

# SENTENCES IN THE COMMUNITY

Reforms to restore credibility, protect the public and cut crime

May 2014



THE CENTRE FOR  
SOCIAL  
JUSTICE

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# About the Centre for Social Justice

The Centre for Social Justice (CSJ) is an independent think-tank, established to put social justice at the heart of British politics.

Moved by shocking levels of disadvantage across the nation, it studies the root causes of Britain's acute social problems in partnership with its Alliance of over 350 grassroots charities and people affected by poverty. This enables the CSJ to find and promote evidence-based, experience-led solutions to change lives and transform communities.

The CSJ believes that the surest way to reverse social breakdown – and the poverty it creates – is to build resilience within individuals, families and the innovative organisations able to help them.

Sentences in the Community: Reforms to restore credibility, protect the public and cut crime

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# The CSJ's Criminal Justice Programme

Social justice and criminal justice go hand in hand. Not only does crime disproportionately affect poorer communities, but those who have committed crime are also far more likely to suffer from the causes of social breakdown such as drug abuse, poor literacy rates and worklessness.

Moreover, criminal sentences – whether prison or its alternatives – provide a unique opportunity to intervene in the often chaotic lives of those involved in criminal activity. By creating a just society where crime rates are low and the public feel confident about their safety, community cohesion and pride in local neighbourhoods can flourish.

For these reasons, in early 2013 the CSJ launched a Criminal Justice Programme to find public policy solutions to entrenched criminal justice problems. The Programme will build on our previous reports on police, prison reform, and youth gangs, such as *Locked-up Potential*, *A Force to be Reckoned With*, *Rules of Engagement: Changing the heart of youth justice*, *Dying to Belong: An in-depth review of street gangs in Britain*, and *Girls and Gangs*.

If you want to contribute to the Programme or have an interest in supporting our work we would be delighted to hear from you. Please contact Edward Boyd, the Deputy Policy Director of the CSJ at [edward.boyd@centreforsocialjustice.org.uk](mailto:edward.boyd@centreforsocialjustice.org.uk).

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# Introduction

Social justice is not possible without criminal justice. Crime disproportionately affects the poorest communities, and those committing it are more likely to suffer from the causes of social breakdown such as poor literacy and numeracy, unemployment, and drug and alcohol addictions.

Sentences served in the community have a particularly important role in ensuring social justice.<sup>1</sup> They are the most commonly used sentence for serious crimes and have the potential to be the most powerful tool for addressing the root causes of offending behaviour.<sup>2</sup> By carrying out sentences in the community, rather than prison, it is far easier and cheaper to provide support that addresses underlying issues, such as drug and alcohol addiction.

Those who serve sentences in the community invariably suffer from many of the conditions that can contribute towards criminal activity. A Ministry of Justice survey showed that, of those on community orders, just under half (47 per cent) did not grow up with both birth parents, and 10 per cent had been in care and only a quarter were in paid work the week before they started a community order.<sup>3</sup> When having their needs assessed, a fifth were also using Class A drugs and 44 per cent had a problem with alcohol misuse.<sup>4</sup>

Yet despite the potential of community sentences and suspended sentence orders, they are proving largely ineffective at changing lives. A third of offenders are caught reoffending within a year of being sentenced, committing around 160,000 further crimes.<sup>5</sup> Instead of stopping offending in its tracks, sentences in the community have become a stepping-stone on the path to prison. This was highlighted by shocking Ministry of Justice figures which showed that 37,019 (35 per cent) of those sentenced to custody in 2012 had received at least five previous community sentences.<sup>6</sup>

<sup>1</sup> Throughout this paper we take 'sentences in the community' to include both Community Sentences and Suspended Sentence Orders

<sup>2</sup> Ministry of Justice, *Criminal justice statistics quarterly – March 2013*, Table Q5.1, August 2013

<sup>3</sup> Community orders are community sentences excluding youth rehabilitation orders. This data excludes offenders who received the lowest level of intervention – those on 'tier one' community orders – and those deemed 'too risky to interview'. See Cattell J et al, Results from the Offender Management Community Cohort Study (OMCCS): Assessment and sentence planning, Ministry of Justice, 2013, [accessed via: [www.gov.uk/government/publications/offender-management-community-cohort-study-baseline-technical-report](http://www.gov.uk/government/publications/offender-management-community-cohort-study-baseline-technical-report) (09/04/14)]

<sup>4</sup> Please note that this includes only those offenders who received an OASys assessment, which accounted for 65 per cent of those starting community orders. Those who received an assessment were considered to have a higher risk of offending and were given longer sentences than those who were not. See Cattell J et al, Results from the Offender Management Community Cohort Study (OMCCS): Assessment and sentence planning, Ministry of Justice, 2013, [accessed via: [www.gov.uk/government/publications/offender-management-community-cohort-study-baseline-technical-report](http://www.gov.uk/government/publications/offender-management-community-cohort-study-baseline-technical-report) (09/04/14)]

<sup>5</sup> Ministry of Justice, *Proven re-offending statistics – October 2010–September 2011*, Tables 20 and 21, July 2013 [accessed via: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/225090/proven-reoffending-oct10-sep11.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/225090/proven-reoffending-oct10-sep11.pdf) (09/04/14)]

<sup>6</sup> Hansard, HC Deb, March 2014, c90W [accessed via [www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140324/text/140324w0003.htm#140324w0003.htm\\_wqn78](http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140324/text/140324w0003.htm#140324w0003.htm_wqn78) (01/05/14)]

It is not difficult to see why they are failing. Offenders are not held properly to account for complying with their sentence, and our main weapon against drug addiction – the drug rehabilitation requirement (DRR) – is more likely to sanction people for whether they attend meetings than whether they come off drugs. Despite clear evidence of the importance of a positive family influence in persuading offenders to leave a life of crime, families are too often shut out from the rehabilitative process.<sup>7</sup> The magistrates' courts too are held back. They sentence around 1.2 million people a year, yet are never told whether any of those sentences made the slightest difference to individuals' behaviour or prevented further crime.<sup>8</sup> Without any feedback, magistrates and district judges cannot learn from past experience which requirements, and what doses, to apply to each new person they sentence.

This paper puts forward proposals to tackle these failings, including:

- Introducing primary legislation to guarantee prolific and drug offenders receive a robust response to breaching sentences in the community;
- Overhauling the DRR to make abstinence its goal;
- Enabling magistrates' courts to review the sentences of prolific offenders;
- Providing magistrates' courts with the feedback they need to sentence effectively;
- Placing families at the heart of the rehabilitative process.

These proposals come at a time of significant change to the way offenders are managed in the community. The probation service has drifted from providing innovative, bespoke support for offenders to a risk-adverse, box-ticking approach. Up to three-quarters of their time is spent on work not directly engaging with offenders.<sup>9</sup> In response the Coalition Government is implementing the Transforming Rehabilitation (TR) Programme to tackle bureaucracy and introduce innovation to the delivery of probation services.

This paper seeks to contribute towards the success of these reforms by setting out the current challenges facing sentences in the community, and presenting ideas on how to make them more effective at reducing reoffending. The research was informed by a large number of interviews with magistrates and judges, probation staff, private and voluntary delivering sentences, and offenders themselves. The CSJ also held a roundtable of expert witnesses in late 2013, analysed official data and conducted a number of Freedom of Information requests.

Sentences in the community need to improve if they are to have any meaningful impact on reoffending rates. The reforms set out in this paper are a roadmap for how we can make them a powerful crime-fighting tool that stops offending behaviour in its tracks and keeps communities safe.

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7 National Offender Management Service, *Understanding Desistance from Crime*, Ministry of Justice, 2010, p3 [accessed via: [www.safeground.org.uk/wp-content/uploads/Desistance-Fact-Sheet.pdf](http://www.safeground.org.uk/wp-content/uploads/Desistance-Fact-Sheet.pdf) (09/04/14)]

8 The Howard League for Penal Reform, *Press Release: Magistrates' court sentencing is a 'postcode lottery'*, April 2013 [accessed via: [www.howardleague.org/magistrates-sentencing](http://www.howardleague.org/magistrates-sentencing) (09/04/14)]

9 House of Commons Justice Committee, *The Role of the Probation Service*, Eighth Report of Session 2010–12, Volume 1, London: The Stationery Office, July 2011

# The policy context

The Coalition Government is reforming the way we manage offenders in the community. The reforms – known as the Transforming Rehabilitation (TR) Programme – aim to reduce ‘*stubbornly high rates of reoffending*’ through introducing the following changes:<sup>10</sup>

- Setting up 21 Community Rehabilitation Companies (CRCs), comprised of a mixture of private and voluntary organisations, and public-sector mutuals to deliver probation services for a caseload of approximately 151,000 low- and medium-risk offenders;
- Introducing an element of payment-by-results to CRC contracts;
- Establishing a new National Probation Service (NPS) to take responsibility for assessing the risks offenders pose, producing pre-sentence reports and managing high-risk offenders;
- Providing rehabilitative support to prisoners on sentences of less than 12 months;
- Restructuring the prison estate to facilitate ‘through-the-gate’ resettlement support through a network of resettlement prisons.

The sentencing framework is also being changed. The current supervision and specified activities requirements are being merged to create a ‘rehabilitation activity requirement’ (RAR). This new requirement has been created to ‘*give providers discretion to require offenders to participate in rehabilitative activities*’ and probation providers will have ‘*maximum freedom to determine how they will rehabilitate offenders*’ under the new requirement.<sup>11</sup> The RAR will provide an opportunity for significant innovation and flexibility in the delivery of rehabilitation. It will enable probation providers to tailor interventions to the specific needs of offenders, even after the sentence has been passed.

The proposals put forward in this paper are framed in the context of these changes. This paper is also a reminder that even if the current reforms are successful they are not enough in themselves to make sentences in the community a powerful crime-fighting tool. The TR Programme will not, for instance, tackle the high levels of breach or help magistrates’ courts make more effective sentencing decisions. The proposals we set out are designed to complement the TR Programme to ensure sentences in the community become successful at turning around the lives of offenders and cutting crime.

<sup>10</sup> Ministry of Justice, *Transforming Rehabilitation: A Strategy for Reform*, 2013

<sup>11</sup> Ministry of Justice, *Target Operating Model: Version 2 Rehabilitation Programme*, 2014, p3



# Executive summary

## Chapter 1: Sentences in the community today

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Any attempt to reform sentences served in the community needs to be built on a sound understanding of their nature. This chapter sets the foundation for our analysis and recommendations by outlining the purpose, use and design of sentences in the community.

- Sentences in the community have five main purposes: the punishment of offenders; the reform and rehabilitation of offenders; the reduction of crime (including via deterrence); the protection of the public; and the making of reparation by offenders to persons affected by their offence.<sup>12</sup>
- They require an offender to abide by requirements imposed by a judge or magistrate. Some requirements are used far more frequently than others:
  - A 2012 Ministry of Justice study showed that 77 per cent (56,118) of community orders included supervision, 42 per cent (30,429) included unpaid work and 28 per cent (20,060) included accredited programmes.<sup>13</sup>
- They are the most frequently used sentences for indictable offences and the way they are used has changed dramatically over the past decade: the number of suspended sentence orders has increased 15 times; whilst the number of community sentences has decreased by 30 per cent.<sup>14</sup>
- Sentences in the community are used for a wide range of serious offences. The most common indictable offences that receive sentences in the community are 'theft and handling stolen goods' and 'violence against the person', with 39,953 and 16,784 people sentenced for them respectively in 2012/13.<sup>15</sup>

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<sup>12</sup> *Criminal Justice Act 2003*, Part 12, Chapter 1, Section 142 [accessed via: [www.legislation.gov.uk/ukpga/2003/44/section/142](http://www.legislation.gov.uk/ukpga/2003/44/section/142) (09/04/14)]

<sup>13</sup> Bewley H, *The effectiveness of different community order requirements for offenders who received an OASys assessment*, Ministry of Justice, 2012, p8 [accessed via: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217383/niesr-report.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217383/niesr-report.pdf) (09/04/14)]

<sup>14</sup> Ministry of Justice, *Criminal justice statistics quarterly – March 2013*, Table Q5.1, August 2013

<sup>15</sup> Ministry of Justice, *Criminal justice statistics quarterly – March 2013*, Table Q5e, August 2013

## Chapter 2: The weaknesses of sentences in the community

Sentences served in the community are currently proving ineffective, and are suffering from high reoffending rates and low public confidence. This chapter explores the performance of sentences in the community and identifies areas for improvement.

