

## Justice Committee

### Community Justice (Scotland) Bill

#### Written submission from Scottish Women's Aid

##### Foreword

Scottish Women's Aid (SWA) is the lead organisation in Scotland working to end domestic abuse. We play a vital role in campaigning and lobbying for effective responses to domestic abuse.

We provide advice, information, training and publications to our 37 member groups and to a wide variety of stakeholders. Our members are local Women's Aid groups which provide specialist services, including safe refuge accommodation, information and support to women, children and young people.

An important aspect of our work is ensuring that women and children with experience of domestic abuse get both the services they need and an appropriate response from the civil and criminal justice systems.

##### Introduction

SWA welcomes the opportunity to comment on this Bill. In summary, our concerns are as follows:

- There is a lack of consideration of victims of crime in the Bill. The focus on victims that was evident in the two previous consultation papers has been lost and this position does not align with existing strategies such as the Scottish Government's "*Justice Strategy for Scotland*",<sup>1</sup> specifically Priorities 4, 5, 8 and 12
- As a general theme, throughout the Bill, the "consultation" duty is not robust and it does not place enough of an obligation on the new national and local structures and arrangements to involve both victims of crime, and the organisations supporting them, in the various planning and monitoring duties. The absence of this explicit commitment is a theme that runs through the clauses of the Bill where "*consultation*" is mentioned and there is no obligation to engage in public consultation or, indeed, to engage with the third sector organisations supporting victims of crime
- The Bill does not reflect the Scottish Government's commitment to tackling violence against women and domestic abuse set out in "*Equally Safe: Scotland's Strategy for preventing and eradicating violence against women and girls*"<sup>2</sup> While the reforms proposed in the Bill, will, hopefully, contribute towards tackling both the lack of local authority consistency in addressing violence against women issues in their planning and the lack of engagement by the Community Justice Authorities with local Violence Against Women partnerships and local Women's Aid groups, SWA is not confident that the Bill places enough of an obligation to allow involvement

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<sup>1</sup> <http://www.gov.scot/Resource/0040/00401836.pdf>

<sup>2</sup> <http://www.gov.scot/Resource/0045/00454152.pdf>

of SWA and local Women's Aid groups in the planning and monitoring processes under the new regime.

## Section 1

We note that the Bill's Policy Memorandum emphasises, at Paragraph 5, "*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.*"

This is further underlined at Paragraph 10, which draws on key characteristics identified by the Christie Commission as being crucial to delivering better outcomes for victims, offenders and their families and local communities. These 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*"... "*clearer lines of strategic, political and operational accountability to support continuous improvement*" ... and ... "*involvement of service users, their families and the wider community in the planning, delivery and reviewing of services.*"

Consequently, the involvement of third sector organisations representing victims of crime and engagement with those victims and local communities, is absolutely crucial, given that Paragraph 10 also highlights "*... a focus on prevention and early intervention...*" In our case, this specifically refers to women, children and young people experiencing domestic abuse, the local Women's Aid groups providing the services and support for them, and the Violence Against Women Partnerships.

All of this means that victims of crime, and the organisations supporting them, have a part to play in ensuring that community justice is organised and deployed in an appropriate and proportionate way that protects the public, especially victims of crime, encourages desistance from re-offending, and instils public confidence in community justice as a viable and safer alternative to custody.

It is therefore concerning, given both the policy direction above and the fact that there is a growing emphasis on the use of community disposals, including electronic monitoring, over custody, that the definition of "*community justice*" at clause 1 does not have any reference to the fact that arrangements for community disposals and post-release control requirements should be carried out in a way that facilitates and considers public protection, public confidence and victim safety. The focus on victims that was evident in the two previous consultation papers has been lost.

This is a significant omission in the intention of the Bill, given that "*an effective and credible justice system... appropriate sentencing... reduced fear of crime and confidence in the justice system... safer homes and communities... a strong and resilient community actively engaged in shaping decisions that influence them... and the need to see victims as people who have legitimate interests supported, safe, informed and involved*" are specifically set out as priorities in the Scottish Government's "*Justice Strategy for Scotland*",<sup>3</sup> specifically Priorities 4, 5, 8 and 12 and this is also not in line with the Scottish Government's commitment to tackling

<sup>3</sup> <http://www.gov.scot/Resource/0040/00401836.pdf>

violence against women and domestic abuse set out in “*Equally Safe: Scotland’s Strategy for preventing and eradicating violence against women and girls*”<sup>4</sup>

These additional considerations must be set out in the definition as the lack of this approach has implications for the role of the new, national overseeing body, Community Justice Scotland, (“CJS”) and the content of the National Strategy and National Performance Framework put in place by this Bill.

