

**Response to ‘Transforming
Rehabilitation: A revolution in the way
we manage offenders’**

February 2013

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About the Criminal Justice Alliance

The Criminal Justice Alliance (CJA) is a coalition of 70 organisations - including campaigning charities, voluntary sector service providers, research institutions, staff associations and trade unions - involved in policy and practice across the criminal justice system.

The CJA's current member organisations are: Action for Prisoners' Families; Adullam Homes Housing Association; the Association of Black Probation Officers; the Association of Members of Independent Monitoring Boards; Birth Companions; the Buck Project; Carers Federation; Catch22; the Centre for Crime and Justice Studies; The Centre for Justice Innovation; the Centre for Mental Health; Chance UK; the Children's Society; the Churches' Criminal Justice Forum; Circles UK; Clean Break; Clinks; Concord Prison Trust; Detention Advice Service; DrugScope; the Fawcett Society; the Forgiveness Trust; the Griffins Society; Gwalia Care and Support; Hafal; Hibiscus; INQUEST; the Institute for Criminal Policy Research; JUSTICE; Kainos; Khulisa; Leap; Nacro; the National Appropriate Adult Network; the New Bridge Foundation; Pact; Partners of Prisoners and Families Support Group; Penal Reform International; the Police Foundation; the Prince's Trust; the Prison Fellowship; the Prison Officers' Association; the Prison Reform Trust; Prisoners Abroad; Prisoners' Advice Service; the Prisoners Education Trust; the Prisoners Families and Friends Service; the Public and Commercial Services Union; the Quaker Crime, Community and Justice Group; Race on the Agenda; Raising Your Game; RAPT; Release; the Restorative Justice Council; Rethink; Revolving Doors Agency; the RSA Prison Learning Network; Safe Ground; Shannon Trust; SOVA; the St Giles Trust; Transform Drug Policy Foundation; UNLOCK; User Voice; Westminster Drug Project; Women in Prison; Women's Breakout; Working Chance; Why me?; the Young Foundation; and Young Minds.¹ The Criminal Justice Alliance works to establish a fairer and more effective criminal justice system.

The Criminal Justice Alliance would welcome a meeting to discuss any of the issues raised in this response.

Introduction

The Criminal Justice Alliance strongly welcomes the Justice Secretary's commitment to extending support to prisoners released after short sentences. It is right to focus new support on this group who have been long-ignored, often in and out of prison on several occasions with no help to turn their lives around. We also welcome the on-going focus on rehabilitation across prisons and community, albeit with reservations about proposed means of implementation, which we outline in our main response.

The CJA also welcomes the acknowledgement in the consultation paper that many prisoners experience homelessness, drug and alcohol dependency, mental illness and unemployment; and that those who are prolific offenders often experience multiple and complex needs. However, the Criminal Justice Alliance is very concerned that the proposals to extend support to short-sentenced prisoners through statutory supervision with the option of custody if they do not engage, carry the real risk of driving up the short term prison population. This could happen if sentencers use the new custodial sentence more often, as it appears a more attractive or 'safe' option, and also because if the

¹ Although the CJA works closely with its members, this consultation response should not be seen to represent the views or policy positions of each individual member organisation.

licence terms are too stringent or inflexible high numbers of this group are likely to breach and end up back in custody.

We question whether a new sentence is necessary to achieve the aims of reducing reoffending. By including sanctions, these proposals significantly increase the likelihood of many low-level non-violent people (those with complex needs and/or chaotic lifestyles, developing maturity and vulnerabilities) ending up back in prison who do not need to be there. This is a significant risk for vulnerable women and young adults, which we outline more fully in our main response.

If the decision is taken to implement compulsory rehabilitation, the option of prison recall must genuinely remain a 'last resort'. Proportionality of the licence conditions will be important, and as much flexibility as possible should be built into the process so that other more appropriate support is tried first. We also firmly believe that the mentoring element of the proposals should be entirely voluntary or this will alter the fundamental purpose of mentoring which is, in the words of the Justice Secretary, providing a "wise friend".

Finally, however good the new post-release support proves to be, it will still be cheaper and usually more effective to sentence people to community sanctions where this is appropriate. Reoffending data from the Ministry of Justice published in January shows that community sentences are more effective at reducing reoffending than custody, and are becoming increasingly more so. In fact, recent data shows that reoffending rates after custody are rising. We provide further articulation of these points in response to questions C10 and C11.

We support the shift of focus from processes to outcomes that underpins the move towards payment by results, but would emphasise that the implementation of this model needs to be given careful consideration to ensure that it is effective in meeting the needs of all offenders and allows a diverse range of providers to participate in the delivery of services, including smaller voluntary sector organisations. The experience of the Work Programme has shown this was not the case, and learning from what did not work should inform the Transforming Rehabilitation proposals. We would also highlight the importance of recognising the specific needs of minority groups within the criminal justice system, including women, those from black and minority ethnic communities, those with learning disabilities and difficulties, and young adults. Prisoners' families are, in addition, another group whose needs and whose potential contribution are often overlooked.

The Ministry of Justice should adopt some of the learning from the justice reinvestment pilots in London and Greater Manchester, which offer potential for reducing crime and saving money. These pilots are continuing; in their first year they produced strong results. We have concerns regarding the impact that the proposed introduction of 16 large regional 'contract package areas', alongside one central probation service, could have on existing valuable local networks. This approach, as opposed to the earlier proposal for a larger number of Probation Trusts to commission services, could make local justice reinvestment, joined up crime prevention and problem solving in the courts more difficult.

If the proposals set out are to be fully and successfully realised, it will be essential that quality is not relegated to cost considerations in the design of the contracts. Without pilots to evidence reasonable reoffending impacts against cost, quality will be an

important consideration, and the confidence of sentencers in the delivery of Community Orders must be maintained. We outline these concerns more fully in our response to questions C7-9. We have responded below to the questions on which we have a view.

Question B1: How can we maximise the results we get from our collective Government and public sector resources?

Question B2: How can we use the reform of offender services in the community to enhance the broader range of social justice outcomes for individuals?

We answer questions B1 and B2 together.

The criminal justice system cannot reduce crime or cut reoffending on its own; the involvement of wider agencies, such as Health and Housing, alongside families and local communities, are critical. For this reason the Criminal Justice Alliance supports a ‘justice reinvestment approach. It is welcome that the Ministry of Justice has allowed the justice reinvestment pilots in Greater Manchester and London to continue, which could offer useful learning on the process of establishing such schemes and the economic and social benefits they accrue.

The Manchester and London justice reinvestment pilots are delivering strong results. In London in the first year of the pilot, savings of £950,000 were secured which can be ploughed back into further initiatives to reduce reoffending. In Greater Manchester £2.6 million of savings have been achieved.² The Criminal Justice Alliance supported these pilot and their aims, as they builds on growing UK and international evidence for justice reinvestment.³ We would like to see the MoJ consider the merits of a continued justice reinvestment approach and a commitment to continue and roll out these pilots. In addition, some element of incentive for reducing demand on the criminal justice system could be incorporated within the Transforming Rehabilitation proposals.

As well as the potential for justice reinvestment, as yet unrealised through these proposals, there are key points where contact with the criminal justice system should be used as an opportunity to signpost and/or divert people into appropriate support ensuring greater social justice outcomes. For example, Mental Health Liaison and Diversion Schemes established following Lord Bradley’s report. These schemes allow people with mental health problems to be diverted out of criminal justice and into health services where appropriate; and for those who cannot be diverted to be supported from point of arrest through to resettlement in the community, as it is essential that there is the same access to treatment and support as would be expected in the community. This important work should be acknowledged and supported within Transforming Rehabilitation proposals.

