

Independent Sentencing
Review 2024 –
Together for Mental
Wellbeing Criminal Justice
Service points for
consideration



Introduction

Since Together was formed in 1879, we have believed that people who experience mental distress have the right and the abilities to lead independent, fulfilling lives as part of their communities.

We are a well-established provider that operates within a variety of criminal justice settings for over 31 years. We have been supporting individuals who experience mental distress through our service provision in prison, in the community, in probation settings and through the courts. We welcome the initiative to review sentencing and appreciate the opportunity to respond and provide feedback.

We have put together our submission following consultation with frontline staff, management and senior leaders within the organisation. Some of the experience and views shared may overlap between the different themes of the review, but we have kept in one place to avoid complication and duplication.

Theme 2 – Structures

In our experience, there needs to be tighter processes around timely information gathering/sharing to facilitate prompt sentencing and ensure that the most appropriate disposal is considered.

We have experienced a disconnect between professionals contributing or writing the pre-sentence reports and other professionals who could have information that would change a decision made by the court. Sentencers need to be more and better informed about the individual's situation. Liaison and Diversion services play a key role in facilitating this information exchange but there is more to be done, as there seem to be certain point of disconnect within the system.

We would, therefore, advocate for timely sharing of information for the purpose of pre-sentence reporting. For example, we hold key information within our probation support services that could play a key role in any sentencing report/decision, but we find it hard to even find out who the author of the report is or how to get this information to them. Therefore, we are often not able to contribute useful information around the person's circumstances, engagement and wellbeing needs, as well as how they are progressing while working with us. We would also welcome more joined up work of all probation staff, whether at courts or probation offices. We have seen that even working within the same organisation, there are still challenges in timely sharing of information.

Information sent between custody and community probation teams also needs to be tighter, so the relevant information is available when an individual goes to court. Currently that information is coming to light months later and that timeframe where support can be crucial at breaking the cycle of offending is lost, with no appropriate intervention offered to the person. Additionally, the systems court users are using differ which doesn't help with information sharing to aid sentencing decisions e.g. NDelius (Probation), Rio (Health), SystemOne (Liaison and Diversion) making it difficult to build a holistic picture of the individual and information can be missed at the point of sentencing.

Finally, on the point of structures, we would advocate for specialised courts. We can offer different examples:

- 1 - The specialised Domestic Violence court at Westminster Magistrates' court in London, held on specific days, is a model that works well, but is not replicated in

other London courts we work within. The magistrate, clerk and CPS all received specific training and there was a noticeable difference in the approach to sentencing in this court with perpetrators receiving longer sentences and greater opportunity and access to rehabilitation programmes as a result.

- 2 - A re-introduction of mental health courts, building on the pilots that were delivered a number of years ago. We were involved in a pilot at Stratford Magistrates' court in 2009, following Lord Bradley's report that same year. We are attaching some press around this project, for information. To summarise:
 - a. One of the aims was to reduce reoffending for those suffering from mental distress and provide accurate and timely information to the bench, prior to sentencing.
 - b. It offered continued engagement of the same bench from time of sentencing to completion of the order or breach.
 - c. Assessments were offered routinely to those on remand or bail.
 - d. There were post-sentence reviews on a monthly basis, to report the individual's progress while on the order.

Although there are similarities with what is offered through Liaison and Diversion, the continuity of support to the service user, through different professionals operating within the criminal justice system, can achieve better outcomes. We know from other specialist courts, and from other countries, that knowing one is returning to the same bench to report progress, can lead to better engagement and act as a deterrent of further offending.

- 3 - We would welcome the creation of women-specific courts, with a similar function to the MH courts. We have been providing women-specialist Liaison and Diversion services at three London magistrates' courts, and therefore have been able to reach a higher number of women compared to a generic L&D service (see summary of evaluation report attached). We recognise the need for a different approach, not only to the support offered but also to the sentencing options available for women, given they tend to commit low level offences and, often, do not pose a risk to the public.

We feel this would be particularly useful to our Women's Mental health Treatment (WMHTR) service and could lead to an increased confidence of sentencers since they will be regularly notified of positive outcomes achieved when given an order.

We also believe mandatory or minimum sentencing should be removed as this has led to the over sentencing of individuals who could otherwise have been managed away from the courts and reduced the pressure felt across the system. If there is a concern around unduly lenient sentences these can be challenged through the appeal system.

Overall, we would encourage any initiatives to increase sentencers' confidence in available sentencing options. Establishing a process of feedback, through probation probably, on how the person is progressing, could be a way forward. We are committed as an organisation to engage in such initiatives, through the existing services we deliver.

Theme 3 - Use of Technology

Within the sentencing review, we would advise for it to look at the use of technology to monitor cases especially those presenting risk of harm or safeguarding concerns and this can then be another way to enforce their sentence.

We would also like to see access for all court users including Liaison and Diversion services to the Common Platform and pre-sentencing reports so there is a better understanding of offending history of the person being assessed.