### **Section 3 Functions**

#### **Section 8 – Governance and Accountability**

We note that clause 3 states, that amongst their other functions under 3(1)(c), CJS will “...*(d) to promote public awareness of benefits arising from— (i) offenders being sentenced to community disposals rather than imprisonment or detention in penal institutions, and (ii) managing and supporting offenders in the community with a view to reducing reoffending by them...*”

As with clause 1, it is concerning that the functions of the new, national overseeing body do not explicitly include, on the face of the Bill, obligations to maintain public confidence in the community justice system and to ensure that “community justice” includes assessing and safeguarding victim and community safety, and that accountability and partnership working occurs at a local and national level.

CJS’s function cannot be achieved without a clear commitment to address the issues stated above. CJS should only be promoting community disposals based on their being appropriate in the individual circumstances, as opposed to a blanket approach. It is not always of benefit to the public, nor safe, to have offenders sentenced to community disposals rather than imprisonment and, unlike the Justice Strategy, there is no indication in the Explanatory Notes and Policy Memorandum that this approach may not always be appropriate, and is dependent upon the individual offender, the nature and circumstances of the crime, should be based on risk assessment, etc.

In terms of clause 8, CJS is required to “...*operate in a way which— is proportionate, transparent and accountable, and (b) is consistent with any other principle of good governance which appears to it to constitute best practice.*”

The Scottish Government paper in response to the “*Future Model for Community Justice in Scotland*”<sup>5</sup> consultation that preceded this Bill clearly stated the need to address public perception and concerns around community justice, thus... “137. *It was highlighted that there was a need to ensure that Community Planning Partnerships (“CPPs”) and partners are contributing to an increase in positive public perception of crime in their local area. There is a need for measures to show the extent to which service users (offenders, victims, families, and communities) believe their lives are improving... 176. As part of this, we require that CPPs and statutory partners recognise the contribution to be made by the non-statutory sector, including the Third Sector, Community Based Organisations, victims, people who have*

<sup>4</sup> <http://www.gov.scot/Resource/0045/00454152.pdf>

<sup>5</sup>Future Model For Community Justice in Scotland: Response to Consultation  
<http://www.gov.scot/Resource/0046/00466082.pdf>

*offended and the wider community. This will be via the duty to involve them in the planning and delivery of community justice services...226. As a key element of the above, CPPs will be required to work with the Third Sector, Community Based Organisations, communities, offenders and victims in the transition and in preparing their outcomes-focussed plans.”*

Having the promotion of the “benefits” of community disposals as a main function of CJS, without any caveat in section 3 that , in addition to the focus on offenders and desistance, this must be carried out in a proportionate, balanced way, informed by risk assessment, public protection concerns and to achieve victim safety, is neither proportionate, transparent nor accountable. The Bill is deficient without the inclusion of wording to this effect and clause 3 should be revised accordingly, in terms of the Justice Strategy Priorities.

To ensure that this remains a consideration of CJS, the Board of CJS should include third sector representatives of victims’ organisations, in line with the “victim centred” approach routinely adopted in other legislation and policy and so the Bill should make provision for this.

### **Section 9- Corporate Plan**

This section indicates that CJS must consult “...*such other persons as it considers appropriate...*” but there is no commitment to engage in public consultation or, indeed, to engage with the third sector organisations supporting victims of crime. The absence of this explicit commitment is a theme that runs through the clauses of the Bill where “*consultation*” is mentioned; the only direct reference to community and wider public engagement is at clause 18, in relation to the Community Justice Outcomes Improvement Plan, and is only mentioned because of the obligations placed on the Community Justice Partners (“CJPs”) by Part 2 of the Community Empowerment (Scotland) Act 2015. (“CESA 2015”)<sup>6</sup>

It is not in keeping with either the provisions of the CESA 2015 or the Justice Strategy Principles to bypass the necessity of public consultation, particularly since the Principles place much reliance on public confidence and community engagement. Further, it does not address the need for third sector and community engagement which was raised during the “*Future Model For Community Justice in Scotland*” consultation, and on which the Scottish Government’ specifically commented in their subsequent response to that consultation, on page 12, namely “...*At the consultation events, the following themes emerged ...Collaboration – between CPPs, the national body, partners, communities, victims and offenders;*”

There is a danger that organisations such as local Women’s Aid groups will not form part of the consultees, given the statement at paragraph 132 in the Policy Memorandum that that the only third sector engagement actively supported by the Scottish Government will be with the Criminal Justice Voluntary Sector Forum<sup>7</sup> , which is not a Forum for organisations supporting victims of crime, who are, effectively excluded from participating in this engagement with the CPPs. Another

<sup>6</sup> <http://www.legislation.gov.uk/asp/2015/6/introduction/enacted>

<sup>7</sup> <http://www.ccpscotland.org/cjvsf/cjvsf/cjvsf-members/>

engagement mechanism will require to be put in place to ensure those supporting victims of crime have equal access to the CPPs.