² Ministry of Justice (November 2012) Justice reinvestment pilots: first year results <http://www.justice.gov.uk/information-access-rights/transparency-data/justice-reinvestment-pilots-first-year-results>

³ House of Commons Justice Committee (2009) Cutting crime: the case for justice reinvestment <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/94i.pdf>

The MoJ should continue to work closely with the Department of Health to ensure the promise of Liaison and Diversion is realised.

The national network of women's centres provide a multi-agency supportive approach to women involved or at risk of offending. They support women referred to the centre as part of a community sentence, but also women who have received a court order to attend a service for a period of time, and women who feel that the service can offer support and just drop in. These types of services fulfil a vital role of improving health and wellbeing, and preventing onset or escalation of offending.

It is therefore concerning that the Transforming Rehabilitation proposals are moving forward in the absence of a published Government Strategy for Women Offenders. There are clear dangers posed by an immediate move to local funding for women's services, with a real risk that hard won progress and practice will be lost. Government should commit to an appropriate level of grant funding for women's centres (or stipulate this within the contracts), and ensure that in the transition to new commissioning models the valuable work of women's centres is not lost. We endorse the response to this consultation of Women's Breakout, a member of the CJA, who expand on this point in more detail.

B3: Should any additional flexibility be built into the community sentencing framework to strengthen the rehabilitative impact of community orders, and the reintegration of offenders into society?

We welcome the intention to provide greater flexibility in the community sentencing framework in order to strengthen the rehabilitative impact of orders. As outlined elsewhere in our response, a very large number of offenders serving short custodial sentences or community sentences have complex and multiple needs. The evidence base shows that a one size fits all approach will not work in reducing re-offending so a range of rehabilitative options is welcome.⁴

However, this seems at odds with the government's less flexible and more centralised approach to community sentences recently adopted in the Crime and Courts Bill which mandates a punitive element in every order. The measures provided for in the Bill may also result in displacing effective rehabilitative requirements with punitive ones. Our first recommendation would be to alter the provisions in the Bill, or to repeal these measures should the Bill become an Act.⁵

Overall the CJA believes the key issue is not the legislation or the existing menu of options, but the inadequate availability of rehabilitation requirements across different locations, despite their need. Recent research into the caseload of Lincolnshire Probation Trust found that at least a quarter had a current mental illness,⁶ and other estimates have

⁴ Weaver and McNeill (2010) Changing Lives: Desistance Research and Offender Management, Scottish Centre for Crime and Justice Studies.

⁵ Criminal Justice Alliance (2013) Briefing on Crime and Courts Bill

⁶ Brooker, C et al, (2011) An investigation into the prevalence of mental health disorder and patterns of health service access in a probation population. Lincoln.

suggested that up to 42% of offenders supervised by probation services have mental health problems.⁷ Despite this the Mental Health Treatment Requirement is used in less than 1% of orders.

The second issue is flexibility in dealing with non-compliance and breach. As outlined, offenders with mental health problems and /or drug or alcohol dependencies often have chaotic lifestyles, and a rigid system for dealing with failures to comply with the requirements of a Community Order or licence period after short term custody is not, consequently, a constructive approach to take. Additionally, some 20-30% of offenders have learning difficulties or learning disabilities that interfere with their ability to cope within the criminal justice system - around 7% of this group will have very low IQs of less than 70.⁸

In order to improve compliance and reduce reoffending, we support moves to afford offender managers discretion, and to allow them to exercise their professional judgment as to whether it is necessary to breach an offender or not. However, whilst we supported the removal of National Standards and broadly support the use of personal discretion and judgment, we would also suggest that some guidance will be needed to guard against unfairness and inconsistency, and to preserve accountability. This will be particularly important as the payment by results model is more widely rolled out, and multiple providers become increasingly involved in the delivery of offender management services.

In terms of flexibility in the sentencing framework, the specified activity requirement is already being used imaginatively in different areas to undertake restorative justice or to refer women offenders to women's centres. However, more needs to be done to highlight the existence of these options and the benefits they produce both to sentencers and the community. More could also be done to improve the view and attitudes of probation towards these centres. A thematic report by the inspectorate of probation found that the "relationships between women's community centres and offender managers were often underdeveloped and it was apparent that work at the centres was often undervalued by probation staff who did not consider it integral to the achievement of the sentence plan"⁹. Pre-sentence reports don't always promote women's community centres as a credible sentencing option, despite the evidence of their value.

Equally, the attendance centre requirement has the potential to be used much more widely to work innovatively with young adult offenders and young adult women (for example in Camden, Lewisham and Ealing).¹⁰ The Magistrates' Association suggested that much more use could be made of attendance centres if they were revitalised and available to every court as a constructive, relatively cheap community penalty.¹¹

⁷ Solomon, E. & Silvestri, A. (2008) Community Sentences Digest. London: Centre for Criminal Justice Studies, King's College, London.

⁸ No One Knows (2007) Loucks, N. The prevalence and associated needs of offenders with learning difficulties and learning disabilities. Prison Reform Trust

⁹ A Joint Inspection by HMI Probation, HMCPSI and HMI Prisons. (2011) Thematic Inspection Report: Equal but different? An inspection of the use of alternatives to custody for women offenders.

¹⁰ http://www.london-probation.org.uk/PDF/Women's%20Senior%20Attendance%20Centre_Info%20for%20Sentencers_Feb2012.pdf

¹¹ Magistrates Association (2010), Sentencing policy and practice committee: community sentences - policy paper, London: Magistrates Association.

In summary, the priority should be to ensure existing rehabilitative requirements are genuinely available to the Courts, and that they are able to command sentencer confidence through good knowledge of what is available, including options available through specified activity requirement and attendance centre requirement. We also advocate that all Courts are empowered with provisions already enacted in the Criminal Justice Act 2003 (but currently restricted to designated courts), to review the progress of offenders during the course of their sentence. As the Magistrates' Association has advocated, a built-in feedback loop would enable sentencers and others to learn what works and provide them with more confidence in community sentences. This power should be made available to all magistrates' courts who wish to undertake this, and would allow for more innovation and problem-solving approaches in and around the Court.

Question C1: We are minded to introduce 16 Contract Package Areas. Do you think this is the right number to support effective delivery of rehabilitation services? Do you have any views on how the Contract Package Area boundaries should be drawn?

The Criminal Justice Alliance supports a more local commissioning approach, which we believe would better take account of local needs and include the voice, expertise and support of the voluntary sector. Whilst the consultation is open to review the number of proposed areas, we advocate a model that allows maximum local input as possible and that is aligned to Local Authorities and Police and Crime Commissioners (PCCs).

The MoJ's published summary of responses to the earlier *Effective Probation Services* consultation makes clear that the majority of respondents supported locally based commissioning. The summary concludes that "there was general support for devolving commissioning responsibility and budgets to Trusts, although some respondents supported a more national approach, which could still be responsive to local needs". As CJA member Catch22 said in their response to the probation review, "The approach should be to enable and help realise the potential for local joint commissioning to make the best use of decreasing resources."

The CJA is concerned that the introduction of only 16 Contract Package Areas could undermine moves already underway to drive innovation locally e.g. through problem solving in the courts, through Police and Crime Commissioners and Integrated Offender Management. We understand that part of the government's rationale in creating large contracts is to reduce costs, however we would urge balance towards localism and co-terminosity with Local Authorities and PCC areas.

Large regional contracts may also mean sentencers will be further removed from the communities they serve, making it more difficult for magistrates to know what is involved in the Orders they are handing down, for example through visiting local services. This would exacerbate an existing problem; a 2008 survey by the Centre for Crime and Justice Studies identified amongst sentencers a clear lack of knowledge about the availability of community order requirements in their local areas.¹² This meant that fewer rehabilitative requirements were used as sentencers did not have knowledge or confidence in them.

¹² Mair, G., Cross, N. and Taylor, S. (2008) *The Community Order and the Suspended Sentence Order: The Views and Attitudes of Sentencers*, London: Centre for Crime and Justice Studies.