There is mention within Theme 2 in the importance of information sharing and access to systems for those professionals that require it in order to provide as accurate information as possible about the person to be considered at sentencing.

Theme 4 - Community Sentences

The use of community sentences needs to be expanded and resources put into those diversion programmes, such as Community Sentence Treatment Requirements (CSTRs) particularly, as an alternative to short sentences.

We have seen the huge benefit for women in London Women's primary Mental Health Treatment Requirement service, with treatment as part of their community sentence rather than receiving a short custodial sentence. Not only does this avoid the potential impact short sentences have on women, particularly with housing and childcare responsibilities where they are the sole parent, but also enables access to the primary (or in some cases secondary) mental health support they would struggle to get through community mental health provision not under an order.

We would also like to see alcohol monitoring tags used more in community sentences as we have seen these to be hugely effective but very under-utilised. Part of this could be down to sentencers not being fully aware of all the options available them so some refresher training on sentencing options or a guidance sheet for magistrates/judges to refer to and ensure all alternative sentencing options are considered.

We would welcome more community sentence orders attached to meaningful activity e.g. attending a course (could be vocational or related to a specific criminogenic need) or with some practical requirements which may assist in sending someone down a different path where there are conditions attached as an alternative to a short custodial sentence. However, community sentences can be hard to enforce. This is why Post Sentence Supervision (PSS) was a good idea on paper but the execution didn't really work and actually sets people up to fail rather than incentivising a change in attitude/behaviour.

We are in favour of more community-based sentences and the focus on rehabilitation however, if someone doesn't comply with their sentence (missing MHTR/DRR/ATR appointments, Unpaid work, probation appointments etc), a breach report is sent to court. In our experience, these are rarely picked up quickly, someone can be in breach for months before returning to court. This is especially concerning when they are on a suspended sentence and there is a risk escalation. We therefore argue there needs to be a way for this to be monitored and addressed by courts in a quicker way, especially when there is a risk concern. The benefit of custodial sentences is once they are out on licence if the risk escalates, probation have the power to recall, however a lot of Serious Further Offences (SFOs) occur when someone has breached their community sentence and there is little by way of enforcement that probation can do.

The use of Criminal Behaviour Orders and Community Protection Notices require review as they are consistently put in place when the guidance advises they are not appropriate. We see this in some of the larger courts we cover through our Liaison and Diversion Service where regular defendants are subject to these orders and often have serious mental health issues (Schizophrenia, Schizoaffective Disorder) and Class A drug addiction. The orders have conditions including prohibiting the possession of drug paraphernalia or frequenting a

certain area and, subsequently, leads to a number of defendants we support frequently returning to court.

Even without the added vulnerability of a serious mental illness, telling someone addicted to crack not to have a crack pipe only serves to criminalise an already vulnerable population. We have had some success in getting these orders amended but this is difficult to do as the defendants are transient/ live chaotic lives so they miss court dates. However, in the two cases where the order was changed to conditions, such as aggressive begging being prohibited, the two men are hardly ever appearing in court now whereas before they were all the time, sometimes weekly.

Finally, we would like to see more on Deferred sentences. We would encourage that this review explores situations where sentencers are encouraged to use this option, when certain parameters are met. For example, for women who commit low level offences, this could be an option to be offered, resulting in them remaining in their communities, do not lose custody of children (where applicable) or accommodation and are able to engage in meaningful activities, especially those that support their mental wellbeing. The court could request written updates from professionals working alongside the person who is on a deferred sentence, and if certain criteria are met then the case could be dismissed.

Theme 6 – Progression of Custodial Sentences

The length of sentences has steadily been increasing over the years and we believe any review would need to look at this in terms of where these could be reduced. Short custodial sentences do not work for the majority of non-violent offences. They are not protecting the public because the person is out in a short space of time and often re-offends quickly because the support is not there and they haven't had enough time to engage with rehabilitative programs in a meaningful way. Individuals may also lose any public housing they may have had and when a woman is also the main caregiver there is the very real issue of what happens to their children.

We believe longer community sentences would be much better suited to those individuals that are currently receiving shorter custodial sentences. However, we would also argue there are some offences where this should be increased. For example, we've experienced examples where shorter sentences for Domestic Violence offences actually increase the risk of further offences, recalls and breaking of restraining orders where the perpetrator has not accessed any kind of course, either in prison or the community, and there has therefore been very little potential for change in behaviour to occur.

We are concerned that there is so much research that shows that people in DV relationships are more likely to be killed or seriously harmed by their partner/ex-partner but perpetrators often aren't sentenced until they have repeatedly committed violence. Even then, many are given SSO rather than custody and the victim remains at risk of harm. One option would be to pose harsher sentences but the most important factor is that these are given timely and there is immediate access to specific interventions while in custody or in the community. If perpetrators are given a community order, then we would like to see access to programmes happening early in the sentence.