### The performance of sentences in the community

- The reoffending rate of those serving sentences in the community is unacceptably high:
  - 36 per cent of offenders on community orders, and 30 per cent of those on suspended sentence orders are caught reoffending within just 12 months of being sentenced;<sup>16</sup>
  - The effect this is having on communities is disastrous: every year around 160,000 crimes are committed by those given a sentence in the community in the previous 12 months.<sup>17</sup>
- This crime has been driven, in part, by an expansion in the number of prolific offenders. In 2003/4, 15,709 people who were given a sentence in the community for an indictable offence had at least 15 previous convictions or cautions. By 2012/13 this had increased to 27,632.<sup>18</sup>
- The public are not confident in the effectiveness of community sentences: previous polling showed that 38 per cent of the public thought they were 'a soft option'.<sup>19</sup>

### The reasons for failure

- A significant proportion of offenders do not successfully complete their sentences. In 2013:
  - Only two-thirds of sentences served in the community were successfully completed;
  - 17,066 offenders (12 per cent of total terminations) had them terminated because they failed to comply with the terms of their sentence;
  - 18,129 (13 per cent of total terminations) were terminated due to offenders being convicted of further criminal offences;<sup>20</sup>
  - Some requirements had particularly low compliance rates. CSJ Freedom of Information requests showed that, on average, just 54 per cent of offenders on community sentences successfully completed DRRs;<sup>21</sup>
  - The problem of high breach rates is inextricably linked to our slow and bureaucratic response to breaches and offenders told the CSJ that the delay in coming before the court can have serious consequences. One ex-offender told us that *'you know you have already messed up and you think to yourself, well – if I am going back to prison – I might as well prepare for it and make sure I got money and drugs'*.

16 Ministry of Justice, *Proven re-offending statistics – October 2010–September 2011*, Tables 20 and 21, July 2013

17 Ibid.

18 Ministry of Justice, *Criminal justice statistics quarterly – March 2013*, Table Q7.5, August 2013

19 Kaye R, *Fitting the crime – Reforming community sentences: Mending the weak link in the sentencing chain*, Policy Exchange, 2010

20 Ministry of Justice, *Offender management statistics (quarterly) – October–December 2013 and Annual*, Table A4.23, April 2014

21 This figure is based on the 20 out of 35 Probation Trusts that replied to the Freedom of Information request

- Magistrates' courts lack the basic information – such as whether or not those they sentenced complied with the sentence or reoffended – that is critical to making the best possible sentencing decisions.
- CSJ Freedom of Information requests revealed long waiting times before offenders started the community sentence requirements they are sentenced to. In 2012/13 offenders waited on average:
  - Five months for accredited programmes in Kent, and four months in Wiltshire, West Mercia, and Norfolk and Suffolk;
  - Four months for specified activities in Norfolk and Suffolk, and three months in York and North Yorkshire.
- Well over half (56 per cent) of offenders on community orders given a drug rehabilitation requirement (DRR) reoffended within a year of being sentenced.<sup>22</sup> The requirement suffers from two structural issues:
  - The current drug testing regime allows many offenders to 'game' the system and produce negative drugs tests whilst still taking class A drugs;
  - Even when positive drug tests are recorded, it is rare that this will lead to an offender being breached. This undermines attempts to incentivise offenders to become drug-free.

## Chapter 3: Reforming sentences in the community

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The weaknesses highlighted in Chapter Two need to be urgently addressed if sentences served in the community are to be an effective means of rehabilitating offenders. This chapter sets out recommendations for reform, focusing on three areas: tackling prolific offending; improving implementation; and involving families in rehabilitation.

### Tackling prolific offending

- A new, more effective way of managing offenders under community supervision has been introduced across the United States. 'Swift and certain' (SAC) Programmes have been implemented in around 20 States and have increased compliance and reduced reoffending when they have been fully implemented.<sup>23</sup>

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22 Ministry of Justice, *Analytical Summary – Re-offending by offenders on Community Orders: Preliminary findings from the Offender Management Community Cohort Study*, p3, 2013

23 For example see McEvoy K, *HOPE: A Swift and Certain Process for Probationers*, National Institute for Justice Journal, Issue 269, 2012 and Hawken A, and Kleiman M, *Managing Drug-Involved Offenders*, National Institute for Justice, 2013

- The Programmes share three core elements:
  - **Swift<sup>ness</sup>**: when offenders breach they are quickly seen by a judge, often on the same day, and receive their sanction immediately;
  - **Certain<sup>ty</sup>**: the consequences of breaching are clearly communicated when offenders are sentenced and every detected breach is sanctioned;
  - **Fair<sup>ness</sup>**: the harshness of the sanctions are made proportionate to the frequency and manner of the breaches, with offenders often being sent to just one or two days in jail for a first breach.
  
- There is every reason to think this approach could work in England and Wales, and the CSJ recommends the introduction of an SAC Programme along the following lines:
  - The implementation should be staged over four years;
  - The Programme should focus on drug addicted offenders and those most likely to reoffend;
  - Judges should be specifically designated to the Programme to ensure hearings are heard within 24 hours of a breach;
  - Sanctions should typically be a day or two in prison, and a week if offenders breach regularly in a short period of time. If offenders consistently breach, or commit further criminal offences, then sentencers should have the option of reverting back to the original breach processes and bring them before the court for re-sentencing.
  
- An SAC Programme should be augmented with court reviews by magistrates' courts for drug addicted offenders and those most likely to reoffend:
  - The idea behind court reviews is that on a periodic basis, offenders who are given a sentence in the community come back before the court to report on the progress of their sentence, and to be held to account;
  - Magistrates' courts currently have the power to review all suspended sentence orders and any offenders who are given a DRR, yet this is infrequently used as many magistrates are not aware that they even have this power.

## Improving implementation

- The time between an offender being sentenced and their requirements starting needs to be reduced:
  - The NPS and CRCs should ensure that the maximum length of time that passes between sentencing and the start of a requirement is one month;
  - Waiting times for all requirements should be published annually by each CRC and the NPS to provide public accountability through transparency.
  
- Magistrates' courts should receive feedback from the NPS and CRCs on whether those they sentenced breached any requirements or reoffended.

- The drug rehabilitation requirement (DRR) should be made fit for purpose:
  - The Ministry of Justice should require drug treatment providers to use randomised drug tests to reduce the chances that offenders can produce negative tests whilst taking drugs;
  - Offenders on DRRs should be subject to SAC breach processes and court reviews as set out above;
  - Drug treatment needs to be far more ambitious at getting offenders drug-free.

### Enabling families to support rehabilitation

- Families can play a crucial role in helping an offender leave crime behind, something well recognised in desistance literature:<sup>24</sup>
  - They know the offender well and are often prepared to go the extra mile to help them turn their life around;
  - Offenders were asked what was important in helping them stop committing crime. More offenders said 'getting support from my family' (34 per cent) than 'not using drugs' (32 per cent).<sup>25</sup>
- Where there are no positive family role models for offenders mentoring should fill the gap. Jonathan Aitken set out a number of detailed recommendations to make better use of mentors in a recent paper for the CSJ called *Meaningful Mentoring*.<sup>26</sup>
- Despite the importance of families in the rehabilitative process, the CSJ has heard that it is currently difficult for family members to play an active and positive part.
- There are a number of ways greater family involvement could be facilitated:
  - Family members could be invited to and involved in probation meetings and given a contact number to enable them to feed information into the sentence plan;
  - The NPS and CRCs could change the default location of meetings with offenders from the probation office to either the offender's home or a venue nearby and partner with voluntary organisations that specialise in strengthening family support for offenders.

24 National Offender Management Service, *Understanding Desistance from Crime*, Ministry of Justice, 2010, p3 [accessed via: [www.safeground.org.uk/wp-content/uploads/Desistance-Fact-Sheet.pdf](http://www.safeground.org.uk/wp-content/uploads/Desistance-Fact-Sheet.pdf) (09/04/14)]

25 Ministry of Justice, *Offender Manager Community Cohort Study: Wave 1 questionnaire tables*, Module N, April 2014

26 Aitken J, *Meaningful Mentoring*, The Centre for Social Justice, April 2014

# chapter one

## Sentences in the community today

Any attempt to reform sentences in the community needs to be built on a sound understanding of their nature. This chapter sets the foundation for our analysis and recommendations by outlining the purpose and design of sentences served in the community, how frequently they are used and for what crimes.

### 1.1 Purpose and design

There are five main purposes of criminal sentences:<sup>27</sup>

- The punishment of offenders;
- The reform and rehabilitation of offenders;
- The reduction of crime (including via deterrence);
- The protection of the public;
- The making of reparation by offenders to persons affected by their offence.

Sentences in the community seek to accomplish each of these five purposes. Recent government changes mean that every sentence in the community will include a punishment element, whether that is unpaid work, a curfew or a fine.<sup>28</sup> Sentences in the community attempt to reform and rehabilitate offenders by providing interventions that tackle underlying problems – from drug addictions to mental health problems – that are fuelling their criminal behaviour and so reduce further crime. Finally, they seek to make reparations to victims through activities such as restorative justice.

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<sup>27</sup> *Criminal Justice Act 2003*, Part 12, Chapter 1, Section 142 [accessed via: [www.legislation.gov.uk/ukpga/2003/44/section/142](http://www.legislation.gov.uk/ukpga/2003/44/section/142) (09/04/14)]

<sup>28</sup> Ministry of Justice, *Press Release: Community sentences to deliver proper punishment*, 2012, [accessed via: [www.gov.uk/government/news/community-sentences-to-deliver-proper-punishment](http://www.gov.uk/government/news/community-sentences-to-deliver-proper-punishment) (09/04/14)]

## Our definition of 'sentences in the community'

In this paper we use the term 'sentences in the community' to refer to two separate sentences: Community Sentences (CSs) and Suspended Sentence Orders (SSOs).

Both orders are made up of the same requirements and are served in the community. A CS can last up to three years, whilst a SSO can only last a maximum of two years. SSOs are technically custodial sentences, and any breach or re-offence should mean that offenders will 'usually have to serve the original sentence in prison.'<sup>29</sup>

A sentence in the community requires an offender to abide by requirements imposed by a judge or magistrate. If they fail to comply with the terms of their sentence or commit further crime, the court can impose tougher penalties, including custody. Sentencers can pick one or more requirements from the following menu:<sup>30</sup>

- Supervision (regular appointments with a probation officer);
- Unpaid work (for up to 300 hours);
- Accredited programmes (programmes designed to help change offending behaviour);
- Specified activities (such as developing skills or making amends to their victim);
- Curfew (required to be in a specific place at certain times);
- Exclusion (not allowed to go to certain places);
- Prohibition (from doing particular activities);
- Residence (must live at a particular address);
- Drug rehabilitation (requires the offender's consent);
- Alcohol treatment (requires the offender's consent);
- Mental health treatment (requires the offender's consent);
- Attendance centre (those under 25 can be required to go to a centre at specific times).