Evidence to the Fawcett Society's Commission on Women and the Criminal Justice System also suggested that magistrates thought there were limitations in the information about the services which were actually available in their local area.¹³ One magistrate suggested to the Fawcett's Commission that the issue is resourcing and the availability of programmes, saying: "I think there is plenty of information regarding COs, it's just a pity the money doesn't seem to be there in order for them to be carried out effectively...Personally I don't feel at present that many of these orders actually work."¹⁴ The Criminal Justice Alliance is therefore concerned that with the introduction of 16 large contract packages, knowledge of local service providers and services will become more difficult to access. This may result in the imposition of Community Orders with requirements that cannot be enforced in the locality the offender resides in. This would potentially result in an increased number of applications being made to court to have Community Orders varied to be made workable, which would impact negatively on court time.

It is therefore important that all requirements are available in every area, that whoever is delivering the service has sufficient funding to provide robust community sentences, and that sentencers are aware of what provision is available in their local area and have confidence in it. The probation service will therefore play a central role in providing sentencers with information - even if the sentence is delivered by another organisation.

Finally, there is little outline in the proposals on how prisons will fit within contracts. We raise the point that several CJA members undertake excellent work in prisons that contribute to desistance, but that this intervention may take place a long time before a prisoner's release. Examples include Restorative Justice Conferences in prisons, Education and Higher Education distance learning courses, not otherwise available in prisons, funded by Prisoners Education Trust and therapeutic communities run by Kainos community.

It is unclear how the valuable rehabilitative work of these organisations would fit into the PBR contracts. It is important this continues to be resourced and prioritised. To maximise results, PBR providers must accommodate and build on these downstream interventions to ensure a smooth transition for the prisoner from custody to the community. For example, where a prisoner has completed the theory aspect of a course through distance learning in prison, but needs to complete the practical or exam element in the community, providers should enable this to happen. As a specific, it is not clear how the proposed Contract Package Areas fit with the 'cluster model' of prisons and the ten OLASS regions. OLASS providers do not currently have any obligation to reduce reoffending, therefore PBR providers will need to work closely with OLASS providers, the National Careers Service and other learning providers both in custody and the community. This would help ensure that learning in prison is more effective in reducing reoffending.

Release on Temporary Licence seems another obvious and important way to provide better rehabilitation. This should be developed within these proposals.

¹³ p.28: Commission on Women and the Criminal Justice System (2009) *Engendering Justice - from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System* - available at <http://www.fawcettsociety.org.uk/documents/Commission%20report%20May%2009.pdf>

¹⁴ p.28: Commission on Women and the Criminal Justice System (2009) *Engendering Justice - from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System* - available at <http://www.fawcettsociety.org.uk/documents/Commission%20report%20May%2009.pdf>

Contract Specification

Question C2: What payment by results payment structure would offer the right balance between provider incentive and financial risk transfer?

Question C3: What measurements and pricing structures would incentivise providers to work with all offenders including the most prolific?

We will answer questions C2 and C3 together.

These proposals represent a significant change in the structure of the delivery of criminal justice services and PBR has been described as a “world first”¹⁵ by the Government. Without any results from pilots to date, there has been little time to build up the evidence base as to the likely costs and effectiveness of different approaches and interventions. It has also been difficult to explore any perverse incentives or unintended consequences that may be created and look at how they can be addressed.

A policy paper published by KPMG states, with regards to payment by results, that there may be “a ‘bleeding edge’ in getting it right, as both the customer and the provider explore how to manage complex risks and rewards and the boundaries of cross-government and multi-year spending are transcended”¹⁶. We outline below some means of mitigating these risks.

Problems with Binary

The strongly held view across the sector is that the proposed use of the binary measure of reoffending is the wrong one; this view came through strongly from the VCS, the private sector and the Police in the government’s summary of consultation responses to the probation review. The binary measure risks disincentivising work with people with complex and/or entrenched needs and those who are prolific offenders. This could mean significant numbers of offenders with high levels of need are ignored, and in turn could cause further crime and more victims. We advocate that, on balance, the preferred measurement for PBR is the seriousness and frequency of offending.

Furthermore, the evidence shows that desistance from crime can be a slow process, often with progress made initially in reducing the frequency of reoffending. This can be an important process, and providers should be recognised for their contribution towards it.

Differing payments and ‘distance-travelled’

Pricing structures will have to be graduated to ensure that providers work with all types of offenders and no-one is left without supervision or support. There are risks that the offenders most likely not to reoffend will be ‘cherry-picked’ while those least likely to avoid reconviction are ‘parked’ with little or no access to support services. To address this, the CBI has recommended that “payment incentives should be increased incrementally as reoffending is cut by larger amounts” in order to ensure that “providers

¹⁵ Herbert, N. (2010) *Speech on Government plans for prison reform*, 22 October, available at: <http://www.justice.gov.uk/news/sp221010a.htm>

¹⁶ p.13: Downey, A., Kirby, P. and Sherlock, N. (2010) *Payment for Success: How to shift power from Whitehall to public service customers*, London: KPMG.

are encouraged to help those who are harder to reach”¹⁷, while the Social Market Foundation has suggested a ‘payment escalator’, which would operate in a similar way.¹⁸

The CJA favours an approach to PBR that recognises ‘distance travelled’. Achievements in other areas that are important factors in desistance - for instance, in housing, education, employment and strengthening family ties - could be considered as part of such an approach.

Local variants

In terms of measurement, it will be important to ensure that the data used for baselines is robust and reliable, and that metrics are not susceptible to changes in the external environment (for example changes in the employment environment or the availability of housing) and national or local policy changes (such as new crimes being legislated for or changes in policing priorities; the latter may be particularly prevalent following the election of Policing and Crime Commissioners), or at least that the impacts of these changes are recognised and minimised.¹⁹ This will be important in ensuring that we get a genuine picture of what is working and should therefore be replicated, as well as ensuring that the payment system is fair.

The Ministry of Justice should also consider whether there may be a need for local variations in the measurement mechanisms and tariffs, to reflect different geographical circumstances. It may, for example, be easier to move an offender into housing or employment in some areas than others, which will have an impact on reoffending rates. Varying tariffs locally would reflect this and incentivise providers to work in the most challenging and disadvantaged areas.

There is also a lack of clarity about how different payment by results systems (for example Drug and Alcohol Recovery, Transforming Rehabilitation and the Work Programme) will interact with each other where they are working towards related outcomes, and which provider will take the credit in achieving outcomes that may relate to more than one service. This is particularly relevant given that the Department of Health has taken a different approach to the MOJ by piloting eight PBR schemes over two years with considerable local discretion, and whose outcomes include reduced reoffending.

Outcomes based payments

The MoJ should also consider the merits of phasing in outcome-based payment mechanisms by initially basing payments on activity measures such as the number of people worked with. This would be a step towards payment by results that the voluntary sector might be better placed to engage with (and this gradualist approach has also been suggested in a recent briefing on applying payment by results to drugs services and by CentreForum).

The Ministry of Justice should also consider the merits of system of staged payments, to ease cash flow problems and lower the level of risk to providers, as it would allow them to be paid in parts for milestones reached. This would build on the methodology underpinning Project Daedalus, which is delivered by the voluntary sector.

¹⁷ p.6: CBI (2011) *Action in the Community: Reforming probation services to reduce reoffending*, London: CBI.

¹⁸ p.71: Mulheirn, I., Gough, B. and Menne, V. (2010) *Prison Break: Tackling recidivism, reducing costs*, London: Social Market Foundation.

¹⁹ p.69: Shelapanov, A. and Ali, R. (2010) *Turning the Corner: Beyond incarceration and reoffending*, London: The Young Foundation.

