

## Independent Sentencing Review 2024 to 2025

Submission from the Criminal Justice Alliance

*"In England and Wales, the quality of community sentences has deteriorated over the past decade. Recent inspection reports found probation services failing to meet performance targets, a national shortage of qualified probation professionals and a lack of evidence informed practice. The way we deliver community sentences is often too slow, and a common frustration for judges is hearing that unpaid work has not started and ordered rehabilitative services have been delayed."*<sup>1</sup>

### A. Introduction

The Criminal Justice Alliance (CJA) is a network of over 200 organisational and individual academic members working towards a fair and effective criminal justice system (CJS). Our focus is to influence systemic change across the system.

The CJA welcomes this review and the chance to contribute to the consultation process. This response is informed by our members; we consulted with civil society organisations, academics, and those with lived experience of the justice system and incarceration.

Our consultation response will focus on three specific questions:

1. How should we reform the use of community sentences and other alternatives to custody to deliver justice and improve outcomes for offenders, victims and communities?
2. How can we use technology to be innovative in our sentencing options, including considering how we administer sentences and manage offenders in the community?
3. How should we reform the way offenders progress through their custodial sentences to ensure we are delivering justice and improving outcomes for offenders, victims, and communities?

Our response also addresses two cross-cutting areas which our members have raised:

1. How can the Sentencing Review and the CJS respond positively to reducing racial disproportionality in sentencing outcomes?
2. What can the government do to enable charities, public service mutuals and social enterprises (VCSE) to support the delivery of the Sentencing Review, helping to create an environment where the balance shifts across the CJS from punishment to effective rehabilitation and prevention?

The CJA has engaged with and responded to several government-initiated consultations over previous years, with our members' input, that are effectively linked to the Sentencing Review's objectives and the specific questions we have focused on. We have highlighted some of the consistencies across this body of work in this response.

We look forward to engaging in an invigorated post-review process of renewed dialogue, implementation, and positive change. Our members and civil society/academia/lived experience must be given the recognition and respect as a strategic partner in this process.

## B. Member consultation responses

### 1. How should we reform the use of community sentences and other alternatives to custody to deliver justice and improve outcomes for offenders, victims and communities?

#### **A system with little understanding of vulnerability and trauma**

*"I was made to attend a programme as the only woman and coming out of an abusive relationship with a man that led to my incarceration. I was having therapy and working full time; none of this was recognised by the system and I had to complete my 180 hours as a vulnerable woman in a hostile all-male environment. The fact that my counselling and full-time employment were aiding my reintegration back into society was never even acknowledged; let alone celebrated or rewarded. Good people are working in the system. But too often everything a prison leaver achieves is despite the system not because of it."*

Lived experience consultation participant

#### **Treatment orders are not reducing reoffending; this must be addressed**

*"The example of treatment requirements for alcohol, drugs and mental health, which have blossomed, highlights the dichotomy between expectations, assumptions and the evidence. Governments of various stripes have always been keen on pushing such things. But a recent report from the Ministry of Justice concluded that adding these requirements made no difference at all to the reoffending rate for people if you take into account their previous offending. That's an extremely worrying outcome."*

Academic member participant

#### **A model of Justice Reinvestment needs to be developed<sup>2</sup>**

*"The concept of shifting money away from costlier areas of the justice budget towards areas with greater potential to save money and improve outcomes (which will of course save money in the long term) must be adopted."*

*Investing in probation and VCSEs, rather than spending on prisons, would deliver better results. In drug policy, that was the argument, you get £1 back for every £5 you spend on drug treatment."*

Academic member participant

#### **The Probation Service is beyond crisis. The VCSE must be viewed as an equal partner, not a cheap provider**

*"Probation cannot on their own meet an increase in the use of community orders – but if the VCSE is to be a partner it should be an equal partner. This is crucial for the client and reducing recalls if VCSE providers had a designated role and a say in those decisions recalls would fall. We need a recall framework where all interested parties are working and communicating together."*