These requirements are in the process of being changed. The supervision and specified activities requirements are being merged to create a rehabilitation activity requirement (RAR) and a new requirement to restrict travel abroad is also being introduced.<sup>31</sup>

Some of these requirements are used far more frequently than others. A 2012 Ministry of Justice study showed that, in 2008, supervision was the most frequently used requirement with 77 per cent (56,118) of those on a community order receiving it.<sup>32, 33</sup> This was followed by unpaid work with 42 per cent (30,429) and accredited programmes with 28 per cent (20,060).<sup>34, 35</sup>

29 Open Justice, *How sentencing and rehabilitation works* [accessed via: [open.justice.gov.uk/how-it-works](http://open.justice.gov.uk/how-it-works) (09/04/14)]

30 Sentencing Council, *Community Sentences* [accessed via: [sentencingcouncil.judiciary.gov.uk/sentencing/community-sentences.htm](http://sentencingcouncil.judiciary.gov.uk/sentencing/community-sentences.htm) (07/05/14)]

31 Ministry of Justice, *Target Operating Model: Version 2 Rehabilitation Programme*, 2014, p14

32 Supervision sessions are primarily used to hold offenders to account, monitor risk, and create a plan that addresses offenders' criminal behaviour

33 Note that if an offender received multiple community orders in one year, only their first one was recorded in this data. Bewley H, *The effectiveness of different community order requirements for offenders who received an OASys assessment*, Ministry of Justice, 2012, p8 [accessed via: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217383/niesr-report.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217383/niesr-report.pdf) (09/04/14)]

34 Unpaid work is a visible means through which offenders repay neighbourhoods for their crimes. Up to 300 hours can be given for the most serious offences. The work that offenders do includes litter picking, graffiti removal, building and maintenance work and grounds clearance. For example see Surrey & Sussex Probation Trust, *What is Community Payback?* [accessed via: [www.surreysussexprobation.gov.uk/what\\_we\\_do/community\\_payback/](http://www.surreysussexprobation.gov.uk/what_we_do/community_payback/) (09/04/14)]

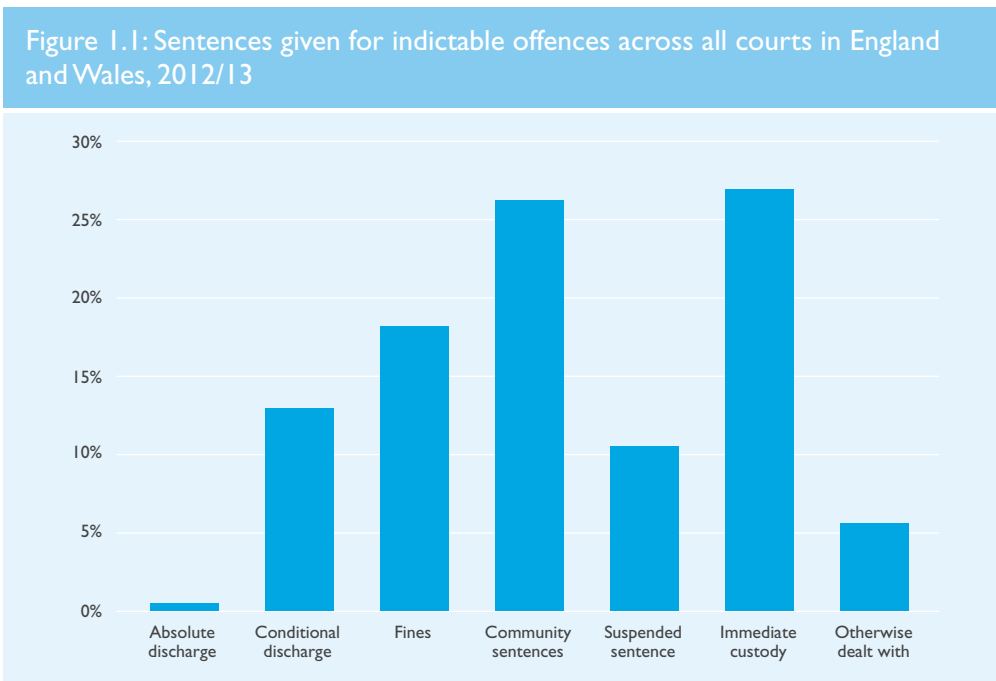
35 Accredited programmes include those designed to tackle domestic violence, sexual offending, problem drinking and dangerous driving. These are usually based on cognitive-behavioural models which aim to change attitudes and behaviour

In evidence to the CSJ, a number of offenders argued that they were too rarely given rehabilitative support alongside punishment. For instance, Kevin told the CSJ:

*'I have been on community sentences for over 10 years now and nothing has helped me as I know that I need help sorting my habit but I keep getting community work which I attend but no one asks me anything about my problem. Even if I breach my work I know they will give me more of the same.'*

## 1.2 How often they are used

Sentences in the community are the most frequently used sentences for serious offences.<sup>36</sup> In 2012/13, 293,640 offenders were convicted of indictable offences and sentenced by a court – of these 76,423 (26 per cent) received a community sentence and 30,742 (10 per cent) received a suspended sentence order.<sup>37</sup>



Source: Ministry of Justice, *Criminal justice statistics quarterly – March 2013*, Table Q5.1, August 2013<sup>38</sup>

The way sentences in the community are used for indictable offences has changed dramatically between 2003/4 and 2012/13: the number of SSOs increased 15 times; whilst the number of CSs decreased by 30 per cent.<sup>39</sup>

<sup>36</sup> By 'serious offences' we refer to indictable only and either-way offences, which include crimes such as murder; manslaughter; robbery; theft, burglary and possession with intent to supply drugs (of Class A, B or C)

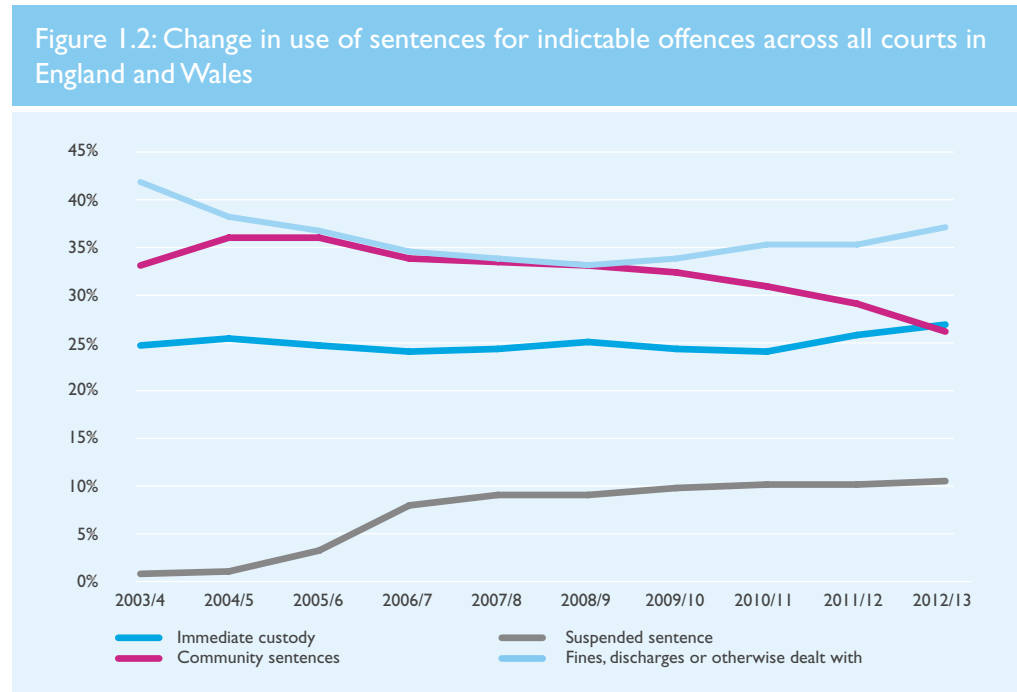
<sup>37</sup> Ministry of Justice, *Criminal justice statistics quarterly – March 2013*, Table Q5.1, August 2013

<sup>38</sup> Note that this data excludes life and indeterminate sentences

<sup>39</sup> Ministry of Justice, *Criminal justice statistics quarterly – March 2013*, Table Q5.1, August 2013



As a result of this the proportion of all those sentenced to CSs for indictable offences has decreased from a third to a quarter over the past decade, and SSOs now account for a tenth of all sentences passed.<sup>40</sup>



Source: Ministry of Justice, *Criminal justice statistics quarterly – March 2013*, Table Q5.1, August 2013<sup>41</sup>

This change should have led to a more robust response to breaches, as SSOs are specifically designed so that offenders ‘usually’ receive a custodial sentence if they fail to comply.<sup>42</sup> However, as we outline in section 2.2.1, this is not always the case as some courts send few of those who breach SSOs to prison.

### 1.3 What they are used for

Sentences in the community are used for a wide range of serious offences. The most common indictable offences that receive sentences in the community are ‘theft and handling stolen goods’ and ‘violence against the person’, with 39,953 and 16,784 people sentenced for them respectively in 2012/13.<sup>43</sup>

Many serious offences are far more likely to receive a community rather than a prison sentence. For example offenders who are convicted of serious ‘fraud and forgery’, ‘violence against the person’, ‘criminal damage’, ‘theft and handling stolen goods’ and ‘drug’ offences

40 Note that the increase in SSO use was driven by the introduction of the Criminal Justice Act 2003, which made them more readily available. There is no obvious explanation as to why the use of CS’ reduced. Ministry of Justice, *Criminal justice statistics quarterly – March 2013*, Table Q5.1, August 2013

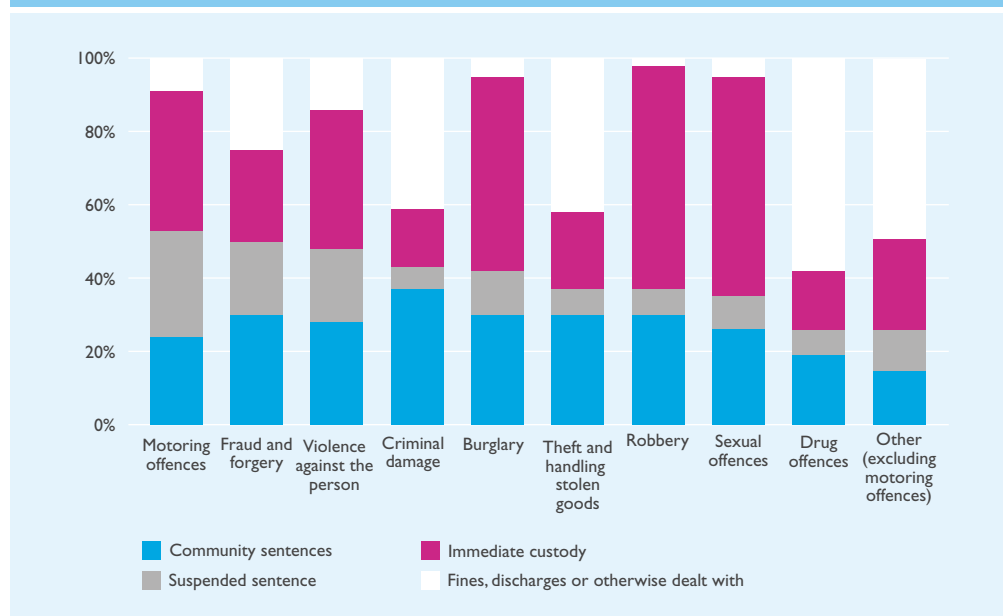
41 Note that this data excludes life and indeterminate sentences

42 Open Justice, *How sentencing and rehabilitation works* [accessed via: [open.justice.gov.uk/how-it-works](http://open.justice.gov.uk/how-it-works) (09/04/14)]

43 Ministry of Justice, *Criminal justice statistics quarterly – March 2013*, Table Q5e, August 2013

are more likely to be given a sentence in the community than be sent to prison. Notably, offenders are three times more likely to be given a sentence in the community than sent to prison for committing serious 'criminal damage'.<sup>44</sup>

Figure 1.3: Sentencing outcomes for indictable offences across all courts in England and Wales, 2012/13



Source: Ministry of Justice, *Criminal justice statistics quarterly – March 2013*, Table Qe5, August 2013<sup>45</sup>

Too few of those sentenced for serious drug offences receive any kind of rehabilitative support. Three in five (58 per cent) are given a fine or are simply discharged from court. Many of those committing drug offences will have underlying drug problems themselves. This is a missed opportunity to tackle their addictions that may be fuelling their criminal activity. Moreover, even when they do receive treatment it is often inadequate (we explore this in section 2.2.4).

