funded. With no requirement for partners to contribute financial resource to the local partnerships, the burden will likely fall with Local Government if no additional administrative budget is provided by Ministers.

44.It should be noted that the Audit Scotland report recommended the Scottish Government should

"...improve arrangements for funding community justice to ensure that:

- the money is targeted towards effective approaches to reduce reoffending*
- there is more flexibility to meet local needs and priorities*
- allocations are more responsive to changes in demand"*

45.The resources set out in the Bill come nowhere close to addressing this concern.

46.On the other hand, CJS has a large budget (which is very similar to the administrative budget provided to CJAs). The fact CJS will receive over £2m while the local partnerships receive nothing, undermines the message that this is primarily a local model.

47.Local partnerships and local authorities may be more comfortable if it was clear exactly what level of support CJS would provide in terms of collecting and analysing data. The potential burden on local authorities should be specifically recognised, given they are realistically the most likely to pick up the reporting and planning duties (via CPP managers or otherwise).

48.There is a commitment in the Financial Memorandum to identifying and calculating the "potential costs around supporting partners under the new model" in collaboration with COSLA. COSLA expects this work to begin shortly and would advise that the Scottish Government initiate this exercise during the Bill process.

Given Scottish Government recognised the need to fund councils' role in the scrutiny of police and fire services as a result of the Police and Fire Reform Act 2012, COSLA would anticipate that each partnership will require in the order of at least £100k per year to service the partnership.

49. We feel it is important to make clear that the 'innovation fund' referred to in the Policy Memorandum is not something COSLA has agreed and we are currently unsure what this would look like. COSLA is responding to the Finance Committee's call for written evidence separately.

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

50. In short, we hope the timetable is achievable given the considerable length of time these proposals have taken to develop. Work is certainly progressing well with regard to the transition from the old to the new model. CPP managers and other local authority officers have taken the redesign head on and there has been a range of opportunities for local partnerships to consider how they are going to take on their new responsibilities. The majority of this work has been done via the Community Justice Transitions Workstream.

51. Some specific areas of concern which may impact the timetable are the lack of apparent progress on statutory guidance relating to the functions of the national body and the performance management and outcomes framework being at a fairly under-developed stage.

52. COSLA would also seek assurances that statutory partners are fully engaged and on board at a national level. Strategic buy-in from all partners from day one is vital to the success of the new model.

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

53. The Bill could be improved for the benefit of service users and our communities by addressing the key concerns outlined at the beginning of our submission. In summary these are:

- Local community justice partnerships must have a robust footing so that the local partners can be properly held to account for community justice services at a local level. The Bill currently does not offer this.
- Community Justice Scotland (CJS) threatens to be overly directional and the Bill lays the foundations for it to take on limitless functions.
- The ability for CJS to commission services must neither duplicate work at a local level nor undermine local prioritisation.
- Local government must be involved in the national assurance process.
- The planning and reporting of local outcomes threatens to be overly burdensome, disproportionate to local circumstances and may contradict the wider public service reform agenda.

- The local partnerships must be adequately resourced to perform their functions.

COSLA
12 August 2015