

## Justice Committee

### Community Justice (Scotland) Bill

#### Written submission from the Howard League Scotland

##### Introduction

1. Howard League Scotland (HLS) welcomes the opportunity to provide evidence to the Justice Committee on the draft Community Justice (Scotland) Bill. HLS is an independent organisation that promotes just responses to the causes and consequences of crime.

2. We have previously responded to the Scottish Government's consultations on community justice reform, both in 2013 in relation to the initial options, and in 2014 on the proposed future model. Copies of our responses to these two consultations are included in this submission in Annexes 1 and 2.

3. We have focused on responding to the Committee's first question as we think this is fundamental to the Committee's consideration of the proposed legislation. Many of the points we make are relevant to the other questions posed by the Committee.

**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?**

4. We welcome many of the proposals in the Bill including recognition of the importance on innovation, partnership and collaboration in delivering effective services for offenders in the community. The focus on ensuring services are person-centred and based on evidence of what is known to be effective in reducing reoffending and promoting desistance is also very welcome.

5. We very much welcome the creation of a new national body with a specific focus on non-custodial sentencing. There is great potential for Community Justice Scotland to play a significant role in contributing to national justice policy and so to shift the emphasis of our justice system away from custody.

6. However, we have significant concerns as to whether the proposals in the Bill, as they stand, will transform the community justice system in the way envisaged by the Commission on Women Offenders in its 2012 report. The proposed arrangements do not address many of the issues and concerns we raised in our previous responses to the Scottish Government. In our view, there are a number of fundamental flaws in the proposed arrangements which will make it difficult, if not impossible, to ensure the needs of offenders across the country will be effectively met and that reoffending will be reduced. Our main concerns are:

- Given the narrow definition of 'community justice', it is disappointing that the scope of the Bill is restricted to those who have already committed an offence. The perpetual focus on reducing reoffending runs counter to the recommendations of the 2011 Christie Commission. We would have hoped to

see a greater emphasis placed on early intervention, prevention and diversionary measures.

- There are no apparent levers for the new national body, Community Justice Scotland, to help it ensure that appropriate services are being delivered locally. The body cannot deliver services itself, it has no control over how social work staff might be deployed locally and no significant funding to commission services. So what, in reality, can it do to deliver the significant cultural change required if Scotland is going to transform its justice system?
- There is no mention in the legislation or the accompanying policy memorandum of the role of the judiciary and the Crown Office and Procurator Fiscal Service in the new arrangements. While we appreciate the importance of maintaining independent prosecution and sentencing decisions, both these functions have a significant role in contributing to reducing reoffending and promoting desistance. Neither sheriffs nor prosecutors are mentioned as potential community justice partners. And yet, bizarrely, the legislation cites the Scottish Fire and Rescue Service as a community justice partner.
- The Bill does not change the funding arrangements for community justice services in any significant way. The majority of funding will continue to go to local authorities. The continuation of the existing funding arrangements means there are no incentives or levers to shift resources in the long term from custodial to non-custodial services. It also means that it will be difficult to shift resources around the country to meet the individual needs of offenders in different areas as these change over time.
- The difficulties faced by the third sector in securing long term funding for effective programmes are not addressed, and there is no apparent mechanism for ceasing funding for less effective programmes, if these continue to be supported locally.
- While we understand and support the importance of effective planning, monitoring and evaluation, we think there is an over-emphasis on legislating for this (especially when combined with the planning requirements included in the Community Empowerment (Scotland) Act). There is a risk that the bureaucratic requirements of the legislation will impede delivery of innovative and effective services, with staff spending their time discussing and developing plans rather than delivering services.
- The complex nature of Scotland's public sector means that the community justice partners which are national bodies may find it difficult to effectively participate in local planning and resourcing community justice services across all 32 local authority areas. This has already been identified as a problem in a number of reviews of community planning partnerships (CPPs). Community justice services are only a small, albeit important, element of all the services delivered locally, so ensuring these have adequate priority will be a challenge in all areas.
- It is not clear how Community Justice Scotland will resolve disputes and tensions at a local level between different priorities. While partners may all be

committed to the same aspirational outcomes for local communities, there may be differences of opinion as to *how* these can best be achieved and where resources should be focused. In these situations, the needs of offenders or those at risk of offending may not be a high priority for some of the local community justice partners or the local authorities.