Sentences in the community have a greater potential to rehabilitate offenders than any other sentence, as they are the simplest, most cost-effective way of combining punishment with tailored programmes to address root causes of reoffending. As this chapter has shown, they are also used more frequently than any other sentence and are applied to a wide range of crimes and offenders. It is therefore imperative that courts sentence effectively and that requirements are well delivered and properly held to account. We explore whether this is the case in the next chapter:

<sup>44</sup> Ibid.

<sup>45</sup> Note that this data excludes life and indeterminate sentences



## chapter two

# The weaknesses of sentences in the community

Well functioning sentences in the community are an integral part of a socially just Britain. Through punishing offenders and providing interventions to tackle the root causes of their offending behaviour, they provide a rare opportunity to rehabilitate individuals and protect communities from crime. Yet they are currently proving ineffective, and are suffering from high reoffending rates and low public confidence. In this chapter we look at the performance of sentences in the community and areas for improvement.

## 2.1 The performance of sentences in the community

When considering how community sentences and suspended sentence orders are performing there are two primary questions that need to be asked:

- Are they proving effective at reducing further offending?
- Do they command the public's confidence?

We explore these two questions below.

### 2.1.1 Reoffending

The reoffending rate of those serving sentences in the community is unacceptably high. Over a third of offenders (36 per cent) on community orders are caught reoffending within just 12 months of being sentenced. The figure is slightly lower for those on SSOs at 30 per cent.<sup>46</sup> Moreover, these figures are likely to be a significant underestimate of the total number of

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<sup>46</sup> Ministry of Justice, *Proven re-offending statistics – October 2010–September 2011*, Tables 20 and 21, July 2013 [accessed via: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/225090/proven-reoffending-oct10-sep11.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/225090/proven-reoffending-oct10-sep11.pdf) (09/04/14)]

crimes committed, as they account only for proven offences and around half of crime is not reported to the police.<sup>47</sup>

The effect this is having on communities is disastrous, as those who reoffend after being given a sentence in the community commit around 160,000 crimes within a year.<sup>48</sup>

This crime has been driven in part by an increasing number of prolific offenders. The total number of those given sentences in the community for indictable offences who have 15 previous convictions or cautions has increased 76 per cent (from 15,709 to 27,632) between 2003/4 and 2012/13. Whilst this absolute number has plateaued over the past four years, the proportion of those with 15 previous convictions and cautions has continued to rise from 14 per cent in 2003/4 to over a quarter (26 per cent) in 2012/13.<sup>49</sup>

One of the main reasons for this increase is the inadequacy of sentences in the community to address the factors – from drug abuse to poor literacy rates – that are fuelling criminal activity. One offender, who is currently on a community order, told the CSJ that unpaid work is often not enough by itself to prevent reoffending:

*'Community work is an easy way out, I did crime for four years and am still getting community service so why should I stop? The work is easy and I meet other guys there who are in the same situation. Nothing comes out of the work we do only more crime – I would like to get settled in a flat and help with my education but we never get advice on that.'*

That so little has been done to address this growing group of prolific offenders is concerning, and something we address in the next chapter.

## 2.1.2 Public confidence

The public are not confident in the effectiveness of community sentences. Polling in 2010 showed that half (49 per cent) of the public are opposed to courts using more community sentences instead of short-term prison sentences and 38 per cent thought they were 'a soft option'. Moreover, 22 per cent said they thought community sentences were 'weak and undemanding,' just five per cent said they were 'good for rehabilitation' and only one per cent thought they were 'tough and demanding.'<sup>50</sup>

This lack of confidence in community sentences is coupled with a lack of confidence in the probation service. One survey indicated that just 24 per cent of the general public are confident that the probation service is effective at reducing reoffending.<sup>51</sup>

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47 The Crime Survey for England and Wales reported 7.5 million crimes committed against households and resident adults in 2013, yet the police recorded just 3.7 million crimes in the same year. Office for National Statistics, *Crime Statistics*, period ending December 2013, 24 April 2014 [accessed via: [www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/period-ending-december-2013/index.html](http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/period-ending-december-2013/index.html) (07/05/14)]

48 Ministry of Justice, *Proven re-offending statistics – October 2010–September 2011*, Tables 20 and 21, July 2013

49 Ministry of Justice, *Criminal justice statistics quarterly – March 2013*, Table Q7.5, August 2013

50 Kaye R, *Fitting the crime – Reforming community sentences: Mending the weak link in the sentencing chain*, London: Policy Exchange, 2010

51 Hough M et al, *Attitudes to Sentencing and Trust in Justice: Exploring Trends from the Crime Survey for England and Wales*, Ministry of Justice, 2013, p31 [accessed via: [www.icpr.org.uk/media/34605/Attitudes%20to%20Sentencing%20and%20Trust%20in%20Justice%20\(web\).pdf](http://www.icpr.org.uk/media/34605/Attitudes%20to%20Sentencing%20and%20Trust%20in%20Justice%20(web).pdf) (09/04/14)]

There is, however, some evidence that increasing people's understanding of community sentences increases their confidence in them.<sup>52</sup> The Sentencing Advisory Council's 'You be the Judge' programme is a good example of this (see the case study below).

Yet the best way of increasing public confidence is by actually improving sentences in the community themselves. A Justice Committee review of community sentences found that *'confidence has been undermined by the fact that community sentences, especially Community Payback, are sometimes not properly completed.'* The Howard League for Penal Reforms have also noted that community sentences *'face a problem in the public eye in terms of their immediacy...delays damage public confidence in community sentencing.'*<sup>53</sup>

### You Be the Judge

'You Be the Judge' is a website set up in 2010 by the Sentencing Advisory Council to give members of the public a chance to make their own sentencing decisions on scenarios based on real-life cases. The website shows people how judges and magistrates make decisions about cases and which sentences they pass.

Users watch short videos that explain the roles of different individuals within the court room, the facts of the case, the aggravating and mitigating factors, sentencing considerations and explanations of the final sentencing decision. The videos are interactive and require users to decide which factors they think should be taken into consideration and which sentencing decisions they would choose.

Within two years 74,000 people had used the website. In 45 per cent of cases, the user selected a less severe sentence than the judge and in 39 per cent of cases the user selected the same sentence as the judge. More than half (52 per cent) of users began with the view that sentencing is 'about right,' which increased to 72 per cent after using the website. 41 per cent started with the view that sentencing was 'too lenient', which decreased to 13 per cent after using the website.<sup>54</sup>

In cases of vandalism and drug dealing, users were significantly more likely to select more lenient sentences than the judge were. Just under half (48 per cent) of people chose a community sentence of 100 hours for vandalism when a judge chose 200 hours.

Whilst these findings are based on a self-selecting sample, and are therefore open to participation bias, 'You be the Judge' has proven to be an effective educational tool, which has created notable changes in public attitude with regard to sentencing practice.

## 2.2 The reasons for failure

The failure of community sentences or suspended sentence orders to have any meaningful impact on reoffending rates or to command public confidence is due to a number of systemic

52 Hough M, Roberts V, *Sentencing trends in Britain, Punishment and Society* [accessed via: [www.uk.sagepub.com/cavadino/sentencing\\_trends\\_in\\_britain.pdf](http://www.uk.sagepub.com/cavadino/sentencing_trends_in_britain.pdf) (07/05/14)]

53 Hansard, *The role of the Probation Service – Justice Committee, Reforms to community sentences* [accessed via: [www.publications.parliament.uk/pa/cm201012/cmselect/cmjust/519/51908.htm](http://www.publications.parliament.uk/pa/cm201012/cmselect/cmjust/519/51908.htm) (09/04/14)]

54 Cuthbertson S, *Analysis of complete 'You be the Judge' website experiences*, Ministry of Justice, 2013 [accessed via: [http://www.insidetime.org/resources/Moj\\_Research-Analysis/You\\_be\\_the\\_Judge\\_website\\_experiences.pdf](http://www.insidetime.org/resources/Moj_Research-Analysis/You_be_the_Judge_website_experiences.pdf) (07/05/14)]

issues. Over the course of this research we have analysed four areas of weakness that need to be tackled if they are to become a powerful weapon in the fight against crime. They are:

- Ineffective breach processes;
- Poor feedback to magistrates' courts;
- Failure to deliver requirements in a timely manner;
- The inadequacy of the drug rehabilitation requirement.

## 2.2.1 Breach processes

The purposes of sentences in the community are catastrophically undermined when offenders fail to comply with the requirements of their sentence. Regardless of how effective interventions are, if an offender does not turn up to or engage with requirements then their behaviour will remain unchallenged and unchanged. Yet offenders fail to complete sentences on a far too frequent basis.



The courts decide not only whether to hand out sentences in the community, but also when to terminate them. Sentences can be terminated early for good progress, because they have been completed or because an offender failed to comply with it and needs to be resentenced.

In 2013, 139,606 offenders had sentences in the community terminated by the court. A third of terminations were due to offenders failing to successfully complete their sentence.<sup>55</sup> Amongst these failed sentences were 17,066 (12 per cent) who failed to comply with the terms of their sentence and 18,129 (13 per cent) who were convicted of further criminal offences before their sentence was complete.<sup>56</sup>

Whilst there has been a slight improvement in the number who successfully completed their sentence since the beginning of the parliament – from 66 per cent in 2010 to 67 per cent in 2013 – it is still unacceptably low.<sup>57</sup>

These aggregate figures also mask the reality that some requirements have particularly low compliance rates. CSJ Freedom of Information requests have shown that, on average, in 2012/13 only 54 per cent of offenders given a DRR as part of a CS successfully completed them.<sup>58</sup> There are also some probation trusts who particularly suffered from poor compliance, as we highlight in the box below.

<sup>55</sup> In other words, their sentence was not terminated early for good progress or did not run its full course

<sup>56</sup> Ministry of Justice, *Offender management statistics (quarterly) – October–December 2013 and Annual, Table A4.23, April 2014*

<sup>57</sup> *Ibid.*

<sup>58</sup> This figure is based on the 20 out of 35 Probation Trusts that replied to the Freedom of Information request

Table 2.1: Proportion of community sentence requirements successfully completed

Probation trust 2012/13	Unpaid work requirement	Alcohol requirement	Drug rehabilitation requirement
Staffordshire and West Midlands	58%	62%	55%
Norfolk and Suffolk	70%	47%	49%
Wales	69%	57%	46%

### Responding to breach

The problem of high breach rates is inextricably linked to the slow and bureaucratic response to breaches. NOMS instructions (for June 2014 onwards) state that Enforcement Officers will be required to apply to the court for a summons and a court date within 10 days of an offender breaching.<sup>59, 60</sup> Court hearings will generally be heard many days after this. There is currently no central target from NOMS, but – to give an idea of the likely timescales – the previous NOMS target was that 60 per cent of breaches were resolved within 25 days.<sup>61</sup>

Offenders told the CSJ that the delay in coming before the court can have serious consequences. One ex-offender told us that *'you know you have already messed up and you think to yourself, well – if I am going back to prison – I might as well prepare for it and make sure I got money and drugs'*.

This lackadaisical approach to breach flies in the face of compelling evidence that when punishments are certain to follow within days of a breach, they have much greater correctional effect on the offender. Evidence shows that swift and certain sanctions introduce predictable consequences into the lives of offenders and increases their capacities for self-control.<sup>62</sup>

This slow and winding path back to court is coupled with significant variation in response to the breach of SSOs. Suspended sentence orders are technically a custodial sentence. If offenders fail to comply with them they should *'usually'* receive a prison sentence.<sup>63</sup> CSJ Freedom of Information requests have revealed, however, that this is not always the case and there is significant variation across England and Wales. For instance, in Nottinghamshire 80 per cent of those who breached in 2012/13 received a custodial sentence, compared with 29 per cent in Greater Manchester and 18 per cent in Lancashire.

