

Ministry of Justice

Punishment and Reform: Effective Community Sentences
Punishment and Reform: Effective Probation Services Consultations

June 2012

Eaves Response

About Eaves

Eaves is a London-based charity established in 1977, providing high quality support to vulnerable women. We also carry out research, advocacy and campaigning to prevent all forms of violence against women.

At Eaves, we put the needs of women first. We are determined to give a voice to the most excluded women in society and provide direct, innovative services to support and empower women to help themselves. There are different projects run by Eaves.

The Lilith Project

Lilith Research & Development have a wide remit ranging from research into various aspects of violence against women, to training and education for the women's sector, to lobbying for legislative and policy change and to working directly with women who have experienced sexual violence.

The Scarlet Centre

The Scarlet Centre is an Eaves service providing advice and drop-in support to women who are affected by violence – including homelessness, rape or sexual abuse, prostitution or domestic violence – and the consequences of violence – including mental health and/or substance misuse problems.

The Poppy Project

The Poppy Project is another Eaves service set up in 2003 to provide high-quality support, advocacy and accommodation to trafficked women; that is, women who have been brought into the UK to be exploited in some way. This

could include but is not limited to sexual exploitation, labour exploitation, forced illicit activities and organ harvesting.

To find out more about our work please visit our website on www.eavesforwomen.org.uk

Introduction

Please note that we are combining our response to the two consultations; *Punishment and Reform: Effective Community Sentences* and *Punishment and Reform: Effective Probation Services Consultations* as we are only able to point out a summary of the key concerns we have in both consultations. Please also note that we will be focusing our response on issues related to violence against women as this is our area of expertise.

Competition and Outsourcing

What's proposed by the consultations

- Intention is ***extending competition and opening up the management for lower risk offenders*** to the innovation and energy of the widest possible range of providers. It further states that
- Believe in ***competing services as a means to raise the quality of public services***. This can deliver innovation, better performance and value for money. Services should be funded by taxpayers, but delivered by whoever is best suited to do so.
- ***Greater involvement of the private and voluntary sectors*** in reforming offenders – as the Government has centrally ***outsourced contracts*** for estates, facilities and IT
- The *Competition Strategy for Offender Services* sets out ambition to ***compete all offender services unless there are compelling reasons not to do so***.
- ***Strong and senior commissioning capability is needed*** to ensure that appropriate and good quality services are purchased that provide the right interventions to reduce re-offending, ***which we believe is difficult to achieve in a small organisation***.
- Where it is not possible or desirable to open competitions directly to smaller enterprises, ***we will work with larger prime providers to ensure there are the right incentives for them to sub-contract with voluntary sector specialist providers***. We encourage voluntary organisations to respond to the issues raised in this consultation.

Response

Firstly, there is no evidence stated on the documents that illustrates, as has been claimed on the consultation document, that outsourcing and extending competition could in any way raise the quality of public services. A study by the Office of Public Management on outsourcing in the NHS found that there is little hard evidence available to suggest that outsourcing impacts positively on value for money or quality of care. On the other hand, there are actually several examples of outsourcing having a directly negative effect on the value for money and quality of care in services.¹

Outsourcing could have a devastating effect on the quality of services as providers will be positioned beyond the scrutiny and influence of the taxpayer or elected representatives. There will be significant reduction of accountability – for instance public sector service providers are covered by the provisions of the Freedom of Information Act whereby their delivery could be scrutinized effectively, outsourced providers are not covered by such laws.

Public sector providers have also positive legal duties of promoting equality under Equality Legislation forbidding them from discriminating on grounds such as sex, sexuality, race and other protected characteristics when providing services. They also have a legal obligation of actively seeking to make their services accessible to marginalised groups. Applying such principles to a private provider, even when they are acting on behalf of a public sector, is not instant and simple to apply.