Civil society member participant

- Increasing community orders requires **investment in support services** such as counselling, mental health and addiction support.
- **Community sentences need to be made meaningful.** Activities must be engaging and have some rehabilitative element. Most people attend unpaid work sessions with no idea of what they are going to do and who is going to be there. Placements in community organisations, e.g. charity shops, where relationships can be built could be put in place.
- **Individual circumstances should be also taken into account**, e.g. if the individual is working, studying or doing a relevant programme, the time should be taken off any unpaid work time. People undertaking unpaid work should be able to acquire recognised qualifications and practical skills as part of their unpaid work hours. The process should also support the employability of the participants.
- There should be an **incentive** element to the assessment process where you can be rewarded for good engagement, e.g. reducing hours on the community order. The Texas incentives model<sup>3</sup> that reduces sentence time and similar principles could be applied to community orders.
- The UK needs to establish a wider range of **quasi-custodial/community sentences** learning from examples across the world such as Australia's home detention orders and orders, and intermittent and weekend orders which are used successfully in New Zealand<sup>4</sup> and Canada<sup>5</sup>.
- Many **targeted orders** such as Drug Treatment and Testing Orders (DTTO) were envisaged to reduce the use of custody, but the opposite has occurred. This must be urgently addressed with clear directions that such orders should be delivered in the community and standards be benchmarked and enforceable.
- The number of **conditions on community orders** that fuel recalls need to be reduced. Recalls form a significant portion of prison population growth<sup>6</sup> and is an area of real concern. Decisions too often depend on individual probation officers and local areas. This results in inconsistent decision making that can often look and feel unjust. The Probation Service lacks expertise in domestic abuse and has a direct correlation to increasing incarceration and recall rates for women.
- **Sentencing Guidelines** need to be more directive on when and how to use community sentences.
- Any increase in the use of community sentences will demand a huge improvement in the Probation Service. **Investment in the Probation Service** is a must.
- The **trust** of sentencers in community orders and the Probation Service must be rebuilt. Judges and magistrates question the ability of community orders to rehabilitate and divert people from re-entering the CJS and the Probation Service's ability to effectively administer them. This can be achieved partially through sentencing guidelines but also requires a wider process of addressing the deficiencies in community sentences and the Probation Service.
- VCSEs are committed to working with and building trusting relations with probation colleagues. However, staff turnover in the Probation Service is undermining these efforts and impacting negatively on people leaving prison.

- **More investment in VCSE advocacy and support services** is required. Official recognition of VCSE providers in delivering community orders with the Probation Service, and not as a subcontractor and/or a cheap provider of services. E.g. good quality third-party mentoring and support are critical in getting many individuals engaging with their orders and complying with conditions.
- An **accommodation strategy** with investment and recognising the barriers to delivering housing schemes for prison leavers.
- Women centres need to be supported – the model needs to be embraced.

**2. How can we use technology to be innovative in our sentencing options, including considering how we administer sentences and manage offenders in the community?**

**The system needs to be gender-specific and develop targeted interventions to meet the needs of women**

*We have seen examples of women recalled for missing appointments at 3.30pm - school pick-up time. We have had cases of victims of domestic abuse put on a tag near a perpetrator.*

*We have also had a shocking case brought to our attention this week about a woman who was released. The tag didn't fit. She couldn't wear the tag on her ankle for health reasons. The tag company couldn't fit one that was adequate to her wrist, and so the only solution was to recall her because the tech itself didn't conform to or meet the needs of that individual woman.*

Lived experience/civil society member participant

- **Use technology to help people leaving prison and on community orders**, e.g. make tablets available with access to advice and programmes; automatic transfer of medical records/prescriptions (e.g. in Wales).
- People exiting prison should be provided with the **training and equipment** to support them in utilising technology in areas such as employment, education and housing.
- Support tagging as an alternative option to custody but there is also a need for **professional and support services to be better resourced**. Technology cannot be used as a replacement for these services which will diminish human contact.
- Technological interventions need to be **adapted to meet the needs of women**. Too often, they are designed by and for men.<sup>7</sup>
- Learnings can be borrowed from **other jurisdictions**. For example, in Northern Ireland, home detention is used as part of the testing conditions for parole. Assessing a similar model in the UK could be beneficial.

