

## Justice Committee

### Community Justice (Scotland) Bill

#### Written submission from the Scottish Working Group on Women Offenders

##### 0.1. Introduction

1.1 The Scottish Working Group on Women Offenders (SWGWO) welcomes the opportunity to respond to the current draft of the Community Justice (Scotland) bill. SWGWO was formed in 2011 with the aim of true equality for all women across the criminal justice system, and to sharpen the focus of policy makers on those women with mental health and learning disabilities and those women from a background of sexual abuse, addiction and substance misuse, as well as support for their families. In particular, we wish to see the Scottish Government “Turn Off the Tap” ([www.swgwo.wordpress.com](http://www.swgwo.wordpress.com)) and significantly reduce the number of women in custody in Scotland and reinvest resources into communities (as advocated in reports by the Prison Reform Trust

(<http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women%27s%20Justice%20Taskforce%20Report.pdf>), CLINKS

(<http://www.clinks.org/sites/default/files/Clinks%20RR3%20Response%20to%20Justice%20Committee%20Inquiry.pdf>) and the Corston Independent Funders Coalition [CIFC]/Women’s Breakout (<http://www.womensbreakout.org.uk/about-us/our-vision/> )

0.2 We also urge the minister to speak directly with the members of the Commission on Women Offenders [CWO], the National Audit Office, the Christie Commission and members of the Scottish Prisons Commission to seek their views on the Bill.

0.3 Please see our response to the consultation questions below.

**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 Response: No.

1.2 We agree with Prof Andrew Coyle’s reinterpretation of the CWO statement on vulnerable women caught up by the criminal justice system in Scotland: *“Many women with complex needs that relate to their social circumstances, previous histories of abuse and mental health and addiction problems end up in the criminal justice system and are frequent re-offenders.”*

1.3 The CWO envisaged a model of community justice which focussed on prevention, diversion, changes to sentencing practice and then only as an option of

last resort the use of custody for women. It said “there is an urgent need for action to reduce the number of women reoffending and going to prison” also noting that in 2010/2011 18,500 women were convicted of a criminal offence (<http://www.gov.scot/Resource/0039/00391828.pdf> )

1.4 SWGWO feels that the proposals in the Bill do not address the vital role of prevention, diversion and changes to sentencing practice.

1.5 We are concerned that there will still be a significant number of women in the custodial estate after the minister’s planned changes and that the current Bill will do nothing to reduce the number of women entering custody. Whilst some of the planned changes to the custodial estate are welcome (such as the scrapping of Inverclyde prison and reducing the capacity of HMP Cornton Vale to 80 serious offenders only) we feel that this model does not go far enough. This is further explained in our “turn off the tap” strategy (<https://swgwo.wordpress.com/turn-off-the-tap-a-bold-strategy-for-women-and-justice-in-scotland/> ). We are extremely concerned that many of these vulnerable women may be able to access the vital help they need only by being given a custodial sentence –i.e. they must become prisoners before they can become patients. We feel that many of these vulnerable women should be, as stated in the CWO, diverted from prosecution and there should be comprehensive use of prevention strategies to ensure that these vulnerable women do not end up in custody.

1.6 We agree with the Northern CJA [NCJA] in the belief that there should be:

- a national strategy for community justice with one individual or organisation with overall responsibility for this strategy as outlined by the CWO, an issue which is not addressed by the proposed bill, because CJS will not be given overall strategic responsibility for community justice in Scotland, merely a role in promoting the strategy and advising ministers of performance. SWGWO is concerned that the lack of focus placed on providing an integrated set of gender specific services flowing between custody and community without named officers tasked with responsibility for providing these services is a great weakness in the bill. The CWO stated “We recommend that a senior director in each of the key agencies working with women offenders is identified to take responsibility for women offenders, championing and driving through change.” There is no directly stated initiative within the bill to provide these gender specific services and this must be remedied if the bill is to be gender compliant.
- a reduction in the “cluttered landscape” as outlined by the CWO report - a landscape which is still cluttered as a result of this Bill as evidenced by NCJA’s diagram “links and governance between the Scottish Ministers and Community Justice Scotland (CJS)” in the appendix of their response.

- Remove the instability created by the short term funding for community justice initiatives by reinvesting money away from custody and towards communities, early intervention and prevention strategies.
- There should be a change to the current lack of flexibility in allocating funding to encourage regional initiatives. It is not clear how the bill will change this.