- We have significant concerns about the overall governance arrangements, in particular how the chief executive of Community Justice Scotland, the accountable officer, can be held to account for performance against agreed indicators, when these are being achieved through local services over which the organisation has no direct control. At a local level, governance arrangements for CPPs are known to be complex and often ineffective in holding partners to account for delivery of agreed outcomes.

## Conclusion

7. Whilst Scotland's prison population is currently at its lowest level for seven years, our imprisonment rate remains one of the highest in Western Europe and those held in Scottish prisons are disproportionately drawn from our most deprived and disadvantaged communities.

8. As we have emphasised in all our recent submissions to the Committee on the Scottish Government's draft budgets, if we are serious about reserving prison for the most serious and dangerous offenders and making greater use of community-based disposals, this cannot happen without a greater shift in resources from custody to community justice. We therefore regret the lack of any clear aspiration in the Bill or accompanying policy memorandum which would commit the Government to moving resources over the long term from custodial to non-custodial models of offender management.

9. In theory, an organisation that will serve as a counterweight to the Scottish Prison Service could have a valuable role to play in enabling a shift from the over-reliance of custody to greater use of preventative and diversionary measures and non-custodial responses to offending. However, it is difficult to see how the proposed new organisation as it is currently conceived in the Bill could achieve that transformation.

Howard League Scotland  
12 August 2015

## ANNEX 1

### Redesigning the Community Justice System Submission from Howard League Scotland (April 2013)

#### Introduction

Howard League Scotland (HLS) welcomes the opportunity provided by this consultation, and supports the recommendation made by the Commission on

Women's Offenders for 'radical reform' to set up a national service. This decision is based not only on the evidence which prompted this consultation, but is also based on the professional expertise and views of HLS Committee Members who come from a wide range of backgrounds within the area of Criminal Justice.

In response to the 'key characteristics' outlined we feel that a national service is the best option outlined. Specifically it would provide strategic direction and leadership, and greater professional identity. We are particularly encouraged by the emphasis placed on core social work values, as this should ensure the cultural shift that is being called for. There were concerns raised within the Committee, namely that a national service in Scotland should not duplicate NOMS in England, as it was felt that this service is too risk orientated and managerial. However, considering the distinctive welfare tradition in Scotland it was pointed out that a national service in Scotland can and should be different. We feel that in order for social work values to remain central, the service should be well informed by the ADSW. The Committee is encouraged by the continued use of 'community' justice. To embed national standards locally we think that there should be an obligation to take on board local issues and a mechanism in place for ensuring that this happens. The role of Local Area Director is welcomed and should mean that this obligation is translated into action. Essentially, we fully support the idea that services need to work together towards common goals. A national service would end the current postcode justice, or injustice, and uncertainty of entitlements for those affected. Audit Scotland (2011) makes a strong case, highlighting inconsistencies which also need to be addressed, such as the varying use of Bail Supervision, and having a national service with national targets and clear guidelines would make this possible.

We agree with Audit Scotland that the CJAs' inflexible funding has limited their effectiveness, and we need to learn from this. At present, many third sector organisations, in particular, are given short term funding which leads to uncertainty and an ongoing battle for survival. It is hoped that with a national service comes a commitment to fund services which are already proven to be successful, and, where possible, to extend these services so that they are available nationally. At present, it is agreed that there is a variability of success of the CJAs, which means that those being targeted are not getting an equality of service. This needs to end. We agree with the emphasis on evaluation so that we can continue to build on an already robust evidence base. This should be applied to all services with support and funding in place.

*2. Which option will result in the significant cultural change required to redesign services so that they are based on offender needs, evidence of what works and best value for money?*

