



Call for Evidence by Scottish Parliament, Justice Committee Pre-budget Scrutiny of the Scottish Government's Draft Budget 2020/21

Introduction

Community Justice Scotland (CJS) welcomes this opportunity to respond to the call for evidence to inform the pre-budget scrutiny of the Scottish Government's draft budget in 2020/21.

CJS supports the shared commitment to fairness, prevention, reintegration and rehabilitation set out in the [Vision for Justice in Scotland](#) and the [National Strategy for Community Justice](#)

Our first corporate plan states that CJS's '*primary focus will be on prevention of offending and the reduction of further offending. We will work with others to contribute to achieving an increase in non-custodial/community-based interventions and effective reintegration from custody to the community.*' We are working with Scottish Government, statutory community justice partners and other stakeholders including the 3rd Sector to help ensure that such a shift in policy and practice can be achieved.

We fully support the Scottish Government's commitment to community justice as evidenced in the creation of the new local arrangements under the Community Justice Scotland Act 2016 (the Act) which included the establishment of Community Justice Scotland in April 2017.

We also note the key role played by community justice in improving community well-being, one of the key outcomes of the National Performance Framework¹.

Community Justice - the picture in Scotland

CJS has undertaken an analysis of publicly available data and information from across all elements of the justice system to inform this submission. We have highlighted where there are gaps in access to information and data and wish to stress our willingness to work with Scottish Government and other stakeholders to improve access to, and understanding of, such information. Key features of the current community justice landscape are as follows.

While crime is at a 40-year low, Police Scotland continue to deal with a high number of cases unrelated to crime, and centred on mental health and vulnerability, on a daily basis. Joint working between Police Scotland and the NHS has created Mental Health Pathways to ensure that vulnerable people making calls to the police are seamlessly transferred to the relevant health professionals for support. The creation

¹ National Performance Framework, Scottish Government, July 2018. <https://nationalperformance.gov.scot/>

of Public Health Scotland will allow for greater cross-agency working with a clear preventative approach.

A small number of those who offend are responsible for the greatest proportion of further offending. It is likely this group will also reflect those with the greatest needs and who are going in and out of prison regularly.

Access to support in police custody as part of arrest referral is inconsistent across Scotland, and a missed opportunity in terms of supporting the broader needs of people arrested. This includes alcohol misuse, housing and mental health.

Police Recorded Warnings, as the earliest form of diversion from prosecution, are underutilised in Scotland, and no information is currently available on any support offered to address needs at this crucial, early stage of justice engagement.

Fiscal Work Orders are an effective, but underutilised method of diversion from prosecution, representing only 1% of total social work orders.

Diversions from prosecution to Criminal Justice Social Work are also an effective but underutilised early intervention option. More research is required on the reasons for such high drop off rates for individuals between referral, assessment and commencement.

The most common disposal given by the courts is a Fine Order, with an average amount of £230 in 2017/18: in total, 157,040 financial penalties were given in court against all crimes and offences. This is 47% of the total against all disposals. More research is required on whether such cases could have been resolved at a much earlier point in the justice process and whether alternatives would have greater effect on future behaviours.

Almost half of all local authority areas did not undertake any Bail Supervision during 2017/18. A lack of consistency across service provision in Scotland will lead to the continued high use of remand, which continues to put additional pressure on the prison system. The reasons for this absence of Bail Supervision are not fully understood and should be examined.

There is limited use of all requirements available as part of a Community Payback Order: in particular mental health, drug & alcohol support and residence requirements. This likely masks the true extent of such issues among those in contact with the system, of which there is limited understanding due to a lack of person-centred outcome data.

Young people are more than twice as likely to breach a Community Payback Order than those aged 40 years and above. Increasing access to structured deferred sentences, and more appropriate services as part of a Community Payback Order may better aid completion.