Some courts are not *'usually'* passing custodial sentences for SSO breaches. This undermines the authority of probation officers and their ability to compel offenders to comply with their sentence.<sup>64</sup>

59 Under Transforming Rehabilitation, Enforcement Officers from the National Probation Service will make all decisions with regard to whether breach hearings are necessary in court

60 National Offender Management Service, *Enforcement of Community Orders and Suspended Sentence Orders*, April 2014 [accessed via: [www.justice.gov.uk/downloads/offenders/probation-instructions/pi-06-2014-enforcement-of-community-orders-and-suspended-sentence-orders.doc](http://www.justice.gov.uk/downloads/offenders/probation-instructions/pi-06-2014-enforcement-of-community-orders-and-suspended-sentence-orders.doc) (07/05/14)]

61 The CSJ were informed of this by the Ministry of Justice, April 2014

62 Hawken A, Davenport S and Kleiman M, *Managing Drug-Involved Offenders*, National Institute for Justice, 2013

63 Open Justice, *How sentencing and rehabilitation works* [accessed via: [open.justice.gov.uk/how-it-works](http://open.justice.gov.uk/how-it-works) (09/04/14)]

64 Mair G and Mills H, *The Community Order and the Suspended Sentence Order three years on: The views and experiences of probation officers and offenders*, London: Centre for Crime and Justice Studies, March 2009



These inconsistent sentencing practices also undermine the fairness of the judicial process. Fairness, and its perception, plays an important role in persuading offenders to comply with their sentence, so it is concerning that the discretion given under the Criminal Justice Act 2003 is being interpreted so widely.<sup>65</sup>

Given our slow and uncertain response to breach it is perhaps not surprising that so many offenders fail to comply with their sentence. In the next chapter we look at how a swift, certain and fair approach to breach could be introduced in England and Wales to increase offender compliance.

## 2.2.2 Feedback to magistrates' courts

*'It's all about communication – magistrates would like to have more knowledge and more information but they are reliant on the Pre Sentence Report. We need to get sentencers out there so they can see for themselves – and if some of the requirements aren't working very well then they need to know.'*

Roma Hooper, Director, Make Justice Work

Magistrates' courts lack the basic information that is critical to making the best possible sentencing decisions. When magistrates sentence an offender they are unlikely ever to receive feedback on the outcome of that sentence. Even if a sentence is overturned on appeal in the Crown Court, magistrates will not be told. Peter Chapman, Chairman of the Magistrates' Association compared it *'to a surgeon operating on a patient and then never finding out whether or not they survived.'*

This lack of information undermines effective sentencing. It means magistrates often have a poor understanding of what each requirement entails and in what situations it would be most effective. One repercussion of this is that sentencers rely heavily on supervision and unpaid work, whilst requirements such as mental health treatment, exclusions and attendance centres are barely used. Research has shown that, whilst most practitioners felt all 12 requirements were relevant, *'it was rare for them to have had experience of using all of them.'*<sup>66</sup>

Poor feedback also means that magistrates and district judges rarely know whether or not their sentences successfully rehabilitated offenders. This prevents them from learning from their sentencing triumphs and failures. It also means they rarely find out when there has been a delay in offenders starting their requirements, which – as the next section shows – can be a problem.

## 2.2.3 Waiting times

There are often long delays before offenders commence the requirements they are sentenced to.

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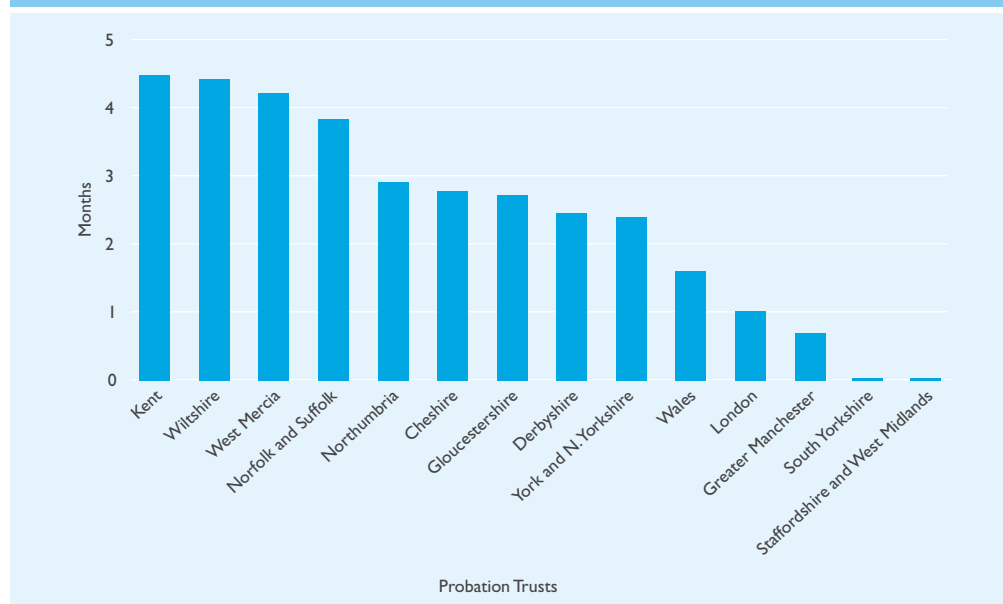
<sup>65</sup> For example see Center for Court Innovation, *Documenting Results: Research on Problem-Solving Justice*, 2009 and Tyler T and Huo Y, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts*, New York: Russell Sage Foundation, 2002

<sup>66</sup> Mair G and Mills H, op cit

CSJ Freedom of Information requests revealed that, in 2012/13 the specified activities and accredited programmes requirements had long waiting times across many probation trusts. 'Specified activities' include activities such as attending literacy and numeracy classes. 'Accredited programmes' include programmes designed to tackle issues such as domestic violence, sexual offending, problem drinking, dangerous driving, and anger management.

In 2012/13, the average wait between an offender being sentenced and starting an accredited programme for CSs was five months in Kent, and four months in Wiltshire, West Mercia, and Norfolk and Suffolk. Across the 14 probation trusts that replied to our Freedom of Information request, offenders waited on average over two months before starting accredited programmes.

Figure 2.1: Average wait before accredited programmes started following sentencing, 2012/13



Source: Freedom of Information requests to probation trusts, conducted by the CSJ in August 2013

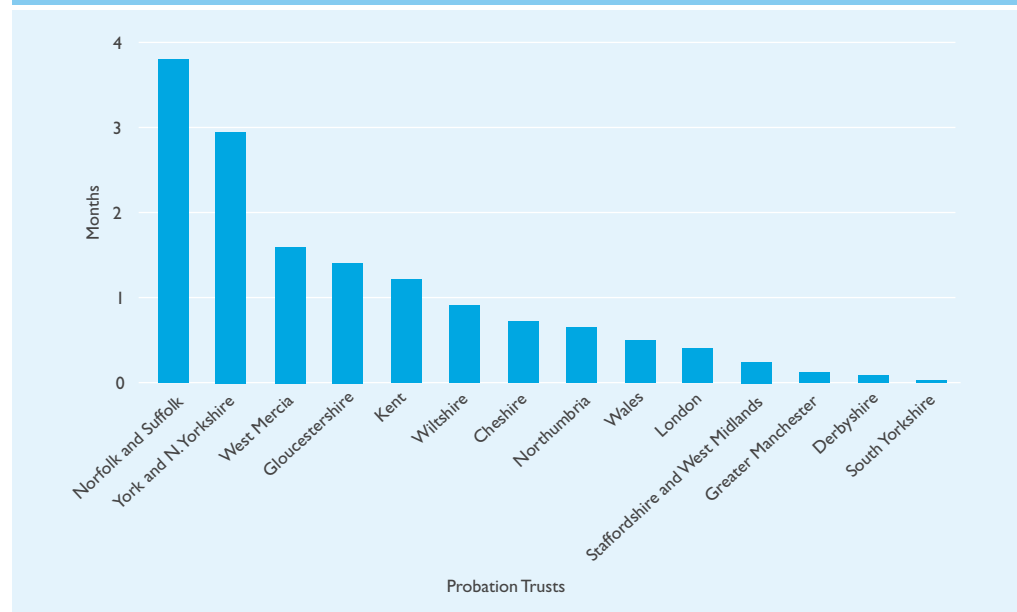
The average wait between being sentenced to and starting a specified activity for CSs in 2012/13 was four months in Norfolk and Suffolk, and three months in York and North Yorkshire. Across the 14 probation trusts that replied to our Freedom of Information request, offenders waited on average one month before starting accredited programmes.

There is some justification for delays. An offender may have 'pre-work' to do such as 'stabilising their accommodation or drug habit'.<sup>67</sup> One probation trust told the CSJ that sex offender programmes in particular required a 'battery of assessments and tests prior to commencing'.<sup>68</sup> Moreover, some activities are infrequently used in some probation areas and courses may only be run a few times a year. Yet this does not justify an average waiting time of up to five months in some probation areas, especially since other areas' waiting times are so much shorter.

67 Probation Trusts in evidence to the CSJ, 2014

68 Ibid.

Figure 2.2: Average wait before specified activities started following sentencing, 2012/13



Source: Freedom of Information requests to probation trusts, conducted by the CSJ in August 2013

These waiting times are delaying offenders' access to rehabilitative support, and resulting in a number of offenders going back to court having reoffended or breached without elements of their original sentence having begun. One offender told the CSJ that their interventions 'took ages before they started and I was back before the court for further crimes before they had begun'.

This was recognised by the Magistrates' Association who said in evidence to the CSJ:

*'Magistrates make a decision imagining – naively perhaps – that it will start fairly soon and then you find, when they breach that something that was ordered four months ago still hasn't started.'*

The Magistrates Association has described these delays as 'unacceptable and a cause for concern.'<sup>69</sup>

These delays are severely undermining the role of community sentences to tackle the root causes of individuals' offending and keeping communities safe.

## 2.2.4 The Drug Rehabilitation Requirement

Almost two-thirds (63 per cent) of those on community orders say their offending is in some way connected to their drug use.<sup>70</sup> Tackling drug addiction is a crucial component of

<sup>69</sup> The Magistrates' Association, *Sentencing Policy & Practice Committee: Community Sentences – Policy Paper*, May 2010, p2 [accessed via: [www.magistrates-association.org.uk/dox/consultations/1274600032\\_community\\_sentences\\_policy\\_19\\_may\\_2010.pdf?PHPSESSID=g54e5iqbksh74tcltfaneb9r21](http://www.magistrates-association.org.uk/dox/consultations/1274600032_community_sentences_policy_19_may_2010.pdf?PHPSESSID=g54e5iqbksh74tcltfaneb9r21) (09/04/14)]

<sup>70</sup> See Cattell J et al, *Results from the Offender Management Community Cohort Study (OMCCS): wave 1 questionnaire tables*, Module O, Ministry of Justice, 2013

sentences in the community, and it is vital that the main requirement through which we tackle drug addiction – the Drug Rehabilitation Requirement (DRR) – is effective. Yet this is far from being the case.

### What is the Drug Rehabilitation Requirement?

The DRR is one of the most intensive sentence requirements and involves attending a number of appointments with a treatment provider and regular drug testing. An offender must agree to be given a DRR.

These orders can be delivered at a high, medium, or low level depending on the extent of the drug problem. A high level order usually consists of two drug tests and 15 contact hours a week, a medium level order usually consists of two drugs tests and eight contact hours a week, and a low level order consists of one appointment and one drugs test a week. The majority of offenders are expected to undertake medium level orders, with just five per cent expected to need the high level order.<sup>71</sup>

DRRs have the highest reoffending rate of all requirements, with 56 per cent of offenders given a DRR as part of a community order reoffending within a year.<sup>72</sup> As we showed in section 2.1.1, this is partly driven by poor compliance. Yet the problems with the DRR go beyond high breach rates as the testing regime can be 'gamed', and too little is done to encourage abstinence.

#### *The testing regime*

The current testing regime allows for the majority of offenders on DRRs to 'game' the system and produce negative drugs tests whilst still taking class A drugs.