Follow up period

In measuring reconviction rates, the length of the follow-period will affect the proportion of people who are reconvicted. For example, Ministry of Justice research has showed that 75% of offenders are convicted of a further offence within nine years, compared to 43% within one year.²⁰ Using a longer follow-up period would therefore give a fuller picture of reoffending. However, a very long follow-up period is likely to be difficult to administer and unrealistic in terms of paying the provider, so a balance between the two is necessary. Given that of those who are convicted of a further offence within two years, 78% are within the first year²¹, there is a strong case for using a one-year follow up period. This would make the process more manageable for providers, and would also limit the impact of other factors outside the providers' control, like rising unemployment or changing housing or welfare policies.

Question C4: How should we specify public sector oversight requirements in contracts, to avoid bureaucracy but ensure effective public protection arrangements?

Several CJA members, including those seeking to be involved in the delivery of services, will be representing their views separately on this issue.

However, there is a clear concern across the Alliance that accountability and transparency is maintained. In addition, careful thought and attention will need to be given to how the risk and reporting requirements are passed down through the supply chain to smaller organisations and then fed back to prime contractors, as well as back into the public sector.

In our earlier response to the probation review, the Criminal Justice Alliance raised some issues that need to be fully considered in any new approach. These include: quality, consistency, fragmentation and accountability and trust. This response is available at http://www.criminaljusticealliance.org/Probation_Review_response.pdf

Question C5: We want to incentivise through the gate provision, but some prisoners will disperse to a different part of the country following release. How can we best account for that in contract design?

The CJA would highlight two key issues here. One is prison overcrowding and the ensuing 'churn' across the prison estate, and the other is the potential negative impact that 'titan' prisons would have on these proposals. Both exacerbate issues relating to resettlement support and mean prisoners are more likely to be held far away from the local area to which they will be released.

When prisons are overcrowded, the risk that offenders will commit crimes upon release may even be greater. A combination of some of strain on prison staff, reduced access to educational and training programmes, lack of mental health and substance abuse treatment services and distance from families exacerbate reoffending.

A report by the CJA collating the experiences of our members demonstrates that often crucial rehabilitative and resettlement work gets squeezed as resources focus on managing an ever expanding prison population.²² The Home Affairs Committee report in 2004/05

²⁰ Ministry of Justice (2010) *Compendium of reoffending statistics and analysis*, London: Ministry of Justice.

²¹ *Ibid.*

²² http://www.criminaljusticealliance.org/Crowded_Out_CriminalJusticeAlliance.pdf

stated that “It is clear that overcrowding is having a hugely damaging impact on the delivery of rehabilitative regimes across the prison estate, both in terms of quality and quantity of appropriate interventions.”²³ CJA members reported the following examples of pressures when prison numbers rise:

- Sudden and last minute transfers which meant more prisoners had their courses interrupted or stopped. It also disrupted established resettlement plans.
- Longer waiting lists for courses, including victim empathy courses, education courses, parenting and relationship courses and work opportunities.
- Less likelihood of families being involved in sentence planning and annual reviews.
- Less support for women on short sentences, again often transferred very shortly before release, and staff struggling to deal with the release paperwork

Additionally, when levels of overcrowding and churn are higher, short sentenced prisoners (the very group these proposals are intended to reach) end up further down the list of priorities and their sentence becomes short term warehousing. It is therefore critical to ensure the welcome new support for short-sentenced prisoners on their release does not inadvertently drive up prison numbers if the licence conditions are inflexible or stringent.

Equally, Ministry of Justice should continue to develop strategies to stabilise the prison population and reduce numbers of people in custody alongside the Transforming Justice proposals.

Supply chain management

Question C7: What steps should we take to ensure that lead providers manage and maintain a truly diverse supply chain in a fair, sustainable and transparent manner?

Criminal Justice Alliance believes that a truly diverse supply chain will include service delivery by voluntary sector organisations, as well as providing for consultation with local authorities, PCCs and communities who better understand the distinct needs and diversity of their areas.

It is anticipated that the voluntary sector will largely sub-contract from private prime contractors i.e. the lead providers. (The possibility of mutuals and consortia-led bids is welcome, and we outline this in more detail in question C9). The prime contractor will have overall responsibility for the delivery of the contract and should therefore be required to stipulate how their proposed sub-contractors will meet the unique characteristics and diverse needs of the communities within which they propose to operate. Specific consideration will need to be given to mental health, alcohol and substance misuse, black and minority ethnic groups, homelessness and women offenders for example. The effectiveness with which the prime contractor continues to work with their sub-contractors and thereby, meet the specific needs of their service users should be a matter for on-going evaluation by Ministry of Justice.

To meet some of the diverse needs outlined above will require the involvement of a range of organisations, including very local specialist groups. To facilitate their involvement, there will need to be some financial payment guaranteed. Until there is a successful track record for payment by results schemes in the criminal justice system, most third sector organisations will have little capital available from sources other than social finance. Thus, they will require some payment upfront in order to be able to provide basic services to offenders without having to borrow capital.

²³ 9 p.16 Home Affairs Committee (2004) Rehabilitation of Prisoners. First report of Session 2004-2005, Vol. 1.

One way of developing this would be to consider the merits of phasing in outcome-based payment, and for some smaller organisations in the supply chain simply to be funded through grants. We suggest that prime contractors should simply grant fund the very small organisations further down the supply chain (this could be based on a contribution to local grants or simply expecting charities with a turnover of less than £500,000 to be grant funded within the contract). This gradualist approach has also been suggested in a recent briefing on applying payment by results to drugs services,²⁴ and by CentreForum.²⁵

The Ministry of Justice should also consider the merits of a system of staged payments, to ease cash flow problems and lower the level of risk to providers, as it would allow them to be paid in parts for milestones reached. These staged payments must be fairly distributed along the supply chain. Different payment levels and mechanisms for different groups of offenders (such as those with multiple and complex needs) would also help to prevent ‘cream-skimming’ and ‘parking’ of offenders.²⁶

Question C8: What processes should be established to ensure that supply chain mismanagement is addressed?

Experience from the Work Programme suggests that despite being included in contract bids, organisations from the voluntary sector have struggled to get referrals from prime contractors. In a survey undertaken by The National Council for Voluntary Organisations, it was found that many sub-contractors were concerned about the sustainability of their contracts due to a lack of referrals.²⁷ In addition, in a report published by three homelessness charities involved in the Work Programme, it was found that sub-contractors were not being used to effectively provide specialist support to those who required it, despite being included in the original bid for the contract.²⁸ St Mungo’s, for example, is a charity that provides specialist support to homeless people. In 2012, the organisation left the Work Programme after not having received a single referral in nine months. In the context of probation services, this raises concerns that the diverse needs of offenders may not be met if prime contractors are reluctant to refer on to their voluntary sector sub-contractors.

The National Council for Voluntary Organisations also found that some sub-contractors under the Work Programme were simply not being paid for referrals received.²⁹

It should be made explicit in all contracts awarded to prime contractors, that any partnership with the voluntary sector must be a genuine one. Primes should be expected to give an indication of the number of referrals a sub-contractor can expect to receive.³⁰ This would allow sub-contractors to better plan their service delivery and assist with maintaining fiscal stability. A process of regular and proactive review by the Ministry of Justice should be implemented, to ensure that the terms of contracts are adhered to. This

²⁴ p.3: Roberts, M. (2011) *By their fruits: Applying payment by results to drugs recovery*, London: UK Drug Policy Commission.

²⁵ p.7: Nicholson, C. (2011) *Rehabilitation Works: Ensuring payment by results cuts reoffending*, London: CentreForum.

²⁶ *Ibid.*, p.6.

²⁷ National Council for Voluntary Organisations. (2012). *The Work Programme: Perceptions and Experiences of the Voluntary Sector*. London: National Council for Voluntary Organisations.

²⁸ Homeless Link, Crisis & St Mungo’s. (2012). *The Programme’s Not Working: Experiences of Homeless People on the Work Programme*. London: Homeless Link, Crisis and St Mungo’s.