We further note, with concern, the “expectation” voiced in paragraph 32, on page 9, of the “*Future Model for Community Justice*”<sup>8</sup> consultation which proposed that only Victim Support Scotland (“VSS”) would be involved as a partner at a local level. While third sector involvement as a general principle was broadened out in the Scottish Government’s subsequent response to the consultation, again VSS was the only third sector organisation mentioned, a disappointing development given “*Equally Safe*” and the importance of organisations such as Scottish Women’s Aid and our local Women’s Aid member groups in the development of responses to domestic abuse.

We trust that both Scottish Women’s Aid and our members will play a major role in advising CJS, CJPs and the CPPs around responses towards domestic abuse and protecting women, children and young people.

### **Section 10- Annual Reports**

Again, the wording of this clause raises a concern that victim organisations will not be consulted. If the local CJPs and CPPs have not met their obligations and their reports are not an accurate reflection of concerns of victims, victim organisations and the local community, then the public will have been prevented in having a say in the overall strategy for community justice.

### **Section 13- National Strategy in relation to community justice**

#### **Section 14 – Review of national strategy**

We would reiterate here our comments and concerns above on the definition of community justice and the functions of CJS. It is concerning that the functions of the new, national overseeing body do not explicitly include, on the face of the Bill, obligations to maintain public confidence in the community justice system, ensure that community justice includes assessing and safeguarding victim and community safety, and ensure that accountability and partnership working occurs at a local and national level. Similarly, a commitment to public consultation, including victims’ organisations, must be stated on the face of the Bill, for reasons above.

If, as clause 14 proposes, the Strategy is to be prepared only once every 5 years then consultation with the public and victims’ organisations is crucial at the review stage, to identify whether the Strategy is working and if it requires amendment. A failure to so consult means that, otherwise, the voice of women, children and young people experiencing domestic abuse and the Women’s Aid groups supporting them, will be excluded from important policy and legislative discussions around community justice.

The Scottish Government’s “victim strategy” must be embedded in any community justice approach and the Community Justice National Strategy should be developed with key partners such as Scottish Women’s Aid

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<sup>8</sup> <http://www.gov.scot/Resource/0044/00448128.pdf>

Further, given that the Strategy reflects the completely new approach, the first formal review should take place much sooner than five years, possibly after the first three.

### **Section 15- National performance framework in relation to community justice**

### **Section 16- Review of National performance framework**

There is no indication what guidelines or baseline Scottish Ministers will use to prepare the framework and its outcomes (the “*nationally determined outcomes*”) and corresponding indicators (the “*national indicators*”) which will be used to measure performance.

In setting the outcomes, the Scottish Ministers must take into account the requirements of the EHRC, Single Outcome Agreements, and “*Equally Safe*.” Thus there must be an active commitment from Ministers and CJs to engage locally and nationally with victims organisations, specifically to ensure that the voices of women, children and young people, coupled with the expertise of the Women’s Aid groups supporting them, contribute to the planning, delivery and evaluation of services and approaches to reducing offending and re-offending in relation to domestic abuse and violence against women

A commitment to public consultation is needed in both clauses 15 and 16 and this is crucial to the success of the Framework. Further clarity and discussion is needed around the model and “*principle of desistance*” that the Scottish Government wishes to embed in both the new national strategy and new national performance framework for community justice, viz “*Para 65. The framework will cover all aspects of offender management in the community. The rehabilitative aspects of managing offenders will be based on the desistance model and promote the factors which reduce the chance of a person re-offending, such as improved health, access to housing, employability and positive relationships. The main organisations with responsibility for delivering these services are community justice partners.*”

The “*Future Model for Community Justice*” consultation indicated that the approach to offender management and reducing re-offending would be based on the “*desistance model*” as set out in the Scottish Government’s “*What Works to Reduce Offending; A Summary of the Evidence*”<sup>9</sup> analysis paper. As regards domestic abuse and violence against women, “*What Works to Reduce Offending*” does not address domestic abuse or any form of violence against women and the updated 2015 paper contains two short paragraphs.<sup>10</sup> The Community Justice Strategy should align with the “*Equally Safe*” Strategy and approach to dealing with perpetrators domestic abuse and violence against women, particularly those under Priority 4,... “*Men desist from all forms of violence against women and girls and perpetrators of such violence receive a robust and effective response*” and in utilising the Caledonian System, referred to on page 19 of “*Equally Safe*.”

