

Introduction

1. The Criminal Justice Alliance (CJA) is a network of over 180 organisations and academics working towards a fair and effective criminal justice system. We welcome the opportunity to respond to the inquiry into community sentences. Community sentences play a vital role in keeping the public safe, repairing the harms caused by crime and addressing the underlying factors that is so often driving offending behaviour. There is good evidence that community sentences are effective in reducing re-offending, and represent value for money, especially in comparison to short prison sentences¹.

2. Our submission is informed by evidence and our members' expertise. It concentrates on solutions which bring together **restorative, reparative and rehabilitative** elements to help bring the focus back on repairing harm and making amends to individuals and communities, as well as changing behaviour.

3. We note that on the committee's call for evidence page it states: *'While it acknowledges that considerations related to restorative justice and to other sentences spent in the community—such as suspended custodial sentences or being released on parole—may occasionally be of relevance, the Committee would like to concentrate on community orders.'* However, it would be difficult for us to progress a submission without some reference to Restorative Justice (RJ), which we consider an important, but underused, rehabilitation activity requirement. We agree with Phil Bowen's oral evidence² to the committee that *'There is some—not enough, in my view—use of restorative justice within the framework of community sentencing, but that seems to me to be a particularly important way in which victims can get a sense that people are paying back for the wrongs committed and trying to come to some kind of mediation.'*

4. Restorative Justice is a voluntary process and can take place alongside criminal proceedings or any other criminal justice intervention, including a community sentence. RJ will only happen if both parties agree to take part and a trained facilitator agrees that it is safe. There is a strong body of domestic and international evidence that points to the benefits and effectiveness of RJ³:

- It gives victims a voice; supports them to cope and recover including improved health and wellbeing; increased feelings of safety; were better informed and empowered; and better able to cope with their lives.
- It encourages people who have caused harm to take responsibility.
- It improves victim satisfaction. Restorative Justice achieved a victim satisfaction rate of 85 percent.
- It reduces reoffending. A Ministry of Justice (MoJ) study showed a reduction in reoffending of at least 14 percent.

5. Links to relevant case studies can be found [here](#). RJ must therefore be viewed as an important part of a suite of options that can be used by sentencers to improve outcomes for the victim, community and individual.

What are the best practices for the delivery of community sentences?

6. Many of the discussions around crime and our responses to crime fail to effectively engage with the idea of harm and how it can be repaired to the individual directly, or to local communities and society more broadly. The Sentencing Council describes the aims of community sentence requirements as: punishment, changing behaviour so they don't commit crime in the future and making amends to the victim of the crime of the local community⁴. Best practice includes solutions that focus on restorative, reparative and

rehabilitative elements. Reparation, or 'giving back' is not only beneficial to individual victims or communities but has been identified as a key element in helping people desist from crime (Maruna, 2016⁵). People should be helped to understand the impact of their crimes on victims and local communities, as well as be supported to move on positively for example through education, training and employment. Research shows that if people are helped to overcome the issues driving their offending, we have a real chance to reduce re-offending and make communities safer.⁶

7. We note the discussions about the relative focus on these aims in the oral evidence given to the committee. We would add that depriving an individual of their liberty, for example by ordering that their free time be spent doing unpaid work, or restricting their movements, for example through use of a tag, should be seen as the punishment and not the intervention itself. As was noted in the oral evidence by Gavin Dingwall and Andrew Neilson, attempting to make the interventions punitive in and of themselves, could reduce the rehabilitative and reparative effects.

8. One example of this is the wearing of 'high-viz' jackets while carrying out community work as a form of public shaming. In our evidence to the APPG on Restorative Justice⁷, we carried out focus groups with our members working in the field of restorative justice and restorative practices who were critical of making reparative orders punitive. One participant described reparation as 'doing sorry'. They shared examples of unpaid work projects done restoratively and one gave the example of an individual who continued the work after the community service hours, as they had 'buy in' and got the 'do good, feel good thing.' The HMI Probation thematic review⁸ also cited examples of people staying on 'after hours' to volunteer their services when doing unpaid work in charity shops.

9. Alternative approaches to 'visibly and publicly making reparations'⁹ include local media, social media and/or plaques put up when work is finished. Probation should also develop more hyper-local partnerships by engaging with victims of crime and community groups to identify local needs. In Scotland there is legislative responsibility to consult specific people and organisations on the types of unpaid work activity that should be carried out in their area. This could be adopted in England and Wales by local PCCs. PCCs could also play a greater role in facilitating community involvement in the selection of unpaid work schemes and communicating their value.

10. Greater involvement of the voluntary and community sector in unpaid work placements would also be beneficial. For example, many voluntary and community sector organisations employ staff with lived experience of the criminal justice system in roles where engagement and rapport building is important. These organisations could also help support people after their order is completed. Specialist 'by and for' organisations could also provide support for people with protected characteristics. There are good practice examples with young people doing community reparation with volunteers from the local community doing the work alongside them as reparation mentors¹⁰. This could also have benefits for other cohorts, in particular young adults¹¹.

11. The Unpaid Work Operating Manual¹² allows for people to attend employment related training or education up to a maximum of 20 percent of the hours ordered, however there is no target for the proportion of eligible people who should undertake training. HMI Probation identified positive examples of unpaid work where education and training were effectively embedded into the placement, for example by the teaching of woodworking skills to make high quality products for beneficiaries¹³. Given the evidence¹⁴ relating to the impact of education, training and employment on reoffending, this is clearly a missed opportunity to embed this more widely into placements where an individuals would benefit from such support. Dave Nicholson¹⁵ has found that including

unpaid work with co-operatives and values-based 'purposeful' employers provides 'both a means of making financial payback, as well as a progression route into desistance-supporting paid employment.'