²⁹ National Council for Voluntary Organisations. (2012).

³⁰ *Ibid.*

should include reviewing information about the number of referrals that are made by prime contractors. In addition, an independent and anonymous feedback and complaints procedure should be established. This would allow the voluntary sector sub-contractors to alert the Ministry of Justice to any issues in supply chain mismanagement.

Question C9: How can we ensure that the voluntary and community sector is able to participate in the new system in a fair and meaningful way?

It is vital that payment by results is implemented in a way that ensures diversity of providers and, in particular, allows smaller voluntary sector organisations, many of whom have a wealth of experience and expertise in supporting offenders, to fully participate as providers. The model of payment that is developed will be central to enabling the involvement of the voluntary sector in delivering criminal justice services. It is clear that voluntary sector organisations, even larger national voluntary sector organisations, will not be able to carry the financial risk of a payment by results model that requires all payment to be deferred and based on results, either due to a lack of available funding or the limits placed on the use of reserves by charity law. Even if a basic payment is made up front, with an additional payment made based on results, it is unlikely that voluntary sector organisations would be able to carry the financial risk, with concerns emerging from the Work Programme that voluntary sector organisations who hoped to get contracts became particularly vulnerable to suffering financially or even being forced to close down as a result of their involvement in the scheme.³¹ If this happens in a criminal justice context, it will weaken the market and damage the credibility of the scheme.

The most likely route will be for voluntary sector organisations to be subcontractors to larger prime providers. The Ministry of Justice could ensure prime providers subcontract a set proportion of the work to the voluntary sector, as a condition of being granted the contract. However, this could be overly prescriptive and inflexible, and might fail to ensure that the most appropriate delivery organisation is in place. A better solution is for Government ministers to require prime providers, where that model is used, to work closely with the voluntary sector as subcontractors, wherever appropriate, in the design and delivery of services from the outset as genuine partners. This should incorporate a strengthened version of the Merlin Standard to ensure subcontractors, including third sector organisations, are treated fairly. There is also scope for the MoJ to support and encourage applications from consortia, and to recognise that any consortia will be newly established and therefore, as yet, unable to evidence long-term track record as a collective.

However, even with these safeguards in place, subcontracting poses significant risks to the autonomy of voluntary sector organisations and may cause considerable problems if there are contradictions between the strategic objectives or operating practices of the (probably private-sector) prime provider and a subcontractor. In addition, a recent report by CentreForum argues that the lessons learnt from the development of PBR mechanisms in welfare to work suggest that large prime contractors will still pass risk and the working capital requirements down to their subcontractors.

To facilitate greater levels of involvement from voluntary sector, an element of the payment will need to be guaranteed, to ensure organisations with limited reserves are able to provide basic services to offenders without having to borrow capital (with little capital likely to be available anyway from sources other than social finance until there is a successful track record for payment by results schemes in the criminal justice system).

³¹ <http://www.bbc.co.uk/news/uk-politics-12476342>

We suggest the overall contracts cannot bear more than 30% of the contract put at risk. As mentioned, we also suggest that prime contractors should simply grant fund the very small organisations further down the supply chain (this could be based on local grants or simply expecting charities with a turnover of less than £500,000 to be grant funded within the contract).

In the initial stages of roll out, it will be essential that there is an open culture across the development of payment by results. Data must be openly available, and not retained by individual providers, and research and assessment on what works must also be openly available to allow providers to learn from each other. There should also be rigorous assessment by the Ministry of Justice of the contents of proposals ahead of contracts being awarded that ensures that what is being proposed is consistent with what existing evidence shows to work in reducing recidivism. While flexibility must be retained to allow innovation, this need not allow potential providers to pursue approaches that have already been demonstrated not to be beneficial in reducing reoffending. In this context, proposals for a NICE-equivalent for criminal justice³² should be re-examined to assess whether an independent body to assess the evidence in support of different approaches could have benefits in driving good practice. This transparency in data and availability of research will better allow small organisations who don't have resources to undertake such work themselves.

There is also a risk that payment by results could instead lead to conservatism in delivery, with providers focusing on a narrow range of services that are known to produce acceptable results, rather than innovating at the risk of failure and little or no payment as a result. The Justice Select Committee noted this potential side effect in their report noting that "It is important that data and information sharing is not inhibited by the rules governing commissioning and competition".³³ For this reason MoJ should take the lead in gathering the evidence and sharing good practice across providers.

We support the work of Clinks (a member of the CJA) who are the infrastructure body for the voluntary sector working with offenders, and we endorse their submission to this consultation.

The involvement of service users and ex-offenders

The Transforming Rehabilitation proposals should be developed in a way that facilitates service user involvement, and that ensures ex-offenders can be fully involved in delivering the services.

As Clinks have noted, service users can play an important role in developing and improving services.³⁴ All contracts should therefore provide for service user involvement in the planning and delivery of services. Many organisations in the criminal justice system already actively promote service user involvement. Kent Probation Trust, for example, commissioned User Voice and Catch22 to establish a community council to improve their engagement with service users. The community council model is based on principles of democratic engagement. So, the council is established and members are elected by their peers. The council then serves to represent their peers' views and opinions.

³² Howarth, D. (2009) 'NICE for justice? Putting the evidence into criminal justice policy' in Collins, J. and Siddiqui, S. (eds.) *Transforming Justice: New approaches to the criminal justice system*, London: Criminal Justice Alliance.

³³ *Ibid*, para 300.

³⁴ Clinks (2008) *Unlocking potential: How offenders, former offenders and their families can contribute to a more effective criminal justice system*, London: Clinks

User Voice worked with Kent Probation to set up a series of questionnaires and focus groups, in which service users participated. The members of the council are then selected by the participants. Probation staff and the council then get together to discuss how best to undertake probation work with consideration for service users' opinions and concerns. Meetings are held regularly and other issues are also considered, such as housing and education. From these meetings, Kent Probation has worked to develop an action plan to support service users' desistance from crime.

CJA members, Clinks and Revolving Doors Agency, have jointly published a guide to service user involvement. This provides valuable advice on how agencies working within the criminal justice system can include service users in project delivery.³⁵ It also provides sample service user involvement policies which could serve as a point of reference for contractors.

We would also highlight the need to engage offenders and ex-offenders in these changes. Contract should be designed in such a way to ensure volunteering opportunities are open to ex-offenders, who may be unnecessarily barred from volunteering due to their criminal records. We support the conclusions of the former volunteering champion Baroness Neuberger, who carried out a review of volunteering in the criminal justice system, that the difficulties that ex-offenders experience are "absurd" and the recommendation of her report on volunteering in the criminal justice system that "all agencies of the CJS should have a strategy to engage the skills and time of ex-offenders."

As a manifesto produced by Clinks, a member of the CJA, in 2010 stated: "Former offenders who have succeeded in turning their lives around often have considerable credibility and should be positively encouraged, trained and supported to be more active in the rehabilitation of offenders", going on to add that: "The experiences of offenders and ex-offenders about what works in reducing offending should be captured in a structured and consistent manner at every stage of the criminal justice system."³⁶

Restorative Justice

In developing PBR, special attention and care must be paid to ensure the correct models are developed for Restorative Justice, in order to ensure that the victims' benefits of RJ are not overlooked. The process of Restorative Justice is delivered to meet the needs equally of both victims and offenders. This point is covered more fully by the Restorative Justice Council, a member of the CJA, in their response, and has been articulated by CJA members, *Why me?*. Equally, we advocate that a RJ quality service mark be made a requirement of commissioning RJ to ensure a high quality service for those who participate.

³⁵ Ramrayka, L. (2010). *Service User Involvement: For Organisations Working with Offenders, Ex-Offenders and Their Families*. London: Revolving Doors Agency.