There has been a significant reduction in the use of Home Detention Curfew (HDC) (86%), despite their proven effectiveness in completion (80%). Use of new technologies and access to needs-based support should make this a more credible and flexible option, particularly for those age 18-25 who are currently significantly under-represented in the HDC population.

Voluntary throughcare remains significantly underused by a large number of people leaving custody who would benefit from this most and a further gap now exists following the suspension of the Scottish Prison Service Throughcare Support Officer Service. This is exacerbated by the inability of local partnerships to coordinate local support activity for those returning from short term custody. Funding throughcare support that is sustainable and consistently available across the country would be a significant step in helping people's reintegration and rehabilitation journeys.

Rebalancing the justice budget from custody to community

As the total Scottish Government spend on community justice is a small proportion of the overall justice budget we welcome the Justice Committee's explicit question around rebalancing the budget provision from custodial towards community and preventative spend. We do however recognise the significant challenges in public finances at present and the substantial pressures being faced by the SPS because of the very high prison population.

Evidence shows that community sentences are more effective for many individuals than custody in preventing further offending and therefore contribute directly to national priorities aimed at enhancing well-being and making a Scotland a safer place to live.

The extension of the Presumption against Short Term Sentences (PASS) in June 2019 is a key step in the shift from custodial to community provision. To be effective this policy shift must be supported with necessary levels of additional resources to support the provision of community based services that help to keep people out of prison and in their communities.

Continuing to invest in such preventative spend is vital to ensure that the Government's commitment to improving well-being is put into practice: by allowing sentencers a wide range of effective community based options on which to base their decisions. Adequate resourcing of both local authorities and the third sector to provide such services is a prerequisite to achieving this aim.

Ensuring access to accurate and up-to-date information on such local service provision will assist sentencers in their decision making. To facilitate this, as one of our current activities, CJS is working with sheriffs, local community justice coordinators and others to develop a template to ensure that such information is collated and available to the Courts. This will help to ensure that sheriffs (including those who are new to or temporarily based in a particular Court) have access to timely and up-to-date information on community provision. We are proposing in our own spending review submission that a resource is created in CJS to support, maintain and coordinate this activity longer term, which will also require additional resources to be made available to local partnerships.

The commitment of £1.5m per annum to Local Government from Scottish Government to support implementation of PASS is welcome although our understanding is that this commitment will be reviewed year on year. CJS is of the view that this initial sum will need to be built upon to achieve the shift in resources from imprisonment to community anticipated by PASS.

If PASS is implemented to its fullest potential a significant proportion of the female prison population would not be in custody. As with the current developments underway for the new custodial estate for women, Committee's considerations regarding investment in prisons could also focus on the opportunities future modernisation allows for prisoners to access opportunities for community-based rehabilitation. This could also apply in relation to the changing demographic of the prison population in particular the increasing numbers of those who are very elderly.

We would propose that a national stretch aim be set around reducing the total number of short-term prison sentences by promoting community based services. Such an approach would also enable effective assessment of the impact of PASS.

The Management of Offenders (Scotland) Act 2019 also provides an unparalleled opportunity to strengthen community sentencing options. To effectively support desistance from offending and offer strengthened community reintegration, the evidence is clear that Electronic Monitoring (EM) needs also to include a person-centred care package that identifies needs and provides coordinated multi-agency support to meet them.

Achieving sentencer and public confidence in the use of EM as a safe, effective and efficient community justice approach will require that design and delivery be built robustly on the best available evidence. This translates to a creation of care plans that are goal-orientated and centred around individual people, with parallel consideration to public protection and the protection of victims.

Effective implementation of EM and associated prevention of further offending requires an associated infrastructure beyond the courts, prisons and Police Scotland. These potentially include supported bail services, mentoring and coaching as well as throughcare support for those leaving prison with specific interventions related to housing, alcohol, domestic abuse and substance use.