- Tech infrastructure is very weak across the CJS. The lack of data sharing across the CJS creates duplication and wasted time and resources across agencies. Probation Services need a **strong infrastructure** to manage community orders and personal support from VCSE providers. This all needs to be **fully resourced**.
  - Attention needs to be drawn to potential **implications** the use of technology in the CJS may have **on human rights and civil liberties**.<sup>8</sup>
3. ***How should we reform how offenders progress through their custodial sentences to ensure we deliver justice and improve outcomes for offenders, victims, and communities?***

**Recruitment, selection and retention of prison officers is in disarray**

*"I work in an establishment that saw 57 newly trained prison officers come into post in June 2024. There was a lot of excitement around the recruits as staff looked forward to progressing to a more open regime. By November, only six were still in the job; this isn't an isolated example. The whole process of recruitment, selection, retention and training for prison officers must be urgently addressed. It is demoralising to see the churn of prison officers who end up in the job without a clue as to the demands and pressures of working in a jail."*

Lived experience consultation participant

- **Prison culture** – prisons are not delivering rehabilitation which needs to be acknowledged and addressed. Positive relationships between officers and people in prison are the cornerstone of maintaining security but also building a rehabilitative environment<sup>9</sup>. However, this is not happening—too many prison officers are desensitised to their actions and see their role as asserting authority and not about building relationships.
- **Training for prison officers** in the UK fall below UN standards. Staff training has been reduced to seven weeks in in England<sup>10</sup>. By comparison, in Argentina, prison staff undergo training for two years. Diminishing training and professional standards for prison officers has a direct correlation to the UK's deteriorating prison outcomes<sup>11</sup>.
- **Staff remuneration** must improve. Lowering the prison population is key to making that transition to a more professionalised service.
- **Implement incentives** within the prison system that support the resettlement plans. Incentives and Earned Privileges Scheme (IEPS) is not working and the use of Release on Temporary Licence (ROTL) has been stagnant. Both should be reformed by involving lived experience and VCSE partners. The onus must be placed on incentives/rewards rather than punitive measures. These processes need to be seen to be delivered fairly, and the racial disparities identified in the Lammy Review addressed.
- **Resettlement must start at the point of sentencing**. Too much time in prison is wasted and no purposeful activity to contribute to resettlement plans. The regime has too much time spent in cells not sufficient education, employment and meaningful activity—this is a breeding ground for recidivism.

- The Corston Review<sup>12</sup> set a viable and cost-effective **framework for the female prison population**. This should be revisited and implemented.
- Introduce **working days** for all those in custody. We need a prison regime that pays fairly give people in prison a chance to save money.
- The **role of the VCSE** is key and undervalued in prisons. They build better relations with people in prison and bring much-needed, accountability/transparency. The short-term nature of government contracts hinders VCSE work in prisons and through the gate.
- Learnings on **rehabilitative programmes used in military prisons** could be applied more generally. The programmes address causes of behaviour and equip those in prison for successful transition on release—recidivism rates are low, under 9%.
- There is a disconnect between delivery in prisons and through the gate into communities. **Too many people leave prison with no fixed abode**,<sup>13</sup> they are being set up to fail.

**4. How can the Sentencing Review and the CJS respond positively to reducing racial disproportionality in sentencing outcomes?**

*“The CJS needs an honest conversation on race and issues such as the grooming of gang members and trauma inflicted on Black children by the police. The system is missing an opportunity to address the criminalisation of children from these communities.”*

Civil society member participant

- Implement the recommendations from the Lammy Review.<sup>14</sup> Do not conduct a tick box exercise and fail to address the huge **challenges in relation to culture across the CJS**.
- **Pre-sentence reports** are not produced when serious sentences are given. This could help address disproportionality.
- **More problem-solving courts** and resources properly building **local responses** respecting local knowledge and involving those communities most affected.<sup>15</sup>
- **Interrelationships for migrant women** on their migration status, being viewed primarily as ‘offenders’ and lastly as victims is a key concern. The Home Office and Ministry of Justice (MoJ) need better joined up working and systems to ensure the needs of these women are met.

**5. What can the government do to enable the voluntary, community and enterprises sector to support the delivery of the sentencing review helping to create an environment where the balance shifts across the CJS from punishment to effective rehabilitation and prevention?**

**Prisons taking a risk-averse approach to working with VCSEs and reducing opportunities for rehabilitation**

*“An excellent local employment project on the Dartington estate in Devon [...] It's called LandWorks, their model was to take referrals from the local prison on release or a month before their release. They come out each day and work on a market gardening scheme and they would continue to employ them for a month or two after they were released. Unfortunately, the risk-averse culture within the prison service put an end to this. So, an excellent scheme which was very successful in terms of employment is now only available for people who are subject to a community sentence. The prison has effectively withdrawn from the scheme on instructions from headquarters.”*