We fully agree with the need for cultural change. The expressed shift towards prevention is vital. Currently funding is directed towards those already in the system. Instead there should be financial investment in preventative work that should be undertaken at a national level. A national investment is required to deter people, particularly young people, from becoming involved in the criminal justice system. We strongly agree with person-centred solution focused work that supports desistance, and helps to develop capacities and capabilities as well as addressing needs. All of these 'characteristics' are aligned with core social work values and this is why a

national service of this kind is the best way forward. Social work services cannot however deal with this alone. Criminal justice should not work in isolation, and we welcome the Government plans to integrate agencies, with health and education being particularly vital, and indeed pooling resources would seem the most logical step to not only reduce reoffending but also create better lives. We also think that there needs to be full engagement with sentencers to tackle the geographical differences in how sentences are passed. Sentencers need to be informed about 'what works' in terms of what is available in the community. The evidence shows that a punitive approach does not work. Scotland needs to move away from the American influence that dominates English policy, an influence that is unjustified considering that they have one of the highest rates of imprisonment in the world. Indeed it is an approach that is being reconsidered in part of America, as a result of the state of the economy and the cost of large-scale incarceration. The present consultation provides an opportunity to create a 'new' system. We should draw on the evidence provided from Nordic countries where it has been made clear that reducing re-offending and ending high rates of imprisonment requires the engagement of all sectors of criminal justice, including the Judiciary.

*3. Which option will result in improvements in engagement with, and quicker access to non-justice services such as health, housing and education?*

Option C provides the best opportunity to create a stronger vision of how services should and could then work together. Equally, the uncertainty which currently exists and which inhibits larger scale collaboration would no longer be an issue. The Local Area Director should ensure that a national vision is realised within local communities. The access to non-justice services, however, requires co-operation from the Judiciary, and where possible they should direct young people, in particular, to diversionary schemes. At present a postcode justice exists which is based on sympathetic sheriffs in some areas and disinterested or poorly informed sheriffs in others. Instead this should be a national commitment. Restorative justice also needs to play a much bigger role in Scotland, thus giving a voice to victims as well as offenders.

We agree that at present the landscape for criminal justice can appear 'cluttered.' Offenders often have complex needs and there needs to be a better focus and interface between prison and the community. Those coming out of prison should be able to access the same support in the community, and a national service could co-ordinate this better.

*4. Do you think that a statutory duty on local partners will help promote collective responsibility for reducing reoffending among all the bodies who work with offenders? If not, what would?*

A statutory duty is a good step forward, however for this to be adopted it requires a cultural change whereby all services are working together because there is a genuine desire to do so. It is felt that the way funding in particular for services is secured often pits services that are working towards a common goal against one another. This needs to change.

*5. Are there specific types of training and development that would be beneficial for practitioners, managers and leaders working in community justice? Who is best able to provide this?*

Training which is closely aligned with the work of ADSW is needed. We feel that a specific qualification for prison officers would also be beneficial.

*8. What do you think are the equalities impact of the proposals presented in this paper, and the effect they may have on different sectors of the population?*

At present there is not an equality of services. A national service would end this, with significant ramifications for those affected, as they would be able then to access the same level of support throughout Scotland.

*10. Are there any other permutations of the options presented in this paper, which should be considered? Please provide details.*

We are concerned that the Scottish Prison Service is part of the national model. We feel that this presents a conflict of interest, because, if this model works, then there would be far fewer people going to prison and therefore SPS would no longer play a significant role.

Equally, we feel that at present Scotland needs to decide if it is genuinely committed to the idea of offering person-centred support and to put core social work values at the centre. If this is the case then those who work for SPS need to be trained in core social work values. We feel that there should be a qualification specifically set up for this knowledge to be transferred and for those in prison, working and affected to benefit.

This consultation presents the chance for Scotland to create its own distinctive way of working. The Committee would like to raise the point that the current way in which offences are recorded and disclosed inhibits young people in particular from moving beyond their offending past. Of course, we understand that there are certain offences, particularly sexual offences, which may require long term monitoring, supervision and disclosure for the protection of members of the public. However, we feel that there should be a meaningful review of how offences are currently disclosed, particularly for young people. We feel that the criminal justice system should help them to make become more employable and better able to enjoy a fresh start.

*26. What are your views on the proposals to abolish the eight CJAs and establish a single social work led service for community justice?*

We feel that this is the best way forward for the reasons already outlined.

*27. What do you think of the proposal to incorporate the functions of the Risk Management Authority into a new single service?*

We think that this presents an opportunity to create a true joining up of the RNR approach with a person-centred solution focused way of working. It is important that

the 'risk paradigm' does not take precedence over core social work values and that both areas are given equal respect and consideration.

30. *Do you think that placing a statutory duty on local partners and a strong Chief Executive negotiating on behalf of the new single service will help facilitate access to mainstream non-justice services?*

We think that this is a good step forward. Access as discussed should mean that all sectors are working together and this should include the Judiciary.