³⁶ p.7: Clinks (2010) Clinks Manifesto 2010, York: Clinks

Legislative changes

Question C10: How can we best use statutory supervision on release from custody to ensure that offenders engage with rehabilitation effectively?

Question C11: How can we ensure consequences for non-compliance are effective, without building in significant additional cost?

We will answer questions C10 and C11 together.

The Criminal Justice Alliance strongly welcomes the focus of resources on short term prisoners who currently get no support on release from prison and who have very high reoffending rates.

A renewed focus on rehabilitation with mentors could help cut crime and make communities safer. This has been the vision of the Just Mentoring³⁷ campaign (previously called Gatemate) which includes CJA members, the Prince's Trust, Clinks, St Giles Trust and Catch22. This campaign has argued that every young adult should have a mentor to support them when they are leaving prison or on probation, as part of a resettlement package.

As part of this programme, The Prince's Trust and St Giles Trust have developed a 'mentoring' module on Virtual Campus which went live in December 2012. Virtual Campus is the computer programme and resettlement tool used by prisoners. This allows prisoners to search for mentoring providers in each sub-region and make a self-referral. The self-referral sends a secure message to the mentoring provider via authorisation by a member of staff within the prison. There are around 60 mentoring providers registered on the system. All are registered charities and many are working towards Mentoring and Befriending Foundation Approved Provider Standard. The Prince's Trust & St Giles Trust are testing the technology in selected prisons in the South East and working with prisoners to understand its effectiveness.

NOMS and the Mentoring and Befriending Foundation are promoting the overall project throughout 2013. This is a highly useful resource for the Ministry of Justice as it (a) empowers prisoners to search for mentors and self-refer (b) helps providers to find and refer to each other's projects. We would recommend that the Ministry of Justice harness this technology.

As outlined in our introduction, however, one of the potential risks to what is very welcome support for this group, is the proposed penalties for non-compliance with the rehabilitation on offer. Whilst we understand the Ministry of Justice aim to ensure every offender is involved, providing this support through mandatory means could in turn push up short-term prison numbers and cause significant additional cost.

The CJA is unconvinced that there needs to be criminal justice sanctions for non-compliance in order to achieve the outcomes sought by the MoJ. The Peterborough Social Impact Bond pilot is voluntary for example, as is the PBR pilot run by Serco and Catch22 at Doncaster prison - both pilots are working with this group of short sentenced prisoners without mandatory licence conditions. The Catch22 Doncaster pilot has shown that most

³⁷ 'Just Mentoring' is led by The Mentoring & Befriending Foundation and includes a public website (being launched early 2013) that maps and unites mentoring providers. The website will be a valuable resource for all criminal justice agencies and make it easier to find mentoring services.

offenders (60%) have taken up the service and are engaging with the pilot.³⁸ The Peterborough pilot early process evaluation also shows around 70% engagement voluntarily with the support.³⁹ The MoJ recognises and supports the work being undertaken at Peterborough and Doncaster; there are huge social and economic benefits to be realised through simply expanding the proactive offer of rehabilitation support to this group.

The CJA also welcomes the acknowledgement in the consultation paper that many prisoners experience homelessness, drug and alcohol dependency, mental illness and unemployment; and that those who are prolific offenders often experience multiple and complex needs and are simply in and out of police cells, courts and short term custody stuck in the revolving door of crime. For these reasons the likelihood of breach, and therefore recall to custody, for this group is significant. By including sanctions for not engaging, these proposals increase the likelihood of people many low-level non-violent people ending up back in prison who do not need to be there.

The *Story of the Prison Population* published last month by the MoJ shows the impact of policy changes on prison numbers. One of the largest increases was within the recall population following legislative changes which made it easier to recall prisoners, and the Criminal Justice Act 2003 which lengthened licence period for most offenders.⁴⁰

The rapid growth in the recall population began in 1999, reflecting changes in the law in 1998 which extended executive recall to medium-term sentences (12 months to less than 4 years). Although not directly comparable, this gives us some indication extending licence periods to all of the 50,000 short sentenced prisoners is likely to impact on prison numbers by increasing the number of low risk, nonviolent offenders in prison. This could be a worrying development so these proposals will require care to avoid unintended consequences. These proposals are likely to impact on vulnerable women, many of whom we know breach their community order not because of reoffending or wilful disengagement but simply through chaotic lifestyles and very high range of complex needs. It is also a key risk for young adult offenders with developing maturity who have higher levels of noncompliance.

If the decision is taken to implement compulsory rehabilitation with the option of recall to custody, the use of custody must remain a genuine 'last resort'. Therefore much more flexibility should be built in to ensure more appropriate support is tried first. A system of warnings should be first included and opportunities for extended or additional support, before any recall to custody.

We also firmly believe that the specific mentoring element of the proposals should be entirely voluntary or this will alter the fundamental purpose of mentoring which is, in the words of the Justice Secretary, providing a "wise friend". It would be inappropriate to sanction someone who does not engage with their voluntary mentor for example. Many of our members would not want to participate in a coercive mentoring scheme and there is strong evidence that this is not conducive to supporting change, and in fact undermines the whole concept of mentoring. Whilst we wholeheartedly welcome new support for short-sentenced prisoners, this must remain genuine mentoring.

Secondly, this should not replace the focus on using community alternatives instead of prison where appropriate for non-violent and non-sexual offenders. There is a danger that new short term prison sentence plus additional supervision becomes an attractive option to the court when a community sentence would have been as, if not more, effective and robust. Community sentences remain a more cost effective way of punishing crime,

³⁸ <http://www.catch-22.org.uk/Files/hmp-doncaster-payment-by-results-pilot.pdf?id=275e92a7-3ce6-4604-8760-a118010ebb54>

³⁹ <http://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/social-impact-bond-hmp-peterborough.pdf>

⁴⁰ <http://www.justice.gov.uk/downloads/statistics/mojstats/story-prison-population.pdf>

providing reparation whilst maintaining links with family, employment and housing. Despite resettlement support after prison, it is much easier to avoid disrupting all these factors simply for a prison spell of a few weeks.

A short spell in prison followed by a period on licence is unlikely to offer the same access to rehabilitation than a Community Order. For example, an Integrated Domestic Abuse Programme takes 6 months to complete, plus additional time preparations sessions with a Probation Officer and then time to access the programme. This is just one example of where short sentences plus licence cannot be seen as the equivalent in terms of support.

Finally, to realise the Justice Secretary's welcome ambition that every ex-prisoner will be met at the gate resources will be needed to roll it out across England and Wales and this will need to be accounted for in contracts. Whether mentoring is provided by paid staff or by volunteers, it is not a free good. Volunteers need support and training to undertake their role. For example, mentors often require training in the setting boundaries and personal safety issues. We are not advocating a 'professional' service but one which is safe and of good quality.

System design

Question C12: Given our proposals for the commissioning structure and the proposed responsibilities of the public sector, what kind of delivery structure would be most appropriate for the public sector probation service?

In our earlier response to the probation review, the Criminal Justice Alliance raised some issues that need to be fully considered in any new approach. These include: quality, consistency, fragmentation and accountability and trust. This response is available at http://www.criminaljusticealliance.org/Probation_Review_response.pdf

Question C13: What else can we do to ensure the new system makes best use of local expertise and arrangements, and integrates into existing local structures and provision?

Question C14: Police and Crime Commissioners will play an integral role in our reforms. How best can we maximise their input/involvement and that of other key partners locally?

We will answer questions 13 and 14 together.

As mentioned, the Criminal Justice Alliance had supported a more local commissioning approach which would better take account of local needs and include the voice, expertise and support of the voluntary and community sector. We would advocate a model that allows maximum local input as possible, and that is aligned to Local Authorities and Police and Crime Commissioners, and takes into account the existing networks of MAPPA, Integrated Offender Management, Youth Offending Teams, Health and Wellbeing Boards and other agencies.