NOMS guidance acknowledges that offenders find randomised testing useful as a motivating factor in giving up drugs.<sup>73</sup> Yet a number of community treatment providers have told us that they are currently using 'scheduled' drug testing, whereby offenders have set times when they will be tested.<sup>74</sup>

The problem with scheduled testing is that many class A drugs can only be picked up if they have been used two to three days before a test, which makes it possible for offenders to plan drug use on specific days to avoid testing positive. Whilst district judges told us that the often chaotic nature of offenders' lives means that not all offenders take advantage of this opportunity, the CSJ has heard first-hand from both offenders and treatment providers that offenders do game the system in this way. James, who was previously on a DRR told us:

*'I could use heroin on a Thursday and Friday, then spend the weekend drinking, and by my next test on Tuesday I would be clean'.*

71 National Offender Management Service, *Probation trust guidance on DRRs 2012-04-24*, 2012

72 Ministry of Justice, *Analytical Summary – Re-offending by offenders on Community Orders: Preliminary findings from the Offender Management Community Cohort Study*, p3, 2013

73 National Offender Management Service, *Probation trust guidance on DRRs 2012-04-24*, 2012

74 The overwhelming majority of those who receive drug treatment are given community, rather than residential, treatment. See Public Health England, *Drug Statistics from the National Drug Treatment Monitoring System, 1 April 2012 to 31 March 2013*, 2013 [Accessed via: [www.population-health.manchester.ac.uk/epidemiology/NDEC/factsandfigures/statisticsfromndtms201213.pdf](http://www.population-health.manchester.ac.uk/epidemiology/NDEC/factsandfigures/statisticsfromndtms201213.pdf) (02/05/14)]

Community treatment providers told the CSJ that randomised and effective testing is far from the norm.

The CSJ has also heard evidence that tests are not always carried out properly by practitioners, which provides further opportunities for offenders to manipulate the system. For example, Martin, who was previously on a DRR, told the CSJ:

*'There are loads of ways to beat the tests. People sell clean urine all the time. They don't come into the toilet with you to make sure you are not cheating, unless you've got a record of gaming the tests. Even then, you can intimidate the staff and they won't come in.'*

This state of affairs is clearly not acceptable and reform is needed to ensure that the drug testing regime is effective at measuring drug taking.

#### *Offender incentives*

Even when positive tests are recorded, the CSJ has heard it is rare that this will lead to an offender being breached. This undermines attempts to incentivise offenders to become drug-free.



Decisions on whether to breach offenders for failing drug tests lies with probation officers.<sup>75</sup> Treatment providers and offenders have told the CSJ that probation is often extremely reluctant to breach positive tests because it happens fairly frequently and they want to keep offenders engaged with their treatment rather than sent back to the prison.

We were told how offenders will be more likely to be breached for missing an appointment, than testing positive for drugs. One community treatment provider told us:

*'You tell them [the probation officer] that the person has failed their test and they aren't interested, all they want to know is whether the person turned-up.'*

James, who had previously been on a DRR, told us how his probation worker would say to him 'I don't care if you screen positive, I'm not breaching you'. James explained to us that this had a negative effect on his drive to give up drugs: 'Not facing any consequences means there's just no point in stopping'. A number of community treatment providers from across England and Wales confirmed to the CSJ that the system is not currently geared towards abstinence.

With a view to remedying this, the Conservative Party pledged in their 2010 Manifesto to 'give courts the power to use abstinence-based Drug Rehabilitation Orders to help offenders kick

<sup>75</sup> National Offender Management Service, *Probation trust guidance on DRRs 2012-04-24, 2012*

drugs once and for all.<sup>76</sup> However, since taking office as part of the Coalition Government, no such change has taken place and recent NOMS guidance states that:

*‘Whilst DRRs are not “drug abstinence” requirements, there is a reasonable expectation that an offender will engage with treatment and this will be evidenced not merely by attending appointments, but also by negative drug tests and by reduced re-offending.’<sup>77</sup>*

Yet offenders are often not ‘engaging with treatment’ and probation officers rarely breach offenders for negative drug tests.

Efforts to get offenders drug-free are also frustrated by the nature of drug treatment in England and Wales. Today, the majority of drug treatment providers do not tackle people’s addictions but rather seek to manage them in efforts to reduce harm. We look at this issue in detail in a forthcoming addictions paper this summer.

Community sentences and suspended sentence orders have so much potential to reform offenders and cut crime. Yet, as this chapter has shown, they are failing to do this because of poor implementation, delivery and accountability, and a failure to tackle the growing number of prolific offenders that are churning through the criminal justice system. In this next chapter we set out the changes that are necessary to ensure sentences in the community fulfil their potential.

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76 *An Invitation to join the Government of Britain, The Conservative Manifesto 2010* [Accessed via: [conservativehome.blogs.com/files/conservative-manifesto-2010.pdf](http://conservativehome.blogs.com/files/conservative-manifesto-2010.pdf) (02/05/14)]

77 National Offender Management Service, *Probation trust guidance on DRRs 2012-04-24*, 2012.



# chapter three

## Reforming sentences in the community

The weaknesses we highlighted in Chapter Two need to be urgently addressed if sentences in the community are to be an effective crime-fighting weapon. Our recommendations for reform are focused on three areas:

- Tackling prolific offending;
- Improving implementation;
- Involving families in rehabilitation.

The first two areas focus on correcting the problems we identified earlier in this paper, while the third sets out a new opportunity.

### 3.1 Tackling prolific offending

There has been a substantial growth in the number of prolific offenders over the past decade. A quarter of those receiving sentences in the community for indictable offences in 2012/13 – 27,632 – had 15 previous convictions or cautions, compared with 14 per cent – 15,709 – in 2003/4.<sup>78</sup> The current sentencing approach is not stopping these prolific offenders from continuing to commit crime. To ensure that sentences in the community are playing their part to successfully rehabilitate those most likely to reoffend we suggest radical reforms to the way in which we deal with breaches, and use of the courts to hold offenders to account.

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78 Ministry of Justice, *Criminal justice statistics quarterly – March 2013*, Table Q7.5, August 2013



### 3.1.1 Swift and certain sanctions

*'Theory and evidence agree: punishment that is swift, certain, but not severe will control the vast bulk of offending behaviour'.*

Mark Kleiman, Professor of Public Policy, UCLA<sup>79</sup>

A new, more effective way of managing offenders under community supervision has been introduced across the United States. 'Swift and certain' (SAC) Programmes have been implemented in around 20 States and evidence suggests they have had a positive effect on compliance and reoffending rates where they have been implemented in full.<sup>80</sup> While there are differences between the programmes, they share three core elements: swiftness, certainty and fairness.

#### *Swiftness*

Lack of compliance is dealt with immediately. When offenders breach they are quickly seen by a judge, often on the same day, and receive their sanction immediately, which is typically a short spell in a jail cell. The only exception to this is if the offender is employed or in school, in which case the sanction is often carried out on the next weekend so as to not jeopardise their employment or education. If offenders abscond they are often sanctioned more harshly to reduce wasted police time chasing them down.

#### *Certainty*

Sanctions are clearly communicated and are carried out every single time a breach is detected. SAC programmes tend to produce a set of simple, easy-to-understand rules dictating what constitutes a breach and what the consequences of breaching will be. These conditions and consequences are explained to offenders when they appear at court, and subsequently with the probation officer.

This is combined with a certainty that every detected breach is sanctioned. This requires the use of hard data, such as that provided through logs of office visits, GPS tracking and drugs tests, to determine whether a breach has taken place, rather than the subjective view of a probation officer. A pioneer of the approach, Mark Kleiman, Professor of Public Policy at UCLA, argues: *'The temptation on the part of probation officers and judges to cut an erring probationer some slack "just this once" can be disastrous; when consistency is the name of the game, random mercy is toxic.'*<sup>81</sup>

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79 Kleiman M, *A New Role for Parole*, Washington Monthly, January/February 2013 [accessed via: [www.washingtonmonthly.com/magazine/january\\_february\\_2013/features/a\\_new\\_role\\_for\\_parole042045.php?page=all](http://www.washingtonmonthly.com/magazine/january_february_2013/features/a_new_role_for_parole042045.php?page=all) (09/04/14)]

80 Angela Hawken told the CSJ that there are two Programmes where the model was only partially implemented which have failed to see any significant change on breach or reoffending outcomes. The results have yet to be published

81 Mark Kleiman in evidence to the CSJ, April 2014

## Fairness

Fairness, and the perception of it, is crucial to SAC programmes. Offenders are more likely to comply with their sentence if they perceive it to be fair.<sup>82</sup> This is one of the reasons it is important that courts set out in advance in clear and simple language what the sanction will be for breaching.

Fairness requires that sanctions are proportionate. An approach where a minor infraction – such as turning up five minutes late for a meeting – leads to a fairly long prison sentence is often seen as disproportionate by offenders. SAC programmes make sure that the sanction fits the breach. In many programmes one or two days in jail for a first breach (with some ratcheting up for subsequent breaches or for the rare person who absconds) is seen as proportionate.

Fairness also requires consistency. As Angela Hawken, Associate Professor of Public Policy at Pepperdine University, puts it: *'offenders do not see it as fair if someone they know gets a different sanction for the same breach.'*<sup>83</sup>

## Evidence of effectiveness

So far the evidence from every place SAC programmes have been introduced in full has been positive.

A randomised control trial of Hawaii's HOPE Programme showed offenders were 61 per cent less likely to skip appointments with their supervisory officer and 55 per cent less likely to be arrested for a new crime.<sup>84</sup> A study of Texas' SWIFT Programme found that 59 per cent of offenders reduced their technical violations of supervision after entering the Programme, and just eight per cent of offenders have had their sentence revoked due to breaching the terms of their sentence, and nine per cent for reoffending.<sup>85</sup> Compared to a matched comparison group, SWIFT participants were half as likely to be convicted for new crimes.<sup>86</sup> Preliminary results from Alaska's PACE programme saw failed drug tests drop from a quarter to nine per cent.<sup>87</sup> South Dakota's 24/7 Sobriety Programme reduced repeat 'driving under the influence' arrests at county level by 12 per cent.<sup>88</sup>

We have included case studies of two of the most prominent programmes that have implemented SAC breach processes below. They are: the HOPE Programme and the SWIFT Programme.

82 For example see Center for Court Innovation, *Documenting Results: Research on Problem-Solving Justice*, 2009 and Tyler T and Huo Y, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts*, New York: Russell Sage Foundation, 2002

83 Angela Hawken in evidence to the CSJ, April 2014

84 McEvoy K, *HOPE: A Swift and Certain Process for Probationers*, National Institute for Justice Journal, Issue 269, 2012

85 *Tarrant County Community Supervision & Corrections Department Research Brief: SWIFT Court Outcome Evaluation*, Tarrant County Court, 2013

86 Snell, C, *Fort Bend County Community Supervision and Corrections Special Sanctions Court Program*, Unpublished Evaluation Report, Fort Bend County, Texas, 2007 [accessed via [www.bja.gov/Funding/14SACTTAol.pdf](http://www.bja.gov/Funding/14SACTTAol.pdf) (16/04/14)]

87 Carns T and Dr Martin S, *Anchorage PACE Probation Accountability with Certain Enforcement: A preliminary Evaluation of the Anchorage Pilot PACE Project*, Alaska Judicial Council, September 2011

88 RAND Corporation, *Fact sheet: An Innovative Way to Curb Problem Drinking: South Dakota's 24/7 Sobriety Project* [accessed via: [www.rand.org/content/dam/rand/pubs/research\\_briefs/2012/RAND\\_RB9692.pdf](http://www.rand.org/content/dam/rand/pubs/research_briefs/2012/RAND_RB9692.pdf) (01/04/14)]

## Hawaii's HOPE Programme

Hawaii's Opportunity Probation with Enforcement (HOPE) Programme was introduced in 2004.

The Programme was initially used for 34 drug offenders, 18 sex offenders and 16 drug/alcohol offenders and has since expanded to 2,200 high-risk felony offenders, including the entire sex offender caseload. If an offender on HOPE fails a test for drugs/alcohol or misses an appointment with their probation officer and turns themselves in right away then they are sent to jail for two or three days. These short spells can be used several times before a lengthier custodial term is given for continued failure. If they fail to appear for a drug test or probation appointment, and law enforcement has to find and arrest them, they receive a sentence of at least 30 days in jail.

The Programme focuses on high-risk, prolific and drug offenders. In a 2009 randomised control trial, 47 per cent were assessed as high risk and they had an average number of 17 previous arrests.