Besides when providing public services and examining efficiency one should not take a very simplistic economic model of lower cost of service provision by outsourcing rather than providing the service in-house; by the public sector. In reality matters are more complex and there are a number of other factors that should be taken into consideration. For instance, one thing to consider is that many services provided by the public sector are interrelated and outsourcing one service to lower cost could end up burdening another public service.

Outsourcing when combined with the absence of National Service Standards, as proposed in the consultation documents, will increase fragmentation in service delivery which can increase the likelihood of ‘postcode lottery’ access to services whereby the availability, quality and type of service provision varies between different areas in an arbitrary manner. The documents states – *‘we have already begun encouraging better use of front-line professional skills and judgment with the introduction of less prescriptive National Standards for probation staff and light touch performance management.’*

As declared in the proposal itself many smaller organisations with the specialist expertise of rehabilitating offenders and reducing re-offending might lose tenders to larger scale private contractors with turnovers of billions of pounds, who have

¹ The shrinking state – Why the rush to outsource threatens our public services – Unite the Union, March 2011 <http://www.dontbreakbritain.org/pdf/TheShrinkingState.pdf>

the advantage of experience in bidding for contracts and access to low-cost finance. They are losing out not because of lack of qualification but by the mere fact that they are smaller. The proposal states: '*where it is not possible or desirable to open competitions directly to smaller enterprises, we will work with larger prime providers to ensure there are the right incentives for them to sub-contract with voluntary sector specialist providers*'. There is nothing stated on the proposal on how the Government is going to '*ensure there are the right incentives for them to sub-contract with voluntary sector specialist providers*' and how they could be monitored when doing so.

There is a lot of mention of the voluntary sector and how the sector will take up on the work that is been done by the public sector. Though the voluntary sector has a great role to play in delivering high quality public services, it should always be noted that it's an addition to public sector provision rather than a replacement. The proposal also fails to mention that the voluntary sector is facing an unprecedented cut to its services and many organisations are either significantly reducing their services or closing down. Without the necessary funding there is not a plausible way of expecting the sector to fill any gap.

National Standards

What's proposed by the consultations

- Encouraging better use of front-line professional skills and judgment with the introduction of **less prescriptive National Standards** for probation staff and **light touch performance management**.

Response

Having basic national standards for probation staff and others involved in managing community sentencing is crucial for accountability and uniformity of services. Standards not only encourage public bodies to review their own effectiveness, they also provide regulators with a common framework for assessing and disseminating good practice.

Payment by result and re-offending

What's proposed by the consultations

- The extension of **payment by results**, so that the taxpayer only funds rehabilitation services that work.
- We are pioneering a world first offender management system in which we pay providers by results.
- Our overall **success will be measured by the reduction we make to the rate of reoffending**.

- We need to give **providers further discretion and freedom over the design and delivery of services**. At the same time, **we have to hold them more strongly to account for reducing reoffending, applying the principles of payments by results** to all of these providers by 2015
- Where possible our proposals will **transfer financial risk to providers and only reward those who achieve a reduction in reoffending**. To support this approach, providers from all sectors will benefit from less bureaucracy and a freedom from targets to focus on what works and introduce new and innovative approaches.

Response

The proposal doesn't state any existing research that shows successes of a service could be measured only by reduction of re-offending. However, if this is a trial, it will be appropriate to pilot it before actually proposing to change an entire system.

The proposal states that '***success will be measured by the reduction we make to the rate of reoffending***'. However, reduced re-offending is difficult to measure and to connect to a particular intervention. There are many factors that affect offending and re-offending and a variety of different approaches to reducing that, so payment by result which is proposed to be directly dependent on reduced re-offending is highly problematic.

Also as stated on the consultation, if providers have the ***discretion on design and delivery of services with no guidelines and standards*** and that combined with the requirement that they are paid by results i.e. reduced re-offending there would be group of people who will fall through the gaps, as providers would not be willing to take them on for fear of losing money.