It is also noted from Paragraph 68 of the Policy Memorandum that “*... In preparing the plan, partners must assess local needs and circumstances to determine where*

<sup>9</sup> <http://www.scotland.gov.uk/Resource/0038/00385880.pdf>

<sup>10</sup> <http://www.gov.scot/Resource/0047/00476574.pdf>

*their local priorities should lie and where specific improvement or further action may be required. This assessment will then inform their local outcomes improvement plan and identify the action required by them collectively and individually. The plan may also include any additional priorities that may be specific to the local area and not be covered by the nationally determined outcomes.”*

While we support the premise that local CJPs and CPPs must be able to shape local provision, strategy and outcomes to accommodate local arrangements/good practice and meet local need, the National Strategy and Performance Framework must seek to embed consistent responses from them. Neither the National Strategy nor Performance Framework can allow CJPs and CPPs to have too much autonomy and develop responses inconsistent with national outcomes and requirements of other policy documents such as “*Equally Safe*”. For example, consistency in commissioning of programmes designed to engage perpetrators of domestic abuse in addressing their behaviour and taking responsibility for this must conform to nationally agreed standards that have the safety of women and children at their heart.

Victim safety must be a priority outcome and carefully monitored and it is not clear how “progress” and “success” in relation to preventing domestic abuse will be measured and how feedback be taken from organisations supporting women, children and young people and service users in both the initial planning and subsequent revision of the Strategy and Framework.

### **Section 17- Preparation of community justice outcomes improvement plan**

### **Section 18- Community justice outcomes improvement plan: engagement**

In its response to the “*Future Model for Community Justice*” consultation<sup>11</sup>, the Scottish Government stated on page 7, that “*Local strategic planning and delivery of services through CPPs is central to the new arrangements. With this emphasis upon collective responsibility through a partnership approach we are placing decision-making into the hands of local people and agencies who know their communities best, understand the problems that are unique to their region, and will be most affected by community justice issues that relate to both victims and offenders...* And at page 12 “*...At the consultation events, the following themes emerged ...Collaboration – between CPPs, the national body, partners, communities, victims and offenders*”

Paragraph 74 of the Policy Memorandum indicates that CJPs planning should largely follows the mechanisms set out in the CESA 2015 for CPPs, preparing a plan to improve local outcomes, consistent with the National Outcomes set out in the Scottish Government’s National Framework which measures and reports on progress of government in Scotland, in consultation with community bodies and others. We note that while clause 18, indeed, puts a duty on the CJPs, and by definition, the CPPs, to consult with community bodies, it does allow them a degree of discretion as to who they can consult, a matter of concern given the operation of local authorities’ planning and engagement with local Women’s Aid groups and

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<sup>11</sup> Future Model For Community Justice in Scotland: Response to Consultation  
<http://www.gov.scot/Resource/0046/00466082.pdf>

response to violence against women. Similarly, section 14 of the CESA 2015 also allows CPPs flexibility in complying with duties relating to local outcomes, which essentially will allow them to pick and choose who they will engage with and what they will plan and engage on.

In 2013, SWA carried out an analysis <sup>12</sup>of the equality outcomes published by local authorities, examining the extent to which local authorities identified violence against women as a gender equality issue within their equality outcomes and the evidence and involvement processes used by local authorities to develop their equality outcomes. Our review found that

- Only 17 local authorities set an equality outcome to address violence against women, with almost half of local authorities in Scotland setting no equality outcome to address violence against women or gender within community safety more broadly.
- 7 local authorities published generic outcomes aimed at improving safety or reducing risk of harm regardless of protected characteristic, referring to people, individuals or communities. This fails to understand or address the needs of different protected characteristic groups and fails recognise the importance of a gender based approach to addressing the safety of women.
- Out of 32, only 4 local authorities reported involving their violence against women multi-agency partnerships in the development of their outcomes.