All offenders are held to account for abiding by the conditions of their sentence, such as attending treatment sessions and some – such as sex offenders – are required to take regular polygraphs. Around 1,800 of the 2,200 offenders currently on the Programme have drug or alcohol problems and are held to account for abstinence through random testing. Each weekday morning offenders are required to ring a phone a number after 4:00 a.m. They have each been given a specific colour in advance, and if their colour is read out they are required for testing that day. The likelihood they will be required for a drugs test starts at once or twice a week and reduces over time following periods of sustained compliance. Every day around 140 people are tested. If they test positive and admit to use they are processed swiftly and are taken into custody that day. If they deny use, the sample is sent to the lab for a confirmation test. If confirmed, the sanction will be 15 days in jail. If they miss an appointment but turn themselves in and test clean, and are employed or in education then their spell in custody is completed at the weekend.<sup>89</sup>

A randomised control trial showed that those with a HOPE condition in their sentence were:

- 55 per cent less likely to be arrested for a new crime;
- 72 per cent less likely to use drugs;
- 61 per cent less likely to skip appointments with their supervisory officer;
- 53 per cent less likely to have their probation revoked.

As a result, HOPE probationers served 48 per cent fewer days in prison, on average, than a control group.<sup>90</sup>

## Texas' SWIFT Programme

Probation Chief, Leighton Iles designed the Special Sanctions Court in 2004 in Fort Bend County, Texas. The design of the Fort Bend County Program paralleled the design and implementation of the Hawaii HOPE model. In 2010, Tarrant County, Texas implemented the Supervision with Intensive Enforcement (SWIFT) Programme which was modelled in part on the Fort Bend County Special Sanctions Court and HOPE and focuses on high- and medium-risk offenders, most of whom are drug involved.<sup>91</sup>

Probation cases enter the SWIFT Programme either as an initial condition of their sentence or after significant violations in lieu of a probation revocation. Offenders are given a document outlining the sanctioning regime once they enter the Programme. It uses a two-stage drug monitoring system

89 Judge Steven Alm in evidence to the CSJ, April 2014

90 McEvoy K, National Institute of Justice, Journal No. 269, March 2012, HOPE: A Swift and Certain Process for Probationers [accessed via: <http://www.nij.gov/journals/269/Pages/hope.aspx> (09/04/14)]

91 Leighton Iles in evidence to the CSJ, April 2014

whereby regular random urine testing is augmented by tests with hair assays taken every three months, to ensure that no drugs go undetected. The cost of the drug testing is passed onto the offender.

SWIFT uses a progressive system of sanctions whereby the sanctions get harsher each time there is a breach. There are a range of sanctions a judge can use, including court admonishment, community service hours, increased reporting requirements, fines and jail time. There are a set of positive incentives for good behaviour; which include fee reductions, reductions in community supervision hours and early termination of a sentence.

A recent study has shown that just eight per cent of offenders on SWIFT have had their sentence revoked due to breaching the terms of their sentence, and nine per cent for reoffending. Moreover, more than four-fifths of offenders on the Programme reported that they had stopped violating the conditions of their community supervision because of the threat of going to jail.<sup>92</sup>

## Reforming breach in England and Wales

SAC programmes have proven remarkably successful at increasing compliance and reducing reoffending in the USA. There is every reason to think this approach could work in England and Wales, however it will need to be carefully adapted to the nuances of our criminal justice system. In this paper we do not attempt to set out a detailed implementation plan, but instead outline a framework within which an SAC Programme should be designed.

### *Stage the implementation*

The Programme needs to be implemented in full for it to be successful. The CSJ heard from pioneers of this approach that programmes have been successful where they have ensured that all three elements – swiftness, certainty and fairness – have been present, with problems arising if even one of these is missing.

To give the different components of the criminal justice system time to adapt to the new approach and everything it will require of them – such as courts conducting breach hearings swiftly – the CSJ recommends the Programme be rolled out over a four-year period. This should involve starting small with pilots in two probation areas, adapting the model using the lessons learnt during the pilot, before rolling it out nationwide if the pilots prove successful at increasing compliance and reducing reoffending.

### *Focus on high risk and drug addicted offenders*

Following the example of successful programmes in the USA, the CSJ proposes that an SAC Programme for England and Wales should focus initially on drug offenders and those who have a high risk of reoffending.<sup>93</sup> By tackling those most likely to reoffend, the Programme will target those prolific offenders whose criminal behaviour is not being addressed by the current approach. Specifically, we recommend that all those given sentences in the community for indictable offences who are assessed as being one of the 10 per cent most likely to reoffend

<sup>92</sup> Tarrant County Court, *Tarrant County Community Supervision & Corrections Department Research Brief: SWIFT Court Outcome Evaluation*, 2013

<sup>93</sup> Should SAC prove successful with this cohort the Ministry of Justice should consider rolling it out more widely

and all those on a DRR be placed on the Programme.<sup>94</sup> This would amount to at most 24,000 offenders, and likely significantly fewer.<sup>95</sup>

By initially focusing the Programme on a subset of the total number of people on community sentences it increases the likelihood of success. Probation experts who have worked on the implementation of programmes in the USA warned that there is a risk of overloading the criminal justice system's capacity to administer swift and certain sanctions if the approach is used on too many offenders at the same time. This is primarily because ensuring all offenders are dealt with swiftly following a breach is resource intensive. There is also merit in specifically targeting prolific offenders, as the traditional approach to breach has already proven unsuccessful on multiple occasions.

#### *Designate judges*

The Programme requires that offenders come before the court almost immediately for breach hearings. The current court set up does not facilitate this. The CSJ recommends that specific judges are designated for the SAC Programme in each probation area, and be charged with ensuring that hearings are conducted within 24 hours of a breach.

#### *Use prison as a sanction*

We recommend that sanctions should initially be a day or two in prison. If they are in employment or school then the sanction should be carried out on the next weekend. Should offenders breach regularly in a short period of time then they should receive a week behind bars. Similar to the HOPE Programme, if there are large gaps between breaches then any breach should revert back to the sanction of a day or two in prison. If offenders



consistently breach, or commit further criminal offences, then sentencers should have the option of reverting back to the original breach processes and bring them before the court for re-sentencing. If they abscond from their sentence, and the police have to find and arrest them, they should – in line with the HOPE Programme – receive a sentence of at least 30 days in prison.

If there are no free prison cells, or the nearest prison is too far away to be practically viable, then offenders should be placed in police cells.

<sup>94</sup> Based on offenders' likelihood of reconviction as assessed through the Offender Assessment System (OASys)

<sup>95</sup> The figure is calculated as follows: 23,836 is the sum of a tenth of all those given sentences in the community for indictable offences (10,717) and those given a DRR (13,119) across both crown and magistrates' courts in 2012/13. Ministry of Justice, *Offender management statistics quarterly – January – March 2013*, Table 4.4, 2013 and Ministry of Justice, *Criminal justice statistics quarterly – March 2013*, Table Q5.1, August 2013

### *Introduce primary legislation*

The current legal framework does not allow for breaches to result in short periods in prison and then have offenders return to their sentence. Introducing an SAC Programme in England and Wales will require changes to primary legislation.<sup>96</sup>

## Recommendations

- The Ministry of Justice introduce an SAC Programme over four years. It should be applied to all those given sentences in the community for indictable offences who are assessed as being one of the 10 per cent most likely to reoffend and/or are given a DRR. This will require:
  - Reflecting these changes in the Sentencing Guidelines
  - Amending the Criminal Justice Act 2003
  - Developing a clear and simple set of rules about what will happen if offenders on an SAC Programme breach their sentence in the community

### 3.1.2 The use of court reviews

Alongside the introduction of an SAC Programme, court reviews have the power to further increase compliance and reduce the reoffending of prolific and drug offenders.

The idea behind court reviews is a simple one: that on a periodic basis, offenders who are given a sentence in the community come back before the court to report on the progress of their sentence, and to be held to account by the court.

It allows sentencers to spot trouble brewing during a sentence and take a problem-solving approach to dealing with offenders, hold probationers to account, and ensure there is a clear and joined-up plan of how to tackle offending behaviour. In this way it uses courts' natural authority to better hold offenders to account.

Reviews also help courts maintain confidence in the delivery of the sentences they hand out by providing them with feedback, such as whether requirements were started on time, and how well offenders are engaging with their sentences.

### Evidence of effectiveness

There is a growing body of evidence that court reviews can increase compliance and reduce reoffending, especially when they see the same magistrate or judge each time.

Much of this evidence comes from the introduction of drug, alcohol and domestic violence courts in the USA, Australia and the UK. A review of the domestic violence courts in San Diego, which produced a reduction in the one year re-arrest rate from 21 per cent to 14 per cent, suggests that the most substantive policy change which may explain the decrease

<sup>96</sup> It is worth noting that there were some similar legislative changes to allow this approach in the recent Legal Aid, Sentencing and Punishment of Offenders Act, 2012, but this related to sobriety orders only

was the introduction of court reviews.<sup>97</sup> A multi-site evaluation of drug courts found: *'judicial interactions with drug court participants are key factors in promoting desistance'*.<sup>98</sup>

A review of 24 Domestic Violence Courts in New York (96 per cent of whom engaged in court reviews) found they reduced re-arrests for convicted offenders on any charge, especially for further domestic violence charges.<sup>99</sup> The Ministry of Justice's review of six drug court pilots in England and Wales highlighted that continuity between the offender and the judiciary helped develop a relationship which *'played a key role in providing concrete goals, raising self-esteem and engagement and providing a degree of accountability for offenders about their actions'*.<sup>100</sup>

An offender on a drug court in the UK described the positive benefits of court reviews as follows:

*'It helps really because I know that I've got to go back for reviews and that I know that I can't do nothing because knowing that if I get breached on a DRR I'll get a two-year prison sentence.'*<sup>101</sup>

A review of the Red Hook Community Justice Centre in New York also found that the prominent role played by the judge likely increased offenders' perception of fairness, which we know is linked to higher levels of compliance.<sup>102</sup>

## The state of play today

Magistrates' courts currently have the power to review all SSOs and any offenders who are given a DRR. All courts are required to review DRRs that are longer than 12 months 'at intervals of not less than one month'.<sup>103</sup> Furthermore, through recent initiatives to introduce specialist courts, there are also 11 courts in England and Wales that have been enabled to review all community orders (although some have subsequently closed).<sup>104</sup>

Whilst there are no publicly available records of reviews that take place, the CSJ has heard from both magistrates and judges that they are used fairly infrequently. Those who gave evidence to the CSJ suggested though that district judges use it more frequently than magistrates, and especially on alcohol and drug rehabilitation requirements.

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97 Angene L, *Domestic Violence Court: Evaluation report for the San Diego County Domestic Violence Courts*, San Diego Superior Court, 2000

98 Rossman S et al, *The Multi-Site Adult Drug Court Evaluation: The Impact of Drug Courts*, Urban Institute Justice Policy Center, Volume 4, November 2011, p17

99 Cissner B, *Testing the Effects of New York's Domestic Violence Courts: A Statewide Impact Evaluation*, Center for Court Innovation, February 2013

100 Kerr J, *The Dedicated Drug Courts Pilot Evaluation Process Study*, Ministry of Justice, January 2011

101 Mair G and Mills H, p35, op cit

102 Frazer M, *The Impact of the Community Court Model on Defendant Perceptions of Fairness: A Case Study at the Red Hook Community Justice Center*, Center for Court Innovation, September 2006 and Tyler T and Huo Y, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts*, New York: Russell Sage Foundation, 2002

103 Bowen, P and Whitehead, S, *Better courts: Cutting crime through court innovation*, the new economics foundation and the Centre for Justice Innovation, 2014 [accessed via: [www.neweconomics.org/publications/entry/better-courts-cutting-crime-through-court-innovation-02/02/14](http://www.neweconomics.org/publications/entry/better-courts-cutting-crime-through-court-innovation-02/02/14)]

104 This is enabled through section 178 of the Criminal Justice Act 2003

Peter Chapman, Chairman of the Magistrates' Association, told the CSJ:

*'... most magistrates are not aware that they have the power to review any offender's progress on a suspended sentence order. I have never seen it used, I have never heard a legal adviser give any advice to the bench about their powers under these sections, and I have never seen a pre sentence report mention that it was an option.'*

The CSJ recommends they be used more frequently by magistrates' courts on those offenders most likely to reoffend and those given a DRR of less than 12 months, given the compelling evidence that they can increase the likelihood that an offender will comply with their sentence.<sup>105, 106</sup>

However, the CSJ believes it would be too heavy-handed for sentencers to be compelled to review these sentences given the importance of judicial discretion and the likelihood that it will not be appropriate in some cases. Instead we suggest magistrates and district judges are enabled and encouraged to review more sentences. They should be enabled to review all CSs, as well SSOs, by extending Section 178 of the Criminal Justice Act 2003. Encouragement and education is needed given that most magistrates seem unaware they even have the power to review SSOs today. We suggest that sentencers' training (and that of other criminal justice officials) be adapted such that it advises that reviews are used for high risk offenders and those on DRRs of less than 12 months, unless there are extenuating circumstances. Training should also include modules on:

- What powers of review are available;
- The evidence base for reviews;
- How reviews are best conducted

We recommend that offenders see the same magistrate or judge each time their sentence is reviewed. This should be coordinated with the development of the SAC Programme.