We also need to look at how these cases are monitored in the community and the rehabilitative activity that we can offer. There is Building Better Relationships, but we are convinced this is not sufficient. More one to one work with a focus on unpacking DV perpetrators' beliefs, emotions and behaviour is needed. There is more complexity to DV than the physical or verbal violence and to protect victims, we need to address the underlying issues. We would like to see longer term programmes following a similar model

as the Offender Personality Disorder (OPD) pathway services with a relational element that includes Mentalisation-Based Treatment and relationship skills for DV perpetrators where more intensive and specialist support is required. We would welcome any community interventions on relationships, through specialist organisations working within probation settings. We are one of those but there are so many examples from all of us in the voluntary sector on the positive impact we have been making on the people's lives.

There are insufficient provisions of Drug and Alcohol Rehabilitation centres for people coming from prison into the community. There's been quite a lot of people we have worked with on our Integrated Offender Management service needing this support but are released into the community without aid and we see the pattern of them coming out, going back to using substances and then back into prison again, rather than having long term rehabilitative support e.g. inpatient settings, so that they can abstain from this lifestyle. This is an issue we see repeatedly in our work, therefore if length of sentences is reduced, which we welcome particularly for drug or non-violent offences where the impact on victims and therefore risk to public is lower, then those community-based options such as residential rehab would need to be increased to avoid repeat offending and recalls.

Community sentence options are available at the point of sentencing through DRRs and ATRs, but these are non-residential and wouldn't meet the needs of those with more chronic abuse issues. There also needs to be a greater provision of high risk or criminal justice specific rehabs or beds as often people with a criminal history are rejected from residential rehab programmes due to the perceived risk they would pose in those environments. We would argue custodial sentences are used as a priority for those that pose greatest risk to others e.g. violent offences, however it would be worth exploring community options in some cases as we have seen where individuals have been achieving positive progress in the community and then a custodial sentence really sets them backwards in terms of their journey towards rehabilitation and desistance.

There are currently no or few alternatives to recall, which leads to a lot of standard recalls being used. There is a need, then, to look at the expansion of alternative provisions to standard recalls and custody. A recent culture of fear among probation and particular amongst newly qualified probation practitioners increases the use and likelihood of recalls. Alternatives could include the expansion of the use of Rehabilitation Activity Requirement (RAR) onto a sentence (either community or suspended) rather than a straight recall.

Theme 7 - Individual Needs of victims and offenders

Possibly out of scope of the sentencing review, but the learning from the early release scheme (SDS40) and probation Reset, including the arbitrary nature this was applied, needs to be considered. This is especially if one of the conclusions of this review is that people are released a certain number of days early or are moved off active probation management for the final third of their licence period. We saw the impact of this on both our work, but also for probation staff who felt this failed to meet the needs of high-risk offenders.

We would propose changes in the probation system to relieve some pressure and to give People on Probation (PoP) better access to support. When qualified, officers should specialise. At the moment, officers hold mixed caseloads with a vast mix of offences, sentence types, presentations and vulnerabilities. This means they are expected to be an expert in everything and with the huge caseloads, some people may be overlooked when they need support or their risk is increasing. Qualified officers should have the opportunity to specialise in a particular area, for example lifers, sexual offenders, violent offenders, gangs, domestic violence perpetrators, substance misuse etc., and may be better able to manage specific risks.

Secure housing options is a major challenge for anyone released from prison and there needs to be some joined up work between government departments to look at this issue within criminal justice particularly. You cannot have a sentence review that stands alone and reduces the length of sentence someone serves without also ensuring there are the provisions from local authority housing departments, private rental sector etc. to manage the housing need.

Additional points around specific cohorts

Through both our Men's and Women's Offender Personality Disorder (OPD) services, we have a specific focus on working with young people from racialised communities and through the majority of our criminal justice services, being London-based, we encounter service users from diverse ethnic backgrounds. We believe there needs to be caution exerted in over-criminalising certain groups or within certain communities. Cultural awareness and early intervention, with programmes that have demonstrated efficacy, are very important and sentences need to offer community alternatives, where possible within the communities of the young people, as a means to intervene early, especially for low level offences.

In Australia, for example, restorative justice programs within the Aboriginal community overseen by Elders has had very positive outcomes particularly within youth justice. Relational interventions based on maturity assessments are crucial for understanding what interventions are to be recommended and should be added to community sentences with probation providing feedback to sentencers on progress the young people are making on an order. This will in turn increase confidence in giving community-based alternatives.

Finally foreign nationals are a particular cohort we have not mentioned in this submission, but feel it is important to comment on. Most probation cases who presented low risk of harm (mainly PWITS) received prison sentences rather than a community order. The overwhelming majority of these people were foreign nationals and as a result of their imprisonment were then restricted from employment, education and claiming benefits by the home office due to the sentence they received. This created a cycle, as without legitimate means of income, they were more likely to return to criminal activity and especially when these cases are left on the waiting list by the home office for months and sometimes years before a final decision is made.

We thank you for your time in reviewing our submission and we are available to you, should you have any questions or need to follow up on certain points.

On behalf of the Criminal Justice service at Together for Mental Wellbeing

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