1.7 Striking the correct balance between tailoring services to reflect local needs whilst maintaining a standard level of provision so as not to discriminate against women. There must be an improvement in the current inconsistent provision of service as already stated by the CWO - again something which the bill does little to address. Fragmentation of responsibility for community justice across 32 Community Planning Partnerships [CPPs], Community Justice Partners [CJPs] and Local Authorities [LAs] will lead to a wide range in the priority placed in community justice issues for women. Whilst there should be some degree of flexibility to develop services to suit the local needs of women, we believe this must be placed within a set of “gold standard” principles to ensure equality of access across all services for women regardless of geographical location. In this respect the bill may fail in its duty to provide gender equality and may impact on the human rights of women affected by the criminal justice system. In its SNAP report the Scottish Human Rights Commission noted that “All detainees have a right to be treated with humanity and dignity. Research ...raised continuing concerns, [including in] healthcare and mental health services (including mixed experiences of access to mental health care), and levels of suicides and deaths in custody.”

(<http://www.scottishhumanrights.com/actionplan/themelivingindetention> ).

Healthcare for women in custody is run by NHS Scotland. The SHRC SNAP report also expressed concern over equality of access to health services and we believe that many women affected by the criminal justice system are discriminated against in relation to receiving appropriate healthcare and the bill will do little to address this “The right to health includes an obligation to ensure that health facilities, goods and services are accessible to all without discrimination....including... non-discrimination (in law and fact) [and] physical accessibility (including in rural areas and for disabled people) <http://www.scottishhumanrights.com/actionplan/themehealth> .

1.8 Third sector organisations must be allowed to participate as community justice partners. Third sector organisations [TSOs] have over the years been highly involved in the provision of services across the criminal justice system. Many of these have undergone evaluation and many pilot projects have been run in collaboration with the public sector, academia and the Scottish Government. We are concerned that TSOs are not explicitly listed as CJ Partners, but are left as vague members of community justice bodies. To refuse the right of these organisations to participate fully in the community justice partnerships would be a grave oversight and would inhibit the ability of the CJPs to fully address community justice needs.

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

2.1 Response: No.

2.2 The definition of ‘offender’ in the draft Community Justice (Scotland) Bill is “.. persons who have at any time been convicted of an offence”, so the Bill as it stands does not cover activities which would fall under Prevention, Diversion, Alternatives to Prosecution etc. This has implications for the national Community Justice Strategy and the Performance and Outcomes Framework which are currently being drafted, and work on the Section 27 Funding Formula, all of which could (and should) support a move to a more preventative agenda for both women and men, but which, as things stand just now, will not have this focus. The definition in the Bill covers offenders and not those people who are in a vulnerable situation who are likely to commit a first offence. There is no mention of provision of healthcare as an integrated part of the community justice and which is vital for prevention strategies.

**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 Response: Partially.

3.2 CJS will be invaluable in the identification of best practice and may be able to give guidance in the commissioning of services. However, we do not believe it will lead to an improvement in oversight as CJS can only currently provide advice to the community justice partnerships; CJS has currently no power to enforce changes / improvements to services which are performing badly and thus provide effective oversight; identifying best practice is only useful if this practice is taken up by CJPs voluntarily. We are not sure if enacting the “enabling” clause will expand the powers of CJS to allow it to enforce improvement of services. There is also currently no provision in the bill to force CJPs and the Scottish government to cooperate to reduce reoffending.

**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 Response: No.

4.2 Keeping community justice partners as a separate group outwith the CPPs reduces the power that CJPs will have to perform their duties. It is vital that CPPs integrate local community justice arrangements into CPP governance and reporting. The legal status of CPPs and how they will work with CJPs has not been clearly defined; we feel this will seriously affect the ability of CJPs to perform their role in developing local justice solutions. It is generally agreed that there are policy areas under the control of CPPs, which can have a key impact on reducing reoffending.

Without a strong relationship between CPPs and CJPs, the ability to increase desistance from crime will be dramatically reduced. We are concerned that the bill proposes a set of planning arrangements whereby the agencies named cannot be forced to enter into a formal partnership with a lead officer nor can they be forced to adhere to the CPP governance arrangements; many of these “partners” have separate central governance arrangements. This is a definite flaw in the partnership and is one of its key weaknesses – particularly in relation to community justice.

4.3 Community Justice Scotland is not named as one of the formal community planning partners in the Community Empowerment Bill, and neither are any of the regional Community Justice Partnerships. If the list of partners in the Community Empowerment Bill can be amended to reflect these new agencies as they come online, this will be a step towards a true definition of community empowerment which includes justice in all its forms. The list of community justice partners in the bill must also include the COPFS – currently it is unclear whether they are included in the term “Scottish Ministers” as the SPS is.

4.4 We are also concerned that with the disestablishment of the CJAs, there is no planned single point of contact for community justice; indeed within the planned CJPs we find a grouping of partners with equal accountability and responsibility – yet there is no defined point of contact to ensure that tasks are completed and currently no strong level of governance from the local CPP. Each of these partners may also be working with different definitions of community justice leading to further confusion on how to tackle key community justice issues.