To reduce the chance of reoffending, among other things, it's vital to have improved mental well-being, sustainable and suitable accommodation, reduced or stabilised substance misuse, increased employability prospects. Individuals requiring many of such needs including those with 'chaotic' life style, who might be considered as requiring 'more work' or susceptible for reoffending could be turned away by service providers who are under additional burden of 'payment by reduced re-offending'.

The proposal states '***where possible our proposals will transfer financial risk to providers and only reward those who achieve a reduction in reoffending***'. The Government is actually transferring all risk to the provider and this will have a massive implication on women in prostitution, women with drug and alcohol problems and those with mental health problems.

Restorative Justice and Repatriation/Restoration

What's proposed by the consultations

- We will seek an ***increased role for restorative justice***. Restorative justice, used appropriately alongside punishment ***can ensure that offenders face up to the consequences of their crimes***, take responsibility for their actions and in turn reform their behaviour.
- There needs to be a much greater emphasis within community sentences on ***reparation and opportunities for restorative justice***.
- Through restorative processes, ***victims and offenders can come together to collectively resolve how to deal with an offence***.
- ***Our own evidence demonstrates the effectiveness of restorative justice*** practices, in particular its impact upon victims (85% victim satisfaction in RJ) as well as its effect upon reoffending (14% reduction in the frequency of reoffending).
- We want ***local areas to retain the discretion on how best to deploy restorative processes*** most effectively and efficiently according to local circumstances and local budgets.
- We are working with a number of local areas to develop Neighbourhood Justice Panels, which bring together the offender, the victim and representatives of the community to respond to low-level crime by using restorative justice and other reparative processes. Building on excellent local innovation in Somerset, Sheffield and Norfolk, we will be testing the panels over the coming months. ***We will be evaluating their work to assess whether they are effective in reducing reoffending but also to gain a better understanding of what impact they have on victim satisfaction and public confidence in the system***. We will provide further detail on these pilots in the forthcoming Criminal Justice Reform White Paper.
- ***Without good standards of practice*** though, this (RJ) cannot be effective or gain the confidence of victims, the public or indeed practitioners in making use of such approaches

Response

The Council of Europe Convention on preventing and combating violence against women and domestic, which the UK Government has signed recently, prohibits mandatory dispute resolution mechanisms such as, restorative justice for violence against women cases.

Article 48 – Prohibition of mandatory alternative dispute resolution processes or sentencing

Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention.

There are significant concerns relative to using restorative justice in cases of violence against women and girls. These processes can minimize the effect that violence has had in women's lives, can perpetuate discrimination against women, and can risk women giving up their individual rights so as to preserve harmony within a social group. As there is often an imbalance of power between the victim and the perpetrator in cases of violence against women and girls, restorative justice practices can create risks associated with bringing the victim and offender together for negotiation and dialogue.

Even offering these measures as a choice in such cases is not to be recommended. The reality of that choice for a woman living in an abusive relationship with her partner and his extended family or community may mean she has not chosen but been pressured by those around them to use these mechanisms instead of or in addition to the criminal justice system.

The informal nature of the process, fails to address gendered power imbalances between offender and victim, and can encourage intimidating behaviour of the offender, causing the risk of continued violence or harm and a failure to protect the victim further.

The process can also marginalise the needs and interests of the victim and instead foster community norms which could lead victim-blaming as opposed to holding the offender responsible for the crime.

Besides the application of restorative justice is expected to be highly localised and left for local areas to deal with, according to the proposal. The documents state, '***we want local areas to retain the discretion on how best to deploy restorative processes most effectively and efficiently according to local circumstances and local budgets***'. Again not having a set standard to assess risk and protect victims could end up further endangering and victimizing the victim of gender-based violence.

The proposal states that the Government's '***own evidence demonstrates the effectiveness of restorative justice***' without stating the details of the surveys or studies conducted which does not give us the opportunity to include and comment as part of this response. It would have been helpful to see the evaluation of the areas where the Government claims that work has been done to assess whether restorative justice have been effective in reducing reoffending within these consultation to have the full picture and be able to respond.