What are the main obstacles to the effective delivery of community sentences?

12. 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.¹⁶ Many of these issues resulted from the split of probation provision into a public-sector service and privately-owned company, which has since been unified.

13. The use of community sentences in England and Wales has also been declining. Between 2011 and 2020, community sentences as a proportion of all sentences fell from 17% to 10%. Research conducted by the Centre for Justice Innovation identified the part-privatisation of probation, underinvestment, court closures and court service efficiency reforms over the last six years to be behind this trend.¹⁷

14. Unpaid work provides a valuable opportunity for reparation to the community, however a 2016 HMI Probation report found that 35% of individuals had not started their unpaid work within two weeks of being sentenced, which has led to a backlog of uncompleted cases. This delay has worsened since the Covid-19 pandemic.¹⁸ In Scotland, reforms to unpaid work within their Community Payback Orders have focused on improving the speed that placements are both commenced and completed.

15. 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. Increased ring-fenced funding for drug, alcohol and mental health treatment for people on probation in the community, judicial awareness training and investing in administrative capacity would begin to tackle the main causes of these delays. To increase the capacity needed to clear the backlog, more national partners should be registered who can offer placements across the country. A duty on probation to use a percentage of its funding to commission the voluntary sector to help deliver standalone unpaid work would also increase the speed of unpaid work.

17. There is inconsistent access¹⁹ to Restorative Justice across the country. Money spent on RJ provision varies considerably in different PCC areas leading to a 'postcode lottery' of provision. PCCs are not allocated sufficient funding to widen access to RJ and many PCCs do not prioritise it, as the MoJ removed the allocated funding set out in the Local Victims Services Grant. The Victims and Prisoners Bill currently does not include anything that would increase access to restorative justice, despite the Justice Select Committee²⁰ highlighting this as an omission which should be remedied²¹.

18. There is also a lack of strategic oversight for Restorative Justice. Police and other criminal justice agencies are not always held to account on whether they offer RJ services or not. The MoJ has previously produced an RJ Action Plan²² aimed at widening its use throughout the CJS and overcoming the structural barriers limiting its effectiveness. However, the MoJ have not produced a RJ Action Plan since 2018, leading to a lack of strategic leadership and oversight. We agree with comments made in the oral evidence that increasing the use of deferred sentencing options would allow for Restorative Justice to occur, such as in Australia and New Zealand.

Do different cohorts experience community orders differently?

19. There is a lack of evidence on this issue which should be remedied urgently to comply with the Public Sector Equality Duty and improve outcomes for people with protected characteristics. HMI Probation²³ detailed examples of racially minoritised people on probation whose specific needs were not addressed with regard to the suitability of community orders. One example was a man of Iranian nationality sentenced to 200 hours of unpaid work. He struggled to read English, has mental health problems and had no recourse to public funds as was therefore unlikely to be able to travel to the unpaid work site. This same report noted that the quality of pre-sentence reports for ethnic minority people was 'insufficient in too many cases' (42 percent) and 'not enough attention was paid to the service users diversity' (only 4 out of 51 PSRs inspected). HMIP raised concerns that 'poorer quality reports that fail to consider all relevant factors run the risk of service users receiving more punitive sentences. In many cases there was insufficient analysis of factors relating to the service user's maturity or their experience of racism or trauma.' The report also found that many ethnic minority service users do not feel that probation staff have a good understanding of their culture, religion, heritage or experiences.

20. There is a concerning lack of day-to-day scrutiny of community orders including unpaid work. HMI Probation provide some scrutiny, however probation remains the part of the CJS that does not have an independent community scrutiny mechanism. Before Transforming Rehabilitation reforms came into effect, there were Probation Boards which provided the community scrutiny function. Since TR the community scrutiny function was eliminated. While HMI Probation inspect each provider annually, there is a need for more regular scrutiny. A community scrutiny mechanism could be in regular contact with staff and people on probation and be beneficial for providing intelligence to HMI Probation and improving outcomes for those on probation, including different cohorts²⁴.

Recommendations

- Pre-sentence reports should be improved to ensure appropriate community sentences are selected.
- Demographic data should be collected and analysed in relation to community sentences and research should be commissioned to better understand the impact of different community sentences on different cohorts.
- More emphasis should be placed on hyper-local solutions that engage local communities in the process, with a greater role for PCC's to facilitate community engagement and involvement in the selection and delivery of unpaid work sentences.
- There should be greater clarity in sentencing guidelines around the relative roles of punishment, making amends and rehabilitation in community sentences.
- Unpaid work should be meaningful, reparative and responsive to community need. It should be communicated to the public using media, social media, greater community involvement and plaques by completed projects.
- Unpaid work placements should commence promptly and run consistently.
- Commission the voluntary sector to help deliver unpaid work placements.
- There should be greater focus on education, training and employment support.
- There should be targets set for spending 20 per cent of the unpaid work order on education and training support, which are monitored and impact evaluated.
- There should be a renewed national action plan for RJ and sufficient resources to ensure victims who wish to access RJ services can do so.
- A community scrutiny mechanism for probation should be co-designed with probation staff, people on probation and the voluntary and community sector.

Disclaimer: The views expressed in this briefing are not necessarily those of any individual member or funder of the CJA.

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