Academic member consultation participant

- **Make the sector a respected strategic partner.**
- Value the role of the sector in **increasing accountability**, particularly in prisons where there is little transparency and accountability.
- **Strengthen the voices of people with lived experience of the system** to effect and co-design government policy. The role of civil society as a conduit can be enhanced between those with lived experience of the system and government to inform policy agendas based on real lived experiences of what works and what does not.
- The justice sector needs more secure funding and cannot be a key provider in terms of supporting community sentences with minimum resources. A **strategic investment in VCSEs** would be a good option.
- The MoJ needs to **work more in collaboration with academics**, in line with the Government Social Research Publication Protocol.<sup>16</sup>
- **Colocation of civil society organisations with statutory services** can bring benefits. Makes joint working easier, improves communications and has benefits for users in accessing different agencies in one hub.

## C. Key recommendations from CJA publications

### *Time for change (2024)*<sup>17</sup>

*Time for change* was a post-election report setting a transformative approach for reforming the CJS. Insights were gathered from 50 CJA members across six consultations. The report emphasises a shift from punitive measures to rehabilitation, focusing on prevention and addressing systemic issues such as institutional racism and the treatment of women. The report also calls on the government to partner with civil society to implement these reforms in the CJS.

The CJA made three key recommendations in relation to the Prison and Probation services:

- **Regime:** We need a regime that prioritises education, positive engagement and physical activity. OFSTED reports show that prison education is not performing to an acceptable level. This links to the broader problem with the regime, in that people are spending too much time in their cells.
- **Rehabilitation over punishment:** We need a greater focus on creating environments that are conducive to rehabilitation. People come out of prison worse than when they went in. The blame is put on the individual when the system is failing them.
- **Positive relationships:** Relationships between staff and people within prison and probation services need to support rehabilitation. When individuals enter the system, they need to build their sense of self-worth. Engagement between staff and people in prison decreases if they do not feel supported and have no trust in the system.

### *Response to National Audit Office (NAO) study on improving resettlement support for prison leavers (2022)*<sup>18</sup>

The CJA responded to the NAO consultation with input from 40 CJA members. Key recommendations included:

- **A national resettlement strategy** to harness efforts, address inconsistencies and bring civil society and lived experience into the policy development and implementation process.
- **Accommodation:** Inspectors continually find that many people are released with no fixed address. Housing support needs to be addressed urgently.
- **Reduce the prison population:** Even a short time in prison can disrupt people's employment, accommodation, healthcare and wellbeing, caring responsibilities and financial health. The best way for people to access employment and build pro-social networks to reduce reoffending is by not going to prison in the first place. We recommended the government to invest in robust effective alternatives to custody. Greater use should be made of community sentences and unpaid work partnerships that are both rehabilitative for individuals as well as reparative to communities.
- **Improve outdated technology:** Increase investment in technology infrastructure and within prisons to support people with education, learning and employment. Introduce a national minimum standard for technology which is outcome-focused, replicates established good practice and addresses inconsistencies across the estate. The strategy should include all uses of digital and technology, especially tech that allows people to have agency over their own life in prison, such as kiosks, controlled internet access, in-cell telephony, video conferencing and emails. Technology should not be used as a replacement for face-to-face contact in prisons (particularly with social visits and education provision), but as a supplement.

### ***A Smarter Approach to Sentencing (2020)***<sup>19</sup>

In this response to the government's white paper on sentencing, the CJA and its members made recommendations for government to create a justice system that diverts people away from prison and gives individuals the best chance. Key considerations and recommendations included:

- **Proposals to increase tariff lengths should be removed**, including whole-life orders for 18–20-year-olds. If tariffs are increased, they should not be applied retrospectively.
- **A presumption against short custodial sentences** in favour of community sentences and diversionary initiatives should be included, given the Government's own evidence of effectiveness.
- The Government should commit to an overarching **review of drug sentencing policy**.

### ***How to Start Reducing the Prison Population (2018)***<sup>20</sup>

The CJA set out pragmatic and incremental ways the government could begin to reduce prison population without impacting public safety.