Another very interesting statement in paragraph 124 of the *Effective Community Sentences* consultation states that, '***without good standards of practice though, this (RJ) cannot be effective or gain the confidence of victims, the public or indeed practitioners in making use of such approaches***'. We do agree that there needs to be a good standard of practice, not only in this instance

but in managing probation and community sentencing as stated on the consultation as a whole and urge the Government to use this reasoning across the planned reform.

Women Offenders

What's proposed by the consultations

- Women are less likely than their male counterparts to receive a community sentence.
- Women offenders tend to have **multiple and therefore more complex problems related to their offending, including mental health and substance misuse problems**, as well as education, employment and relationship needs.
- Ensuring that there are decent **non-penal options for offenders with caring responsibilities** where their being sent to prison would cause chaos for innocent children in their families
- **Curfew that could work around an individual's childcare responsibilities**, or tailoring requirements to deal with an offender's mental health issues
- **New option for offender managers to deal with breach, of giving a financial penalty without returning to court**, would help to reduce the number of women offenders in custody
- The Women Awareness Staff Programme has been developed to train those who work with women offenders who are victims of domestic violence and abuse in the community; and the Sex Workers in Custody and the Community training will raise awareness of the life experiences of **street based sex workers**, and ensure that these women offenders are better signposted to appropriate, specialist services.
- Providing **gender specific and holistic services built into the fabric of every Probation Trust** as a part of comprehensive local service delivery.
- A more **local approach to commissioning** should result in better services for groups of offenders with complex needs, including women offenders.

Response

As stated on the consultation women are less likely than their male counterparts to receive a community sentence and there are too many women in prison largely because women are being treated more harshly by the courts.

According to a briefing paper by the Prison Reform Trust, in 2010 the number of women in prison in England and Wales stood at 4,230 and in the last decade the

women's prison population has gone up by 33%.² Studies also show that most of the rise in the female prison population can be explained by a significant increase in the severity of sentences.

27% of women in prison had no previous convictions – more than double the figure for men. 63% of women are in prison for non-violent offences, compared with 45% of men.³

More women were sent to prison in 2007 for shoplifting offences than any other crime. 28% of women offenders' crimes were financially motivated, compared to 20% of men.⁴

Women from BAME background are also overrepresented in the criminal justice system. For example 36.3% of the female prison population is made up of ethnic minority women. These women also face additional barriers that prevent them from accessing services to help them alter their lives and reduce reoffending.⁵

The Fawcett Society has developed some good practice information and guidelines for services on meeting the needs of BAME women who are offenders or at risk of offending/reoffending.⁶ The document proposes that in order to design effective community interventions that match the needs of these group of women it is important to consider the economic and social status of this population, as well as how various life factors impact on their offending patterns.

It is encouraging to see that the Government has recognized that women offenders tend to have multiple and therefore more complex problems related to their offending, including mental health and substance misuse problems. Women in custody are five times more likely to have a mental health concern than women in the general population - with 78% exhibiting some level of psychological disturbance compared with a figure of 15% for the general adult female population.⁷

58% of women in prison had used drugs daily in the six months before prison and 75% of women prisoners had taken an illicit drug in those six months⁸. Prison is not the right place for these women - they need assistance and medical intervention to help them rebuild their lives.

² Women in Prison 2010 – Prison Reform Trust

<http://www.prisonreformtrust.org.uk/uploads/documents/Women%20in%20Prison%20August%202010.pdf>

³ Ibid

⁴ Ibid

⁵ Fawcett <http://www.fawcettsociety.org.uk/index.asp?PageID=45>

⁶ Good practice in meeting the needs of ethnic minority women offenders and those at risk of offending, Fawcett Society

<http://www.fawcettsociety.org.uk/documents/Ethnic%20minority%20women%20offenders%2025.1.06.pdf>

⁷ Women in Prison 2010

⁸ Ibid

Women are also coerced into criminal activity, for instance, women in prostitution and trafficked women are forced to solicit, use drugs, and 'commit' immigration crimes by those controlling them. Unless these women are supported and the root cause of the problem is addressed these group of women will be wrongly incarcerated. On issues of prostitution we are also concerned that the consultation documents only address the issue of women in on-street prostitution. As we work with women in both off-street as well as on-street prostitution and women trafficked into prostitution (internally and externally) we know these groups of women are also vulnerable and are regularly coerced into criminal activity and re-offending. Therefore any reforms proposed should be addressing the needs of these groups of women as well.