31. *What do you think of the proposal to establish a dedicated community justice unit as part of the service?*

We welcome this idea. Alongside the Local Area Director this should ensure that national standards and guidelines created under the National service have meaning.

The Howard League for Penal Reform, Scotland would be happy to engage in further dialogue with the Scottish Government in relation to this consultation.

April 2013

## ANNEX 2

### **The Future Model of Community Justice in Scotland Submission from Howard League Scotland (July 2014)**

#### **Chapter 2**

#### **Question 1: Do you have any general comments on the overview of the new arrangements for community justice?**

Howard League Scotland welcomes the government's continuing commitment to putting in place arrangements which help keep offenders out of prison wherever possible, while ensuring that the management of all those convicted of an offence meets the demands of justice and public safety. It is essential that any changes to the present arrangements help build public confidence in the use of non-custodial sentencing.

The creation of a national organisation charged with supporting and promoting community justice is very welcome. The test for local arrangements will be whether they are able to produce a consistently effective approach to managing offenders in the community, given the separate organisational priorities and cultures brought to the process by the many different partners. Criminal justice issues are not equally central to the remit of all those organisations whose contribution will be essential and even those bodies mainly concerned with criminal justice face a variety of pressures.

As the chapter dealing with finance does not include a dedicated question, our comments on that are included here. We note that the costs of change are expected to be minimal, that a review of funding arrangements for those monies currently

allocated to CJAs is already underway and that it is proposed that the Scottish Government will retain responsibility for the allocation of funding. We would welcome reassurance that the government is committed to sustaining its investment in community justice and regret that the opportunity has not been taken in this paper to commit the government to moving resources over the long term from custodial to non-custodial models of offender management.

### **Chapter 3**

#### **Question 2: What are your views on the governance and accountability arrangements?**

We welcome very much the ethos of joint working and cooperation underpinning the model and hope it will work well as a framework for sharing information, co-ordinating activity, stimulating improvement and gathering data in circumstances where all parties are equally committed and performing well.

However, we note that in any case where local performance does not meet acceptable standards or where any local partner is not properly engaged, the decision whether to change current practice will remain with individual organisations locally. Although the paper refers to new powers in The Community Empowerment (Scotland) Bill, it is not clear how these might be used to deal with such situations. Similarly, we note that “should the local partners or a CPP request advice and assistance on issues that, for whatever reason, have not been able to be resolved locally either within or between partnerships, or through arrangements for community planning, then Community Justice Improvement Scotland will be able to offer support and assistance.” In other words, it appears that much will rest on organisations choosing to seek advice and being prepared to take it when offered.

We are concerned therefore that in the event of problems with the operation of community justice in one or more areas, it is not clear how the proposed arrangements will provide the basis for any effective intervention, in the absence of local goodwill. We are concerned that as long as that is the case, it will be difficult to build confidence in non-custodial sentencing among the public, the media and, crucially, sentencers themselves.

In the absence of any new powers, and with the distribution of funding to partnerships will remain with Scottish Ministers, we wonder how far it will be possible in practice to “hold the Chief Executive [of the CJIS] to account for performance against the strategic plan”, if that performance is intended to include the performance of the service on the ground.

### **Chapter 4**

#### **Question 3: What are your views on the arrangements for local strategic planning and delivery of services for community justice?**

The public credibility of non-custodial sentences will ultimately rest on local performance and the management of individual cases. Where this model builds on

well-established good working relationships and practices, it is to be strongly welcomed.

However, at a time when resources are scarce, there appears to be a risk of a relatively high “co-ordination overhead” in this model, and we are concerned that some organisations may struggle to make a meaningful input into 32 separate partnerships. Given the number of planning partnerships, protocols for information sharing, sharing good practice, joint commissioning and dealing with cases which affect more than one local authority area will be essential. The new national body will have an important role to play in ensuring services in any one area do not become too isolated from developments elsewhere.

As already noted, however, the main issue is that there will need to be effective mechanisms for resolving any tensions and conflicting priorities which do arise between partners locally, all of which will be facing significant budget pressures, and ensuring that any disagreements are dealt with quickly, before there is a negative impact on the provision of services.