4.5 The proposed new arrangements do nothing to reduce the “cluttered landscape” criticism of previous community justice arrangements; nor does it improve levels of governance.

4.6 Whilst some organisations within the proposed new CJPs already have structures in place to communicate effectively with 32 local authority areas, some do not – notably the Scottish Prison Service, Scottish Courts and Tribunals Service, and the Crown Office and Procurator Fiscal Service.

4.7 There is no explicit mention of how the voice of service users will be included in the new arrangements. This serious omission must be rectified.

4.8 Local Criminal Justice Boards may not have the capacity to deal with the several CPPs which may cut across their jurisdiction. Many have found it of benefit to deal with a single CJA and we are concerned that vital working partnerships will be lost as the CJAs are replaced with multiple CJPs.

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

5.1 Response: No

5.2 Governance arrangements are not clear. Whilst it was previously thought that CPPs would take on all governance requirements from CJAs, this has now shifted to the CJPs – with no oversight of the efficacy of each CJP allowed by either the local CPP or the national CJS. Neither the proposed new national body nor the local CPP will have any measure of oversight across the CJPs to ensure equality of access to services across Scotland for women affected by the criminal justice system. Empowering local democracy must be balanced with the need for transparency of operation, and independent inspection to ensure the very best community justice services.

5.3 Consultation on national matters by Scottish Ministers and CJS is to be with “each of the Community Justice Partners” not local community justice partnerships or Community Planning Partnerships. We are concerned that there is a risk that the consultee list for any national developments consists of national contacts within national organisations/ representative bodies, not locally based contacts or indeed local partnerships who should be allowed to form a collective view on any proposals. We are concerned that CJS will be seen as the sole voice for community justice issues, and the voices of the local partners will not be heard.

6 ***Will the proposed reforms support improvement in terms of:***

***(a) leadership, strategic direction and planning?***

6.1 Response: Yes, if allowed to enforce improvements in leadership etc.

***(b) consultation and accountability?***

6.2 Response: Possibly, if the national body is allowed further powers of oversight to include enforced improvement of services which are underperforming and enforcement of identified best practices.

***(c) partnership and collaboration?***

6.3 Response: No, currently the third sector is not explicitly listed as a partner to be involved in the decision making behind service planning as it is not part of the formal CPP or CJP structures.

***(d) commissioning of services and achieving best value for money?***

6.4 Response: We suggest that Audit Scotland should be consulted directly on this matter.

6.5 In its business and regulatory impact assessment on the bill the Scottish Government makes following statement:

“The new model draws on the characteristics identified by Scottish Government as key to delivering better outcomes for victims, for people who offend and their families, and for local communities. These characteristics also include priorities for

public sector reform identified in the Report of the Christie Commission.” Some of these characteristics include: effective local partnership and collaboration that brings together public, third and private sector partners, and local communities, to deliver shared outcomes that matter to people; involvement of service users, their families and the wider community in the planning, delivery and reviewing of services; a more co-ordinated and strategic approach to working with the third sector. However, in this current community justice bill, the third sector is entirely cut out from the community planning partnership structure and seen only as a sector which can bid for services, once the CPPs have decided that they will not deliver these in-house. Indeed in its assessment on the impact of service providers for this model the report states “The groups that we anticipate to be affected by the Bill are those who plan, deliver or use community justice services. For example, CJAs, former offenders, health professionals, housing sector, local authority workers, Police Scotland, Scottish Prison Service and third sector organisations.” Whilst a statutory duty cannot be placed on the third sector to engage, a duty *can* and *should* be placed on the statutory partners to involve relevant third sector bodies as equal partners in local arrangements.

6.6 The bill also assumes that a simple change in legislation will automatically create strong effective partnerships. The extent to which people can work together around a shared value base and shared outcomes is a more significant predictor of partnership success than just a change in legislation and supporting the development of these partnerships is crucial. Strong partnerships are heavily reliant on good personal relationships, a history of joint working which builds communication and trust, and an established track record of joint planning and delivery to grow community confidence and commitment.

**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 Response: No

7.2 Funding for female offenders in the community is currently just 5% of that spent on women in the custodial estate. The CWO envisaged a system heavily geared towards prevention, diversion and alternatives to prosecution and custody. Currently most of the funding is for the custodial estate and until this is re-balanced the resources are grossly inadequate.