Police and Crime Commissioners will be integral, as they hold budgets that can contribute to reductions in reoffending. For example, PCCs will be able to commission drug and alcohol services locally. Community drug intervention programmes can be successful in

both reducing dependency and reoffending. It can decrease criminal behaviour by 26%.⁴¹ This demonstrates the need to ensure PCCs have an incentive and responsibility to be involved in these reforms. PCCs will also crucially hold budget for victims' services which could overlap with regional contract packages, for example in the provision of Restorative Justice services should that be part of the chosen allocation of resources.

Furthermore, there is increasing evidence that successful interventions understand the community, social and personal contexts in which they are situated⁴² and that social contexts can be more important even than relationships with workers.⁴³ This requires that rehabilitation be focussed not solely on the individual person and his or her perceived 'deficits' but that this should to increase their social capital and links to their community. Supporting integration and participation will enable people to desist from crime, yet much of this lies in the power of non-criminal justice agencies. This demonstrates the need for effective local partnerships, linking criminal justice agencies with non-criminal justice agencies, and ensuring (e)-offenders can access community provision.

We welcome the recognition in the consultation of the excellent work that has been achieved through MAPPA and IOM and the intention to preserve this. However, it is important that government clarify in more detail how they intend offender management will work with Police and Crime Commissioners, health services, local authorities and prisons. It is important that the realignment into 16 contract package areas providers are both required and supported to engage meaningfully with partners in local areas.

Finally, the CJA would reiterate that a justice reinvestment approach would better incentivise local partners to work together to reduce reoffending and secure better social justice outcomes across the board.

Question C15: How can we ensure that professional standards are maintained and that the quality of training and accreditation is assured? A professional body or institute has been suggested as one way of achieving this. What are your views on the benefits of this approach and on the practicalities of establishing such arrangements, including how costs might be met?

Criminal Justice Alliance welcomes the idea of introducing a professional body or institute in order to maintain professional standards. It is acknowledged that many other professions involved in the provision of services to the public, and particularly those who work with vulnerable people, are regulated by such a body. This approach would allow for the establishment of transparent standards to support the provision of high quality services. It would also provide for the recognition of practitioners' knowledge and make it simpler for practitioners to move between different employers.

It is understood that the Probation Chiefs Association are currently working on a feasibility study in this area, and that an interim report of this study is due on 25 February 2013. Criminal Justice Alliance urges the Ministry of Justice to give consideration to this report and any recommendations made by the Probation Chiefs Association for the establishment of a professional body.

⁴¹ Home Office. Meeting the needs of offenders with a drug dependence. Reducing Re-offending Unit.

⁴² *Ibid.*

⁴³ Farrall, S. (2002) *Rethinking What Works With Offenders*. Willan Publishing, Cullompton, Devon.

We strongly endorse the view of the Probation Chiefs Association that any professional framework that is developed must provide for continuous professional development. In addition, there is a need to ensure training and guidance which provide more information on the specific needs of the groups of offenders set out above. For example, the Centre for Mental Health has recommended that NOMS should provide detailed information for probation officers on how to manage the MHTR while probation officers also require training and information on mental health awareness and sentencing options, in order to increase their knowledge of mental health issues.⁴⁴ Lord Bradley's review also argued that "many probation staff are unsure of how they should manage offenders on their caseloads with mental health problems"⁴⁵, suggesting that "all probation staff (including those based within courts and approved premises) should receive mental health and learning disability awareness training".⁴⁶

Research by the Institute for Criminal Policy Research has also suggested that "there is considerable scope for improving the scale, quality and monitoring of training being offered to offender managers to better equip them to more effectively deliver brief interventions to alcohol-misusing offenders".⁴⁷

Question C17: How can we use this new commissioning model, including payment by results, to ensure better outcomes for female offenders and others with complex needs or protected characteristics?

It is important to recognise the need for a gender-specific approach to working with women offenders in the design of payment by results. Women offenders are in a minority throughout the criminal justice system, and as a consequence there is a risk that if payment by results is developed on a generic basis, women's outcomes will be marginalised as there will not be enough women in any one area for their outcomes to be a priority. As Women in Prison, a member of the CJA, has argued, "designing and delivering services for women would be disincentivised because it would not yield statistically big enough results to qualify for payment"⁴⁸. A women-specific approach is therefore necessary, and this should include ensuring that organisations with existing experience of working specifically with women offenders are able to deliver services and, crucially, be involved in designing the service and the mechanism for measuring outcomes. Many of these organisations are small, local organisations and it is essential that they are supported in the work that they are currently doing to reduce reoffending by women rather than supplanted by new, generic services.

⁴⁴ p.40-41: Khanom, H., Samele, C. and Rutherford, M. (2009) *A Missed Opportunity? Community sentences and the Mental Health Treatment Requirement* - available at http://www.centreformentalhealth.org.uk/pdfs/Missed_Opportunity.pdf

⁴⁵ p.66: Bradley, K. (2009) *The Bradley Report: Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system* - available at http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_098698.pdf

⁴⁶ p.69: Bradley, K. (2009) *The Bradley Report: Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system* - available at http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_098698.pdf

⁴⁷ p.30: McSweeney, T., Webster, R., Turnbull, P. and Duffy, M. (2009) *Evidence-based practice? The National Probation Service's work with alcohol-misusing offenders*, Ministry of Justice Research Series 13/09 - available at <http://www.justice.gov.uk/research-paper-alcohol-misusing.pdf>

⁴⁸ See <http://www.womeninprison.org.uk/userfiles/file/Green%20Paper%20OPEN%20Briefing.doc>

Secondly, most women's centres cater for those *at risk* as well as those who have actually offended. Funding therefore needs to not only depend on proof of reduced offending by specific offenders, but wider impact should be examined, for example to see where reductions in crime, and greater safety for these women and their community is being achieved in an offending area. This will be very difficult to assess, therefore, the Ministry of Justice should also consider a wider set of outcomes, building on what we know about women's offending and desistance. Outcomes could include rebuilding family relationships, and in particular stabilising relationships between women leaving prison and their children. In addition to reducing reoffending, this would save considerable future costs associated with the children's needs. Overall, outcome measures that support improvements in women's general health and wellbeing would both reduce reoffending and result in broader social and societal benefits.

In support of the points above, research conducted by Social Justice Solutions (SJS) on behalf of Women's Breakout in December 2011 found that the top three critical factors for delivering high quality services to vulnerable women in the community were: Gender specific, holistic approach that is flexible and tailored to meet individual needs, offering early and intensive support where appropriate; Strong partnerships with other service providers and joint working arrangements with statutory criminal justice agencies; Women-centred services informed by service user engagement in design/delivery and service-user satisfaction. Any new commissioning model must therefore take account of these important factors.

As mentioned, we strongly believe the Transforming Rehabilitation proposals should not move forward in the absence of a published Government Strategy for Women Offenders and without a Women's Justice Board. The Ministry of Justice should commit to an appropriate level of grant funding for women's centres (or stipulate this within the contracts), and ensure that in the transition to new commissioning models the valuable work of women's centres is not lost. Organisations including Women's Breakout and Women in Prison have suggested that a separate contract package could be provided for women's services.

BAME

There may also be a need to prioritise working with offenders from minority ethnic groups. More people from ethnic minority communities now enter the criminal justice system and stay in it for longer than ever before. People from ethnic minority communities are consequently overrepresented across the criminal justice system, and account for 27% of the prison population even though they constitute only 9% of the overall population in England and Wales.