With the extension of PASS, a potential reduction in remand as well as an expanded use of EM, we anticipate a greater burden to fall to community services, including the third sector, to work with an increased cohort of people with multiple, complex needs. We wholly support this approach, and would advocate a funding allocation that recognises and aligns to the impact of increased community disposals on community justice services.

The recently updated legislative and policy landscape also presents a timely opportunity to fully align portfolio funding to the Christie Commission principles, national priorities and outcomes. Structuring a funding stream towards recovery and rehabilitation for example, would encourage a whole systems focus on these outcomes and our success in achieving them. It would also have a significant impact on spend across other policy areas beyond justice. For example a significant degree of multi-agency effort has gone into the production and implementation of the SHORE Standards (Sustainable Housing on Release for Everyone). These deal with the homelessness faced by many people leaving prison particularly those on short term sentences or who are frequently in and out of prison. This is an example of the 'failure demand' outlined by Christie. Preventing people going into prison in the first place would remove the need to address their homelessness problems upon release.

Impact on remote and rural communities

Decisions as to what constitutes most effective services should be based on a proper assessment of needs of the people who require such services and on ongoing monitoring and evaluation of the effectiveness of services provided. This should primarily be determined by looking at the outcomes achieved for the individuals involved.

The specific issues raised by the Committee concerning those living in remote and rural areas, for example around lack of economies of scale, means that resource allocation must appropriately consider the ongoing additional needs of people living in such areas and any additional requirements placed on local service providers. Island and rural impact assessments of budget proposals may assist in determining how best to address any additional barriers those living in such remote and rural areas face.

The Government's commitment in the Islands (Scotland) Act 2018 to 'island impact assessments' in relation to legislation and strategies which have an effect on an island community which is significantly different from their effect on other communities (including other island communities) in Scotland is an example of how this could be achieved. Sustainability of funding for such services, tailored to people's specific needs and circumstances, is a prerequisite for effective service provision.

Strategic Commissioning

Public services in Scotland continue to operate in a climate of austerity, with the additional uncertainties associated with Brexit. The resultant funding issues for the third sector and voluntary groups are well known: reduced overall funding levels; short term funding cycles; insecure funding sources (one-off grants rather than mainstreamed funding, etc.). For smaller providers, there are issues of constrained capacity and constrained capability, resulting in an imbalance in provision - larger providers continue to grow or dominate, despite not always being able to tailor services to local needs due to scale.

CJS has recently consulted on a proposed [strategic commissioning framework for community justice](#). Its success is predicated on resources being made available to enable strategic commissioning and co-production of sustainable services based on local assessment of needs.

The adoption of outcomes focussed and flexible funding approaches would further enable local allocation of resource to need, reducing unhelpful competition for particular populations or between providers. It would also allow the development of a holistic review of success.

Community Justice Partnerships

Current governance arrangements within community justice partnerships which are non-statutory in nature, yet critical for the delivery of the statutory local community

justice outcome improvement plans under the Act, mean that funding allocated and/or commissioned to third sector delivery often originate from services who are not in themselves a statutory community justice partner, or partnership member.

While legislative duties exist for partners to work together for service provision, no accountability, incentive or deterrent is in place for oversight of service alignment and resourcing. Strengthening CJ partnership status to a body corporate with ability to hold, manage, and allocate funds would enable strategic oversight of needs-led provision, and investment of resource (human or otherwise) from partnership members. Strengthened accountabilities and powers would create a basic status for onward leadership, partnership participation, accountability and improvement. This would need to also involve a strengthened locus with Community Planning Partnerships, and ability to collaborate with others such as ADPs, where populations and need are the same.

Developing the community justice workforce

Although CJS does not itself directly provide services, other than the [provision of training to community justice professionals](#), we are being increasingly called upon to provide more dedicated support to local community justice partnerships without a concomitant increase in resources for either CJS or the partnerships. It is hoped that the recently established National CJ Leadership Group co-chaired by the Cabinet Secretary for Justice and COSLA will focus on and find solutions to some of these issues.