

Justice Committee

Community Justice (Scotland) Bill

Written submission from Fife Council and Fife Partnership (Fife's CPP)

General comments

- a) We broadly support the proposed focus on local planning and delivery but disagree with the lack of any specific reference to the role of Community Planning Partnerships and Elected Members within the Bill.
- b) The scope of Community Justice Scotland's proposed powers are not sufficiently limited to the functions of leadership, oversight, the identification of best practice or commissioning
- c) There is a lack of clarity about the requirements being placed on 'community justice partners' to plan, report and deliver on community justice outcomes.
- d) There is repeated reference to the "local authority area", which could be misinterpreted as meaning the duties fall primarily on local authorities rather than other community justice/community planning partners.
- e) The resource implications of delivering the new model at a local level have not been adequately considered or recognised by the Scottish Government.

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 Structural reform will not in itself bring about better outcomes for communities and individuals. The success of any approach will depend on the development of a model based on *strong local partnership working through community planning partnerships* accompanied by *a shift to functions that support early intervention and prevention, joint resourcing approaches and collaborative approaches to local service delivery*.

1.2 Very little mention is made in the Bill's accompanying documents of the Commission on the Future Delivery of Public Services (the Christie Commission). However, it is this vision which would really transform outcomes across the justice system, including community justice. In particular there is nothing in the Bill which will guarantee the decisive shift to prevention which is required.

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

2.1 The definition of community justice is far too narrow. It focuses on 'offenders' rather than on the wider policy area of reducing offending and re-offending. It also

focuses on the actions of agencies and services rather than on the delivery of outcomes for individuals or communities.

2.2 The Bill provides a broad definition of ‘offenders’ as “persons who have at any time been convicted of an offence”. This is an extremely wide grouping. The focus on ‘convicted offenders’ by definition excludes approaches based on early intervention and prevention, i.e. the importance of keeping people out of the justice system as far as possible.

2.3 The Policy Memorandum uses the definition that was included in the 2014 consultation:

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

2.4 This definition gives insufficient focus on the risk management and public protection function of community justice.

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

3.1 The creation of Community Justice Scotland (CJS) will not, in itself, lead to better leadership, oversight, identification of best practice or commissioning. All these improvements could arguably be delivered through effective local community planning functions and arrangements supported by the Scottish Government, Audit Scotland and existing improvement services. The latter model is considered to be sufficient for all other community planning policy priorities, including areas of significant challenge, such as safer communities, economic development, anti-poverty and inequality, alcohol and drug misuse, and tackling health inequalities.

3.2 CJS will not have ultimate accountability for any improvements in community justice outcomes. At a national level accountability will remain with the Cabinet Secretary for Justice, and locally with community justice partners (or, preferably, community planning partners). It is not clear what would happen if CJS were to recommend local improvements, beyond requiring community justice partners to publish their response to any improvement plan. There are no stated sanctions for community justice partners who refuse to comply, nor is it clear who would be answerable or accountable for non-compliance among the loose grouping of partners. CJS will also face a significant administrative burden in supporting and overseeing up to 32 separate local arrangements.

3.3 CJS will be reliant on the quality of performance information gathered and submitted by community justice partners and on its own analytical capacity and expertise. The Scottish Government is leading the development of a new national Performance Management Framework (as yet unpublished), but it remains challenging to meaningfully measure collaborative community justice outcomes. This

will be challenging at the CPP level and even more so at neighbourhood level where many CPPs are now focusing their efforts on planning around 'Place'.

3.4 As a largely advisory body it is not clear that CJS will provide sufficient added value to the new community justice arrangements. There is a danger that it will provide an additional layer of bureaucracy and expense at a cost of £2.2 million per year in addition to significant initial set up costs.

3.5 We consider that the functions of Community Justice Scotland could be more economically and effectively delivered by the Scottish Government, supported 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 No. The Bill makes no specific reference to Community Planning Partnerships (CPPs), instead referring to 'Community Justice Partners'. Earlier communications from the Scottish Government proposed a strong commitment to a predominantly local model for community justice through CPPs. The reason for this omission is unclear given that the Community Empowerment (Scotland) Bill makes explicit reference to the role of CPPs.

4.2 The Scottish Government has indicated that CPPs cannot be mentioned in legislation because they are not legal entities. However there are 22 mentions of the term 'Community Planning Partnership' in the Community Empowerment (Scotland) Bill as introduced (and 42 mentions in the Bill as passed on 19 June 2015).