There is an urgent need to address this by examining and addressing the causes of this disproportionality both within and outside the criminal justice system and by developing and promoting services within the criminal justice system that better support the resettlement and rehabilitation of ethnic minority offenders. Payment by results could be a route to achieving this, but organisations with particular expertise in working with people from ethnic minority communities must be involved in designing payment by results systems and mechanisms, to ensure that their expertise and experience are considered. All providers should also be required to work closely with organisations with particular expertise in working with people from ethnic minority communities in the delivery of services to ensure that the specific needs of this group are met. Indeed, there is insufficient attention throughout the Transforming Justice paper on race issues, and more should be done to address this

Young Adults

The CJA is a member of the Transition to Adulthood Alliance, which identifies and promotes more effective ways of working with young adults, aged 18 to 24 years-old, in the criminal justice system. We endorse the response of the T2A Alliance to this consultation.

Young adults are over-represented in the criminal justice system; constituting less than 10% of the population, they make up more than one-third of those commencing a community sentence, one-third of the Probation Service's caseload and almost one-third of those sentenced to prison each year. Taking into account the distinct needs and the developing maturity of this age group will therefore be important in the success of these reforms.

Young adults have distinct needs which commonly include poverty, unemployment, educational failure, substance misuse, mental health problems, young parenthood, and victimisation - all experienced while many young adults are still in the process of development. However, there is very limited distinct provision for this group and innovation in this area is badly needed.

The T2A Alliance has put forward a strong evidential case that criminal justice agencies should take a young adults' developing maturity into account at each stage of the criminal justice pathway. T2A is currently working with Birmingham University and the London Probation Trust to explore the development of an assessment tool for maturity which should assist this.

The Ministry of Justice should also consider how best to incorporate specific measures related to young adults in the development of payment by results. The work of the Transition to Adulthood Alliance, which the Criminal Justice Alliance has contributed to, has set out the economic, social and structural factors that specifically affect young adults, and the impact that maturity can have on offending behaviour. Young adults are disproportionately involved in the criminal justice system and there are currently high reoffending rates for this group, demonstrating that an approach that is targeted to addressing their specific needs could have a significant impact on improving the effectiveness of the criminal justice system. This approach should be proportionate to their maturity and responsive to their specific circumstances, incorporating what we know about young adult offenders, the causes of their offending behaviour and what can be done to encourage desistance.

The MoJ should expect providers to demonstrate that they have taken into account the distinct needs of young adults and have tailored their approaches to match maturity and support desistance. This will require providers to work alongside other partners and external agencies such as prisons, mental health services and including through arrangements such as IOM and MAPPA.

Foreign National prisoners

Additionally the CJA is concerned about the offender management of minority groups within the criminal justice system, including foreign national prisoners (FNPs). Detention Advice Service, a member of the CJA, has stated that at the moment, many foreign nationals in prison don't have very much, or sometimes any contact at all with their community-based probation officer because the assumption is that most FNPs will be removed/deported. If offender management of low and medium risk offenders is outsourced to private/other contractors there is a risk that these groups will be even less likely to get any offender management involvement than they currently do. We believe

that there is an opportunity to change the delivery of offender management to recognise the specific needs of these minority groups, in particular by utilizing the specific skills and experience of the voluntary sector organisations.

We also note the concerns of CJA member, Hibiscus, that PBR might disincentivise cooperation between organisations, who have traditionally worked together to provide tailor-made rehabilitation pathways for foreign national or minority women who have additional needs. For example, Hibiscus works with many women who do not speak English and/or need to regularise their immigration status. This cooperation with others allows for a more holistic approach to rehabilitation and also means that the client is receiving assistance from those who are best equipped in a certain area. We include a case study as an appendix to this response which shows how it can take several charities and other organisations working together to provide an effective rehabilitation plan.

Question C18: What are the likely impacts of our proposals on groups with protected characteristics? Please let us have any examples, case studies, research or other types of evidence to support your views.

As an appendix to this submission, we include case studies provided by CJA members, Women's Breakout and Hibiscus, which demonstrate the complexity of issues for many vulnerable women offenders and the need to ensure the supportive women-only environments provided by the network of Women's Centres to continue.

**Criminal Justice Alliance
February, 2013**

For further information about this response, please contact Vicki Helyar-Cardwell, Director of the Criminal Justice Alliance, at info@criminaljusticealliance.org or on 0207 091 1298 or at Park Place, 10-12 Lawn Lane, London, SW8 1UD.

Appendix: Case Studies from Women's Breakout

<http://www.womensbreakout.org.uk/about-us/case-studies/>

Betty

Betty is 47 and was a long term heroin user who had tried on many occasions to stick to a methadone programme. Betty was referred to Evolve via her Probation Officer after being charged with theft. Betty had a history of shoplifting to enable her to buy heroin. Betty was also in a very abusive relationship with a man who was also a heroin addict and he forced Betty to have sex with his friends in exchange for money.

"I have tried to come off the heroin before but no one has ever looked at why I got into it in the first place and now I have left my partner and am coming to WomenCentre to see my Probation Officer and my support worker., I am starting to look at my past. I have been on the methadone programme for longer than ever and really feel that I am over the worst. I haven't needed to steal and I am really determined to stay well. I can honestly say that if it hadn't been for this place I would have been dead. I had never had support like this before."

Betty has been supported to access health care and a dentist for the first time in many years and she is keeping a photo journal of the changes in her appearance to record her progress. Betty is working closely with her Probation Officer and is hoping for early revocation of her order.

A Woman's Story...

"My story began a few years ago. I went from having a normal happy life to losing everything. It started with my dad taking his own life and since that day we lost the family home and gradually all love and respect we had for one another. It ended up with us getting out and going on our own way. My brother went and lived with his friend. My Mom went to my nans and because of all the heartache and pain with a lot of arguments going on I ended up living in several hostels and having no contact with my family. I was 17 at the time of my Dad's death.

I did turn to alcohol and drugs such as cocaine and cannabis. I eventually got a flat from a housing association after two years. I got myself off drugs and alcohol without any professional help or support. The time when I offended, I was in a club with friends. My friend had an issue with someone and I ended up getting myself involved which turned into a fight. Due to my past I had a lot of pain and anger in me I never expressed or let out and it comes out in aggressiveness to innocent people. I was then arrested and got given an Order - coming to Anawim was the main part of my order. I didn't want to come to Anawim and had a very strong barrier in front of me with lack of confidence and self-esteem.

I had my ups and downs when I first started coming but I've learnt so much in so little time already that it's become a part of my life where I enjoy to come. It's a place where you can relax and talk about things that are on your mind and you don't want to talk to anyone. Being at Anawim makes you want to let these feelings and problems out so when you leave you feel better in many different ways". - *Woman on Specified Activity Requirement*

Appendix: Case Study from Hibiscus

Ms LO is a 32 years old Romanian of Roma ethnicity. She is a mother who first arrived in the UK in 2003 on a student visa. She did a degree and a masters degree and worked as an activist for Roma rights. She referred herself upon release of prison supported by Hibiscus in Holloway prison.

Hibiscus supported Ms LO in receiving food parcels and a 'Help with Healthcare' certificate for help with the costs of medicine or dental services. We referred her to an educational charity and she is actively engaging in a 12 week programme where she has weekly classes aimed at improving her employability. Education is something that is avoided in Roma culture but in the case of this client she is very open to it.

Her solicitor has negotiated and written a letter confirming that the client is able to work until the next court hearing. Hibiscus has informed the client of employment agencies who can help the client find work as a receptionist and has provided £50 towards a clothing outfit for attending interviews. Hibiscus has supported Ms LO in a number of ways:

- Assessing the housing situation of Ms LO. She is temporarily housed by a family friend while her son is looked after by her sister; the situation is not suitable but is stable.
- Ms LO was referred to an educational charity and as a result regularly attends a 12 week course weekly on employability skills. Hibiscus provided her with £50 towards food and clothes.
- Ms LO is not registered with a GP and Hibiscus is working with a third sector organisation to help her register.
- Ms LO is bright, highly educated (a champion of Roma rights) but with a conflictive personality and suffering from mental health issues. Hibiscus is negotiating counselling and a drama and art therapy course with another third sector organisation to help her deal with her emotions.