Any strategy to address the issues of re-offending has to also recognize the background of these women. One in four women in prison has spent time in local authority care as a child and over half the women in prison say that they have suffered domestic violence and one in three has experienced sexual abuse.⁹ This provides cogent reasons why services for women offenders cannot be put in place without addressing the i.e. victimisation.

It's great to see that the Government has proposed to put in place alternative option for offender managers to deal with breach - giving a financial penalty without returning to court, as that would help to significantly reduce the number of women offenders in custody. In 2009, 1,052 women entered prison for breaching a court order. This represents 13% of all women entering prison under an immediate custodial sentence.¹⁰

Children of women offenders should also be included in the equation when addressing issues around women offenders as women prisoners are far more likely than men to be primary carers of young children. 66% of women in prison have dependent children under 18 and each year it is estimated that more than 17, 700 children are separated from their mother by imprisonment. Because of the small number of women's prisons and their geographical location, women tend to be located further from their homes than male prisoners, to the detriment of maintaining family ties, receiving visits and resettlement back into the community.¹¹

This has considerable implication on the women, their children and society as a whole. Research showed that, imprisoning mothers for non-violent offences carries a cost to the state of more than £17 million over a ten-year period.¹² Therefore, alternative routes such as community sentencing could be helpful not only in addressing women's and their children's complex needs but also save the

⁹Fawcett <http://www.fawcettsociety.org.uk/index.asp?PageID=45>

¹⁰ Prison Reform Trust

¹¹ Ibid

¹² Ibid

state significant amount of money. According to the New Economics Foundation for every pound invested in support focused alternatives to prison, £14 worth of social value is generated to women and their children, victims and society in general over ten years.¹³

Moreover, as one of the major purposes of the proposed reforms is reducing re-offending, the Government should be clear on what mechanisms are put in place to insure women are adequately prepared women for their release from prison or for their probation and community sentencing. 30% of women in prison lose their accommodation while in prison and just 11% of women received help with housing matters whilst in prison. 41% of women in prison did not have accommodation arranged on release and only a third of women prisoners who wanted help and advice about benefits and debt received it.¹⁴

Recommendations by Baroness Jean Corston on the report - ***A review of women with particular vulnerabilities in the Criminal Justice System*** should also be implemented in the process of reforming community sentencing and probation. Some of the recommendations are:

- Treating women both holistically and individually – having a woman-centred approach. Women have been marginalised within a system largely designed by men for men for far too long and there is a need for a “champion” to ensure that their needs are properly recognised and met.
- Services for vulnerable women, particularly for mental health and substance misuse in the community are provided and accessed; there needs to be an extension of the network of women’s community centres to support women who offend or are at risk of offending and direct them out of pathways that lead into crime.
- Need for an integrated approach across government demonstrated by the creation of an Inter-Departmental Ministerial Group for women who offend or are at risk of offending supported by a Commission as a visible, strategic lead
- Address the yawning gap in the national structures that exist for meeting the needs of women who offend or are at risk of offending. No one person or body is responsible or accountable for provision of care and services for women coming into contact with the criminal justice system.
- Strong, visible direction of issues relating to women in the criminal justice system to address the inconsistent of addressing the needs of women offenders.
- Accommodation pathway needs speedy, fundamental, gender-specific reform and should be reviewed urgently. In particular, more supported accommodation should be provided for women on release to break the

¹³ Ibid

¹⁴ A report by Baroness Jean Corston o- A review of women with particular vulnerabilities in the Criminal Justise system 2007 <http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>

cycle of repeat offending and custody and the intentional homelessness criterion for ex-prisoners should be abolished.