7.3 The detailed financial arrangements within the proposals are (as with the National Strategy, Performance Framework etc) still in development and therefore unpublished. It is therefore unclear whether many of the disadvantages of the existing system, as highlighted by the Commission on Women Offenders, Audit Scotland and the Christie Commission will be resolved, such as an inability to identify unit costs; perverse incentives to maintain and indeed escalate people into

the system; a lack of strategic commissioning approaches discouraging long term planning and so on. Indeed none of these difficulties required structural change to be resolved.

7.4 The CWO proposed a joint Board between the national Community Justice Service and the Scottish Prison Service (a National Community Justice and Prison Delivery Board). This proposal must be considered, however at this point it has been overlooked.

7.5 We are concerned that the costs currently expended on community justice reform are not detailed in the Financial Memorandum, with only 19 months to go before the new arrangements are due to start. These costs include significant officer time (e.g. CJA Convenors, staff, partners; Scottish Government and other national bodies; more recently CPP partners) as well as numerous external consultancy contracts. We are also concerned that training costs have been greatly underestimated and this may impact on the provision of new and improved services, due to come online in 2017. There will also be considerable costs associated with new IT systems to collate data from the new performance outcomes, which must be budgeted for.

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

8.1 Response: No

8.2 The bill requires considerable amendment, which will take time and CJS requires a 6 month lead in prior to starting its operations and the CJPs will require a suitable period of time to establish.

8.3 However, the Scottish Government currently has its own timetable for transition in 2016 – 2017, which could be revised to take into account the fact that the Bill has an insufficient definition of community justice. Until this is remedied the transition plan will force CPPs and CJPs to publish plans based on this inadequate definition of community justice. It is vitally important that CPPs, CJPs and CJS are all working together under the same definition of community justice. As it stands, the transition plans must be submitted in January 2016 – in 6 months' time – all whilst the community justice Bill is still being considered and refined. The transition plans also state that the CJPs must publish their community justice outcomes improvement plan in early 2017. This approach seems to be putting the cart before the horse and it would make sense to have a timetable for transition once the CJ Bill (including its official definition of community justice) is finalised.

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

9.1 Response: Yes, the proposals in the bill could be improved.

9.2 SWGWO believes that the bill must:

9.3 Expand its definition of the meaning of “community justice” - in particular its current lack of focus on prevention and diversion from the system is of concern. The definition must include prevention, early intervention, risk management and public protection. Using these principles before looking at sentencing and custody was a vital tenet of the CWO recommendations. We should not wait for people to become “offenders” but look at prevention and diversion as a means to reducing the number of victims and lowering the crime rate. Also, the definition of “general services” must include access to healthcare services, which are vital in the progression towards desistance for vulnerable women.

9.4 Include a promise to ensure service design which allows equality of access to services for all people across the system – including women. SWGWO is concerned that these services will not exhibit a gender balance appropriate for the needs of vulnerable women caught up in the system.

9.5 Specify a clear role for Third Sector Organisations and service users in the new criminal justice arrangements. The list of community justice partners should not be too prescriptive. It should be flexible to allow new partners to be brought in as required. It should also allow the third sector to be included in the list of community justice partners. This would allow third sector organisations to bring their expertise in service delivery and design to the partnership. The Bill’s policy memorandum states that *“successful delivery of better outcomes for victims, offenders and communities relies therefore on a wide partnership of agencies and services working together, engaging with local communities and listening to the voices of those affected by offending”*. However, as the Bill currently stands, the third sector, has no role in service design. The decision as to how services are designed and who should deliver them, is made by the community justice partners only. The third sector is not seen as a partner, it can only bid for a service, should the community justice partners decide to outsource that service. Having a restricted list of community justice partners does not allow for flexibility of service design provision. The policy memorandum states that the bill will *“promote a focus on collaboration – including the opportunity to commission manage or deliver services”* However this is only the case for the community justice partners. The whole of the third sector is shut out of this partnership.

9.6 We also believe that Scottish Ministers must seek direct feedback on the Community Justice Bill from members of The Commission on Women Offenders, Audit Scotland and The Christie Commission as to whether the Bill is compliant with their recommendations.

9.7 We believe that Community Planning Partnerships must integrate local community justice arrangements into the robust system of CPP governance and

reporting, rather than Community Justice Partnerships being seen as “bolt-on” partnership.

9.8 Consideration could be made to see if it would be more efficient to fulfil the duties of the national body within existing government departments.

9.9 Consider the CWO proposal for a joint Board for Community Justice Scotland and the Scottish Prison Service.

9.10 Ensure that issues such as homelessness, poverty and previous trauma / abuse and addiction are properly addressed by CPPs and CJP as these are drivers of imprisonment amongst the most vulnerable women in the criminal justice system. Running the new community justice arrangements to address these issues will hopefully turn off the tap supplying vulnerable women into custody and help them to reintegrate into their communities.

SWGWO  
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