4.3 It is concerning that the Scottish Government may not be committed to the new model of community justice being driven by CPPs despite their earlier assurances.

4.4 The proposed local arrangements for community justice are subsequently unclear. If CJAs are to be disestablished in favour of a new local model, it makes sense to integrate arrangements into CPPs, which deliver against all other policy areas locally. This has been promoted as a key advantage of locating community justice within CPPs in terms of the ability to link across disparate CPP policy areas which impact on reducing reoffending.

4.5 However what appears to be proposed in the Bill is a parallel set of planning arrangements to be undertaken by a list of individual 'Community Justice Partners who may or may not act independently from each other, and who can certainly act independently from CPP governance structures. There is no requirement for these partners to work as a formal partnership with an identifiable and accountable Chair or lead officer, nor to be integrated within the CPP governance arrangements, leaving them as a number of essentially free-floating organisations. The majority of

these partners (five from the list) are governed from the centre as national organisations.

4.6 The current proposals propose a loose grouping of Community Justice Partners with equal accountability and responsibility; with no governance by the local CPP; and with no clear leadership. It is unclear who is responsible for completing the required tasks. This 'looseness' then relies on people having a consistent interpretation of what is required, which fundamentally undermines the point of legislation.

4.7 There is an assumption in the Bill that the new local arrangements will be formed on a local authority basis not a regional basis, thereby replacing 8 CJAs with up to 32 new and varied community justice arrangements (along with a national body). There is no requirement for these 32 community justice arrangements to sit within CPP governance arrangements.

4.8 Whilst some named 'Community Justice Partners' have already created partnership facing structures and are already active within CPPs (local authorities, NHS, Police Scotland, Scottish Fire and Rescue), and should find engagement with CPPs relatively straightforward, being named as a 'Community Justice Partner' will create significant challenges for others. This includes the Scottish Prison Service, Scottish Courts and Tribunals Service, and the Crown Office and Procurator Fiscal Service, none of whom currently have the operational capacity or structure to actively participate in 32 different local governance arrangements (not to mention sub groups or working groups which may emerge locally).

4.9 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 these 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.

4.10 There is also a lack of clarity as to how service user voices will influence the new arrangements.

4.11 There will also be significant challenges for the new local arrangements in maintaining some critical and influential networks, such as longstanding working relationships between the current CJAs, local criminal justice boards and individual sentencers. As Chairs of these Boards, a number of Sheriffs Principal have made clear that multiple CPP representatives will not be invited to replace individual CJA Chief Officers in future arrangements. A key strategic link between community justice and judicial decision makers locally will be lost.

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

5.1 No. The new model has been repeatedly described as a predominantly local model, supported by a national assurance and improvement function. However, the Bill suggests a very different dynamic. The looseness of the proposed local

arrangements contrasts with the extensive detail provided on Community Justice Scotland.

5.2 Whilst previous consultation documents emphasised that local outcomes would be overseen by local CPPs not by Community Justice Scotland, there appears to have been a change of direction in the legislation. Prior to publication of the Bill, CPPs were preparing for the transition of CJA responsibilities into their governance arrangements, and were unaware that the proposals would instead place duties on a list of individual Community Justice Partners.

5.3 The Bill states that the required Community Justice Outcomes Improvement Plan, and related performance reports, must be sent to CJS (not simply published and therefore made available). This suggests a reporting relationship to CJS which is contrary to the Scottish Government's earlier commitments. It also contrasts with established reporting arrangements for CPPs.

5.4 Consultation on national matters by Scottish Ministers and CJS is to be with "each of the Community Justice Partners" not with local community justice partnerships or Community Planning Partnerships. There is a risk that that the consultee list for any national developments will consist of national contacts within national organisations/ representative bodies rather than locally based contacts or indeed local partnerships that should form a collective view on any proposals.

5.5 In this local leadership vacuum there is a risk that Community Justice Scotland will become the sole centralised leadership voice for community justice, and that local views will remain unheard.

5.6 *There is a significant resource inequity between the proposed national body (proposed budget £2.2 million, 22 staff) and the proposed local arrangements for Community Justice Partners (to be delivered within existing budgetary and staffing 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 This question groups together a wide range of issues. For example 'leadership' and 'planning' are very different functions, and 'consultation' is quite different from 'accountability'. In the Bill and accompanying documents these terms are often used interchangeably and are not defined.