Compensation

What's proposed by the consultations

- One of our aims in that **strategy is to move away from a culture of state compensation towards one of offenders making direct reparation for the harm they cause**. Our reforms to sentences in the community will play a role in achieving that shift.
- Reparation can be achieved through paying back to society as a whole – for example, Community Payback through which offenders make a contribution to their local community, or making financial contributions to support services for victims. It can also **involve victims directly, for example by offenders paying financial compensation to victims for loss or damage they have caused**.
- Compensation orders - they require **offenders to make financial reparation directly to their victims**, to compensate for the loss, damage or injury they have caused

Response

Even though it might be appropriate for the state to demand payment in terms of fines from offenders as part of their sentencing – this shouldn't in any way be directly linked to compensation paid to victims of crime. The purpose of the Criminal Injuries Compensation is to give financial support to a victim recognising the injuries suffered. Its not clear on how direct payment from offenders as compensation work with victims as they might need to have a certain degree of communication with the offender and that could be upsetting to many victims, especially victims of VAWG and ultimately deter them from getting the compensation they deserve.

Tackling 'alcohol-related crimes' and compulsory sobriety scheme

What's proposed by the consultations

- We know that we need to do more to specifically tackle **alcohol-related crime** which remains a significant problem
- These are issues that we are looking at: about how we can better identify offenders with alcohol-related needs; develop a better cost benefit analysis for alcohol interventions and programmes; and explore how ASARs can be further developed to target the large number of problematic drinkers receiving sentences in the community.
- Another proposal we have been considering to help tackle the problem of alcohol-related offending is **compulsory sobriety schemes**.

- In the ***initial trialling stage, we do not propose to include domestic violence (DV) offences.*** We do not dispute that alcohol is often a causal factor in DV cases, and is a considerable issue we must continue to address. However, the causes of DV are far more deep rooted than simply being an effect of intoxication. It is therefore vital that any alcohol misuse is treated in tandem with addressing the violent behaviour and that considered and holistic steps are taken to tackling the root causes of domestic abuse. Once we have assessed the initial pilots and learned lessons then we can think further about the application of sobriety to other offence types and establish what sufficient safeguards must be in place in order to do so.

Response

Firstly, we have concerns as regards using the phrase ‘alcohol-related crime’ as crimes such as domestic violence, sexual violence including rape, could be misleadingly defined as alcohol-related crime.

According to a brief by the Criminal Justice Alliance, there does not appear to be any evidence to show that compulsory sobriety scheme has been genuinely effective in diversion from custody into community treatment in the US, where the model proposed by the Government is based on.¹⁵

Prison population figures for South Dakota, the state with the highest use of these orders, has not demonstrated a positive reduction in incarceration levels. Despite thousands of individuals receiving sobriety orders annually, the number of individuals in prison in South Dakota has actually slightly increased when national levels began to fall for the first time in several decades. Available research also points to the limited effect the programme has on reducing re-offending rates in the long term.¹⁶

Event though the proposal recognizes that domestic violence offences have to be treated differently it only states that the sobriety scheme will not be used ***in the initial trialling stage***, and gives no assurance as this would not be used in the future. Besides, there is no mention of other forms of VAWG that could be misleadingly defined as alcohol-related crimes.

It’s important to note that although alcohol and violence against women could occur together, alcohol does not cause the violence. VAWG is mostly a pattern of abusive and controlling behaviour through which the abuser seeks power over his victim. Alcohol can not be used to excuse or justify the violence and be used as a sufficient cause and effect relationship in this case.

¹⁵ CJA Briefing Note: Sobriety Orders <http://www.criminaljusticealliance.org/docs/SobrietyBriefing.pdf>

¹⁶ Ibid

Besides, in this economic environment there is a risk of resources being diverted to deal with the alcohol problem rather than dealing with the root causes of the crimes including diverting services from victims who need it most.

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