## **Chapter 5**

**Question 4: What suggestions do you have on how a national performance framework for community justice in Scotland could operate under the new model?**

The process for developing and reviewing the framework should be transparent and open, allowing the proper involvement of any interested bodies who are not directly connected with the delivery of services. We welcome the broad range of factors which the paper suggests the strategy would cover.

## **Chapter 6**

**Question 5: What are your views on the functions to be delivered by Community Justice Improvement Scotland?**

HLS particularly welcomes the creation of CJIS as a national body whose principal concern is non-custodial sentencing, able to make a strong input into policy-making from within national government, complementary to the role of the SPS. We believe that it is important that CJIS builds as strong a relationship with Ministers and officials as the SPS has. This change provides an unprecedented opportunity for expert voices on custodial and non-custodial sentencing to be given equal weight at the heart of government.

We welcome very much that CJIS will be expected to take an active role in promoting the value of community sentences, not least through engagement with the media.

We welcome the emphasis on CJIS’s role in providing positive support and advice. We can see real benefit in the capacity CJIS will have to identify system-wide issues, including the impact of decisions taken about resources elsewhere in government.

We welcome the role identified for CJIS in commissioning certain services at national level and that its capacity to do so need not depend on securing the involvement of all 32 partnerships. The ability of individual partnerships to decline to become involved in any particular national initiative may though make it harder to tell a coherent story about, and so build public confidence in, non-custodial sentencing.

Our principal concern about CJIS remains, as already noted, that it will not have the powers it needs to deal with situations which cannot be resolved satisfactorily by local partnerships themselves.

We are also concerned about the potential for net widening. Whilst HLS would like to see increasing use made of non-custodial sentences in preference to custodial sentences (particularly short term sentences), we would not wish to detract from interventions aimed at diverting some offenders from being drawn into the criminal justice system in the first place.

**Question 6: Does the name “Community Justice Improvement Scotland” adequately reflect the responsibilities of the new national body and the functions?**

No strong view.

## **Chapter 7**

**Question 7: Are the skills and competencies in paragraph 105 and referenced in paragraph 106 sufficient to allow the body to fulfil its functions as noted in Chapter 6?**

We hope that CJIS staff will also be expected to bring the skills necessary to liaise effectively with the wide variety of organisations with an interest in community justice and that communications and media skills will also be covered.

**Question 8: Is the organisational structure shown at Figure 3 and the expected size of the staffing complement sufficient to allow Community Justice Improvement Scotland to fulfil its functions as noted in Chapter 6?**

We hope that the need for the staff to understand the work of, and be in communication with, 32 planning partnerships, which will not all have identical structures, has been factored into the assessment of numbers needed.

**Question 9: What other suggestions do you have for the organisational structure for Community Justice Improvement Scotland to allow it to fulfil its functions as noted in chapter 6?**

See answer above.

**Question 10: What are your views on the proposed location for the headquarters of Community Justice Improvement Scotland?**

None.

## **Chapter 8**

**Question 11: Are the professional areas noted in the list at paragraph 114 appropriate to allow the Board of Community Justice Improvement Scotland to fulfil its functions?**

The board should include at least one person with professional expertise in housing. Benefits and education are other areas you may wish to consider including.

## **Chapter 9**

**Question 12: What are your views on the arrangements for the national Hub for innovation, learning and development?**

We very much welcome this proposal.

## **Chapter 10**

**Question 13: What are your views on the arrangements in support of the transition process?**

However the transition is managed, it will be crucial that nothing happens over the period which affects the handling of individual cases in way which would undermine confidence in non-custodial sentencing more generally.

## **Chapter 12**

**Question 14: What impact on equalities do you think the proposals outlined in this paper may have on different sectors of the population?**

The HLS remains concerned at the levels of imprisonment in Scotland, which disproportionately affects those from deprived and disadvantaged backgrounds. In particular, we are concerned that the numbers of women in prison remain so high. Increasing the use of non-custodial sentences is an essential element in seeking to bring down these numbers. If the proposals in this paper will increase the availability of and confidence in non-custodial sentences, they will have a positive impact on equalities. If not, there is a risk they will have the opposite effect.

## **Chapter 13**

**Question 15: What are your views regarding the impact that the proposals in this paper may have on the important contribution to be made by businesses and the third sector?**

No comments.

July 2014