SWA had previously carried out a similar analysis of local authority Gender Equality Schemes in 2010. This report also raised concerns that these Schemes failed to develop and integrate approaches to prevent violence against women and to meet the needs of women and children who had experienced violence. It appears that very little progress has been made since then and that in practice under the Public Sector Equality Duty, the focus on gender and the need to take a gender- based approach to tackling violence against women has been diluted, rather than advanced.

It is noted that the CESA 2015, section 4 (6)(a)-(c) and section 5 place a duty on CPPs to “*act with a view to reducing inequalities of outcome which result from socio-economic disadvantage* “ *and to identify and secure participation of “...those bodies represent the interests of persons who experience inequalities of outcome which result from socio-economic disadvantage...”* which clearly include local Women’s Aid groups delivering services and support to women, children and young people experiencing domestic abuse. This underlines the importance of this Bill tying in with other legislative and strategic planning such as the “*Equally Safe*” strategy, since “*Equally Safe’s*” intention to embed the Violence Against Women and Girls Strategy in the new community justice arrangements will, hopefully, rectify this situation and ensure that local authorities’ equalities outcomes and thus, the CPPs outcomes and indicators, will address violence against women appropriately.

Clause 18 will be helpful to third sector violence against women organisations in promoting our engagement at a local level but it is not clear what redress an organisation or individual has, in terms of this Bill, if they were not consulted.

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<sup>12</sup> <http://www.scottishwomensaid.org.uk/sites/default/files/SWA%20-%20Analysis%20of%20local%20authority%20Equality%20Outcomes.pdf>

We would also comment that while the Bill refers to section 5(1) of the CESA 2015, that legislation, as enacted, does not contain a section 5(1) and so the reference should most likely be section 6 (1). However, in addition to this, the Bill should also quote sections 4 and 5 of the CESA 2015, in relation to CJPs and CPPs engagement with the community on the formulation and revision of any community justice outcomes improvement plan and the Bill should emphasise the CJPs' and CPPs' obligations under these sections.

### **Section 19 Review of community justice outcomes improvement plan**

This section does not place any duty, or, in fact, any requirement whatsoever on CJPs to consult anyone when revising the plan. In line with the other sections on planning, and reflecting specifically the wording of clause 18 (3), clause 19 must state that consultation will be undertaken with the community bodies referred to in section 18(3) above.

### **Section 20- Reports on performance in relation to community justice outcomes**

In terms of outcomes being proportionate, transparent and accountable, this clause does not impose any duty on the CJPs and CPPs, in preparing these reports, to include in them any concerns raised by community bodies around performance outcomes, failure to meet outcomes and targets and the consultation process, nor does it provide any mechanism whereby community bodies can highlight that these issues have been communicated to the CJPs and CPPs but not reflected in the report. This section's wording should be amended accordingly.

### **Section 21 - Guidance in relation to community justice outcomes improvement planning**

It is crucial that Scottish Ministers produce draft guidance for public consultation on this matter and as part of this, actively engage with community bodies and victims organisations such as Scottish Women's Aid and our local Women's Aid groups, reflecting the provisions of section 15(3) of the CESA 2015. The section should be reworded to reflect this commitment to community and public consultation.

### **Section 27 -Strategy for innovation, learning and development**

### **Section 28- Review of strategy for innovation, learning and development**

### **Section 29- Innovation, learning and development activity**

In devising this strategy and any accompanying learning resources, it is vital that CJS actively consults, and involves victims' organisations such as SWA on any national forum or training initiatives and as part of this, sets up an Advisory or Steering body to feed into this.

The third sector has an important role in the development of awareness, skills and competencies of those working in offender management, in terms of scrutinising practice and outcomes for victims of crime and contributing to necessary research identifying whether the new regime has any impact on reducing victimisation and offending. SWA has an acknowledged expertise in this work, in relation to the dynamics of domestic abuse and criminal justice responses to women, children and

young people experiencing domestic abuse; both SWA and the local Women's Aid groups have much to contribute to the development and delivery of this strategy for innovation, learning and development.

### **Section 30- duty of duty of co-operation**

This refers to the "*duty of co-operation*" between the community justice partners at clause 30. It is not clear how this duty will be used to support communities and protect victims of crime. The information sharing provision has the potential for both positive and negative impacts on local Women's Aid groups and their service users in terms of confidentiality and safety implications for them and the women and children they support. This aspect requires further consideration, particularly how it ties in with existing Data Protection requirements and the Children and Young People (Scotland) Act 2014. There is also a need for guidance on how this duty would work in practice, which again, should include consultation with the third sector victims' organisations.

Scottish Women's Aid  
12 August 2015