- **Recalls:** These are costly interventions that interrupt effective reintegration. The standard and extra licence conditions that Offender Managers can impose should be reviewed, alongside the mechanism for recalling a person following breach, emphasising that recall should be preserved for those presenting a serious risk to the public or genuinely failing to progress towards reintegration. The best way to prevent an unnecessary recall is to ensure that there is no breach in the first place, by providing effective rehabilitative support.
- **Short sentences:** These should be a last resort. It was estimated that by introducing a presumption against short sentences of less than 12 months could save £57million annually.<sup>21</sup>
- **Mental Health support:** It was estimated that 90 per cent of the prison population have mental health conditions and/or difficulties with substance misuse. A community order with a Mental Health Treatment Requirement (MHTR) could be transformative. Sentencing guidelines on MHTR were recommended, alongside a specific Sentencing Guideline on mental health and vulnerability to be created. The purpose, process and eligibility for MHTRs should be described in collaboration by the MoJ and Department of Health. Magistrates and judges may also require additional guidance on the use of MHTRs attached to community sentences, though emphasis should be on their availability and inclusion in pre-sentence reports.
- **Women:** Concerns were raised in relation to the necessity of custodial sentences for women who committed non-violent offences. The vast majority could serve a sentence in the community without posing a threat to public safety. It was recommended that the majority of women would be better rehabilitated in the community with access to appropriate treatment and without disrupting existing housing and/or childcare arrangements.

#### D. Summary recommendations

- **Courts and sentencing:** Problem-solving courts led by judges with an understanding of the communities and the people they are putting on trial should be expanded. New quasi-custodial sentences need to be developed learning from best practice from other jurisdictions. The use of needs-driven orders and requirements must be linked to delivery in the community and responses to improve outcomes developed.
- **Prisons:** HM Inspectorate of Prisons (HMIP) reports<sup>22</sup> have chronicled the deterioration in our prisons. Our consultations reinforced this- particularly concerning in relation to recruitment and culture within the service. The lack of a fostering environment within prison culture is inhibiting rehabilitation.
- **Probation:** The Probation Service as our members summarised, is 'beyond crisis'. There are serious concerns relating to resources and capacity, but also philosophically in relation to its role and the balance between its enforcement and rehabilitative duties. Transforming Rehabilitation<sup>23</sup> was unsuccessful, lessons must be learnt and improvements made.
- **Women:** The government must re-embrace the challenge laid by the Corston Review. Women in prisons must be a last resort.
- **Race disparities:** Failure to place race disparity at the heart of the any CJS reform will likely result in worsening outcomes for Black, Asian and minority ethnic groups<sup>24</sup>. Serious concerns have been raised by human rights experts before the United Nations Human Rights Council on UK CJS policy, concluding that '*the UK's racialised criminal justice system and policing practices systematically violate human rights.*'<sup>25</sup> Urgent reform is a necessity.
- **Lived experience:** Involving those who have been incarcerated, victims and others with lived experience and are personally impacted by crime and its effects should be a prerequisite for the government's policy development processes.
- **Trauma:** There is very little understanding of the impact of trauma on those people caught up within the CJS. A better understanding of trauma and trauma-informed interventions would support desistance.
- **Public discourse:** Public/media/political discourse on crime and punishment is geared towards punishment and there is little space for any reasoned dialogue on rehabilitation and prevention. Any commitment to move away from custody towards community sentencing demands political leadership to engage the public and shift opinion.
- **Civil society:** The sector provides an opportunity to support the government in greater use of community sentences. This must be done based on respect and a partnership of equals, not as a source of cheap provider of services.
- **Justice reinvestment:** The risk-averse nature of UK public spending must be addressed if we are to shift the CJS away from custody and towards better prevention and diversion.
- **Repetition:** Over the past decade, numerous policy consultations have been held on issues related to reducing prison population, improving resettlement of people leaving prison, and increasing the use of non-custodial measures. Initiatives have been piloted but learnings not well documented nor have improvements and/or recommendations been implemented. The things that can work are well established. We know the international examples to assess.

## **Appendix 1: CJA members who attended the consultations**

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- Catch 22
- Clinks
- Hestia
- Prison Reform Trust
- Nacro
- Revolving Doors
- Sentencing Academy
- Together Women
- User Voice
- Unlock
- Women in Prison
- Professor Alex Stevens, University of Sheffield
- Professor Julien Roberts, University of Oxford
- Professor Rod Morgan (Professor Emeritus), University of Bristol
- Independent lived experience expert
- Participants of the ELEVATE CJS lived experience programme

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