6.2 Structural reform does not guarantee any of these improvements. The extent to which people can work together around a shared value base and shared outcomes is a more significant predictor. For example, there are assumptions throughout the Bill and accompanying documents that effective partnerships can be created through a simple change in governance and reporting arrangements. In fact 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.

6.3 We have particular concerns about the lack of any stated role for either Elected Members or the third sector in the proposals. Both have played a key role within CJAs in driving forward local and national community justice improvements. Whilst a statutory duty cannot be placed on the third sector to engage, a duty *can* be placed on the statutory partners to involve relevant third sector bodies as equal partners in local arrangements.

6.4 The simple existence of a national strategy, performance framework or strategic commissioning approach will not deliver better outcomes, but rather the quality of each of these, and the way in which they are implemented. We are unable to comment on any of these aspects at present, as they remain in development and unpublished. It is unclear why any of these require legislation to be introduced.

6.5 We are not convinced that the risks associated with loss of expertise and specialist skills have been adequately taken into account. For example the CJA Training and Development Officers (TDOs) are a highly trained, specialist group providing both local and national professional training capacity. They cannot be easily or quickly replaced. However, no assurances have been given that these staff will be transferred via TUPE or other arrangements into the new local or national bodies.

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 most significant resource challenge for community justice remains the fact that the vast majority of resources for offender management are still held on the custodial side of the system – in the Christie Commission's term, to resource 'failure demand'. In 2015-16, £113.2 million was allocated by the Scottish Government for community justice compared to £396.2 million allocated to the Scottish Prison Service. *The custodial budget is therefore three and a half times higher than the community justice budget, despite over 4,000 more people (29% more) being given a community sentence than a custodial sentence each year.* Re-engineering existing resources within the same inequitable framework will not deliver a decisive shift to prevention.

7.2 Detailed financial arrangements are still in development and 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. None of these difficulties required structural change in order to be resolved.

7.3 The costs already expended on community justice reform are not detailed in the Financial Memorandum and are of considerable concern given that we are still almost two years away from the new arrangements. These costs include significant officer time (e.g. CJA Convenors, staff, partners; Scottish Government and other

national bodies; and, more recently, CPP partners) as well as numerous external consultancy contracts.

7.4 The opportunity costs of structural reform are also absent from the Financial Memorandum, but will be very significant given the 5 year transition period from 2012-17 (discussed further below) followed by potentially 3 to 5 years of development time for the new arrangements to bed in and deliver their full potential.

7.5 There is a potential for underestimating the costs of training new learning and development staff as there is no guarantee that existing Training and Development Officers will be successful if they apply for posts with CJS. There are already issues around the *existing* training capability in some very important specialist areas, particularly around high risk offenders. The potential costs of not being able to train staff in the interim period may have an impact on delivery of Criminal Justice Social Work reports etc. if staff do not have the required training.

7.6 With the creation of new national outcomes and indicators, and indeed, new *local* outcomes and indicators, there may be an added financial burden for CJS and all Community Justice Partners and partnerships in respect of IT for data gathering and amalgamating information from multiple partners. Currently local authority systems (and probably most partners' systems) are based on outputs and not outcomes.

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

8.1 There are considerable challenges involved in moving to the new arrangements by 1st April 2017, particularly in terms of developing and resourcing new local governance and planning arrangements.

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

9.1. Redefine 'community justice' to fully reflect offending and reoffending, including prevention, early intervention, risk management and public protection, rather than a definition based on 'offenders', and to capture wider outcomes for individuals and communities.

9.2. Re-assess the likely added value that will be provided by the proposed Community Justice Scotland and amend as required, considering that its limited functions could more effectively and economically be delivered by the Scottish Government, supported by existing assurance, improvement and academic bodies.

9.3. Place explicit duties on CPPs to integrate local community justice arrangements into the robust system of CPP governance and reporting, rather than setting up a loose grouping of 'Community Justice Partners' as a parallel arrangement working outwith CPPs.

9.4. Specify clear roles for Elected Members, the Third Sector and service users in the new community justice arrangements.

9.5. Specify that 'Scottish Ministers' includes both the Scottish Prison Service and the Crown Office and Procurator Fiscal Service (COPFS).

9.6. Remove reference to the National Strategy and Performance Framework from the Bill as these do not require legislative change.

9.7. Replace reporting requirements by local partners to Community Justice Scotland with a requirement to publish relevant reports.

9.8. Include a commitment to equitable resourcing between Community Justice Scotland and CPPs, reflecting the relatively limited role of CJS within a predominantly local planning and delivery model.

Fife Council and Fife Partnership
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