## Recommendations

- The Ministry of Justice extend section 178 of the Criminal Justice Act 2003 to allow all magistrates' courts to review all community orders
- The Ministry of Justice ensure that training for magistrates, district judges, probation officers, prosecutors, and court staff includes:
  - A section on the available review powers, the evidence base for reviews and how reviews are best conducted
  - Advise that magistrates' courts review all DRRs and those offenders considered to have a high risk of reoffending, unless there are extenuating circumstances

<sup>105</sup> The CSJ believes the crown court should be excluded from further reviews

<sup>106</sup> Likelihood of reoffending should be based on OASys data



## 3.2 Improving implementation

Sentences in the community need to be carried out well if they are to effectively punish and rehabilitate offenders. Yet as we showed in Chapter Two, they currently struggle with a number of implementation issues. We identified three key problems:

- The requirements that make up sentences can start months after an offender is sentenced;
- Magistrates' courts receive no feedback on whether the sentences they handed out were complied with or successfully rehabilitated offenders;
- The drug rehabilitation requirement is particularly poorly designed and does little to address drug addictions that are fuelling criminal behaviour.

In this section we outline remedies to these three problems. The solutions are far more straightforward than those proposed for dealing with prolific offenders and poor compliance, yet they are no less important. For if sentences are poorly implemented then they will not effectively tackle the root causes of offending behaviour, regardless of whether offenders comply with them.

### 3.2.1 Shortening waiting times

There are often long waiting times – of over five months in some cases – before offenders start the requirements they were sentenced to. These need to be addressed as a matter of urgency.

The Ministry of Justice's TR Programme will help solve this to some extent through the introduction of a payment-by-results element to probation contracts. Making the reasonable assumption that delivering requirements on time will reduce reoffending, providers will be incentivised to ensure they receive requirements swiftly.

Yet by itself this is not enough, and more needs to be done to reduce waiting times. In the new probation landscape, it is important that both the NPS and CRCs aggressively tackle waiting times. The CSJ agrees with the Magistrates Association recommendation that the maximum length of time that should pass between sentencing and the start of requirements should be one month.<sup>107</sup> The CSJ also suggests that the waiting times for all requirements be published annually by each CRC and the NPS to provide public accountability through transparency.

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<sup>107</sup> The Magistrates' Association, *Sentencing Policy and Practice Committee: Community Sentences – Policy Paper*, May 2010, p2 [accessed via [www.magistrates-association.org.uk/dox/consultations/1274600032\\_community\\_sentences\\_policy\\_19\\_may\\_2010.pdf?PHPSESSID=g54e5iqbksh74tcltfaneb9r21](http://www.magistrates-association.org.uk/dox/consultations/1274600032_community_sentences_policy_19_may_2010.pdf?PHPSESSID=g54e5iqbksh74tcltfaneb9r21) (01/05/14)]

## Recommendations

- The Ministry of Justice hold the NPS and CRCs to account for ensuring all requirements are delivered within one month of sentencing
- The NPS and CRCs produce an annual report detailing waiting times for each requirement, split for each probation area

### 3.2.2 Giving magistrates' courts feedback

Magistrates' courts lack the basic information that is critical to making the best possible sentencing decisions. Introducing court reviews for prolific and drug offenders, as recommended in section 3.1.2, will help improve sentencer understanding of requirements and their effectiveness. Yet this will not help them understand the outcomes of sentences for non-prolific offenders who are not sentenced to a drug rehabilitation requirement. To ensure sentencers have all the information they need to sentence effectively the CSJ recommends that the NPS and CRCs be required to provide feedback to magistrates' courts on whether those they sentenced breached any requirements and whether they reoffended.

#### Recommendation

- The NPS and CRCs provide quarterly data to magistrates' courts detailing whether those they sentenced breached their order or reoffended

### 3.2.3 Overhauling the drug rehabilitation requirement

Drug addiction is a root cause of many offenders' criminality. It is crucial that the primary means of tackling drug addiction, the drug rehabilitation requirement (DRR), is fit for purpose. This will require an effective testing regime, a robust breaching procedure and treatment that promotes recovery.

Today, many drug treatment providers are using scheduled, rather than randomised drug testing. The CSJ recommends that treatment providers are required to use randomised testing to reduce the chances that offenders can test negative whilst still taking drugs. This will help ensure their underlying drug issues are tackled and reduce the chances they go on to reoffend.

This switch to randomised testing needs to be combined with offenders being subject to SAC breach processes, as set out in detail in section 3.1.1. This approach will ensure that offenders are breached for every positive drugs test, and thereby incentivise them to become drug-free.<sup>108</sup> As sanctions under this Programme are typically just a day or two in prison, they will also be able to quickly return to the drug treatment that is addressing the root cause of their offending. We also set out in 3.1.2 that those on a DRR should generally have their

<sup>108</sup> Under an SAC Programme offenders will come before a judge within 24 hours who will determine the veracity of the breach and the suitable sanction

cases reviewed on a regular basis. Amongst other benefits, this will enable their progress to be recognised and rewarded by the court.

Finally, the drug treatment that they receive needs to be far more ambitious to get people drug-free. Despite a focus on drug-free recovery in the Coalition Government's 2010 Drugs Strategy, too much of the treatment system is based around substitute prescribing, rather than the psychological and social support essential to break the habit.<sup>109</sup>

Although NOMS guidance encourages the probation service to use their influence on commissioning groups to ensure offenders can access '*relevant and timely treatment*', few services are available which help people actually come off drugs.<sup>110</sup> In particular, there is a lack of residential treatment which is proven to be far more effective than community based treatment at getting people off drugs.<sup>111</sup> In 2012/13 less than two per cent of those given drug treatment in England and Wales received residential rehabilitation.<sup>112</sup> The CSJ will look into this issue in more depth in a forthcoming addictions paper this summer.

### Recommendations

- The Ministry of Justice require drug treatment providers to use randomised drug tests for offenders on a DRR
- The Ministry of Justice introduce abstinence-based DRRs

## 3.3 Enabling families to support rehabilitation

*'Given the evidence of the central role played in desistance by parents and partners, prison and probation staff should consider all ways possible to support and maintain these crucial relationships.'*<sup>113</sup>

Families can play a crucial role in helping an offender leave crime behind. They know the offender well and are often prepared to go the extra mile to help them turn their life around.

This is well recognised in desistance literature (the study of why people move away from crime).<sup>114</sup> It sees '*rehabilitation as a relational process best achieved in the context of relationships*

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109 Her Majesty's Government, *Drugs Strategy 2010*, London: Home Office, 2010 and Public Health England, *Drug Statistics from the National Drug Treatment Monitoring System*, 2013

110 National Offender Management Service, *Probation trust guidance on DRRs 2012-04-24*, 2012

111 National Treatment Agency, *The Role of Residential Rehab*, London: Department of Health, 2012 [Accessed via: [www.nta.nhs.uk/uploads/roleofresi-rehab.pdf](http://www.nta.nhs.uk/uploads/roleofresi-rehab.pdf) (07/05/14)]

112 Public Health England, *Drug Statistics from the National Drug Treatment Monitoring System, 1 April 2012 to 31 March 2013*, 2013 [Accessed via: [www.population-health.manchester.ac.uk/epidemiology/NDEC/factsandfigures/statisticsfromndtms201213.pdf](http://www.population-health.manchester.ac.uk/epidemiology/NDEC/factsandfigures/statisticsfromndtms201213.pdf) (02/05/14)]

113 National Offender Management Service, *Understanding Desistance from Crime*, 2010, p3 [accessed via: [www.safeground.org.uk/wp-content/uploads/Desistance-Fact-Sheet.pdf](http://www.safeground.org.uk/wp-content/uploads/Desistance-Fact-Sheet.pdf) (09/04/14)]

114 Ibid

with others,' and highlights that most ex-offenders give credit to family and friends for having a significant impact on decisions to stop offending.<sup>115</sup> Ministry of Justice research has also highlighted this. The Offender Management Community Cohort Study asked 2,919 offenders on community orders whether there was anyone in particular who had motivated them to avoid crime. Of those that said there was a particular person, 16 per cent pointed to their mother; 21 per cent to a partner; and 10 per cent to a non-specific family member.<sup>116</sup>

The same survey asked offenders what was important in helping to stop them committing crime. More offenders said 'getting support from my family' (34 per cent) than 'not using drugs' (32 per cent). Three-quarters also said they 'feel close to their family'.<sup>117</sup>

Despite the importance of families in the rehabilitative process, it is currently very difficult for family members to play an active and positive part in their sentence. Vicki Helyar-Cardwell, Director of the Criminal Justice Alliance said in evidence to the CSJ:

*'Family members are desperate to help, desperate to be involved – they are an untapped resource – these are people who so much want their son or partner to succeed that they'll bend over backwards to help them... a lot of family members are thinking 'what can I do?' but no one is giving them answers.'*

There are some impressive examples where families are playing a leading role in offenders' rehabilitation. We highlight one such example in the case study below.

### The Family Man Community Programme

*'Strong relationships are critical to the desistance process. Family members can provide a major motivational force for men in the criminal justice system to begin addressing the challenges in their lives and building for the future.'*

**Adam Moll, Business Development Director of Safe Ground**

The Family Man Community Programme (FMCP) was pioneered by the charity Safe Ground in 2012 and has been trialled five times in Southampton in partnership with Hampshire Probation Trust.

Working with groups of up to ten men, the Programme uses family relationships as a vehicle to improve participants' skills, and boost their chances of gaining sustainable employment.

It consists of 14 two-hour group sessions delivered over seven weeks. In each session the group undertake a range of drama-based activities, group discussions and debates that focus on parental responsibilities, wider family relationships and coping strategies.

The Programme seeks to channel the motivation, confidence and resilience developed through the group work towards the creation of realistic, individually-tailored action plans.

115 Maruna S, and LeBel T, *The desistance paradigm in correctional practice: from programs to lives*, p81 [accessed via: [blogs.iriss.org.uk/discoveringdesistance/files/2012/01/Maruna-and-LeBel-Chapter-4.pdf](https://blogs.iriss.org.uk/discoveringdesistance/files/2012/01/Maruna-and-LeBel-Chapter-4.pdf) (09/04/14)]

116 Ministry of Justice, *Offender Manager Community Cohort Study: Wave 1 questionnaire tables*, Module O, April 2014

117 Ministry of Justice, *Offender Manager Community Cohort Study: Wave 1 questionnaire tables*, , Module N, April 2014

FMCP was adapted from the Safe Ground prison-based Family Man Programme, which has seen almost 3,000 male prisoners take part since 2003, with a completion rate of 74 per cent. Only eight per cent of graduates fail to progress onto further education, training and employment opportunities.

The Ministry of Justice's Justice Data Lab showed the Family Man Programme to have reduced the frequency of reoffending relative to a matched control group.<sup>118</sup>

One participant who graduated from FMCP said:

*'I learned how to properly connect with my children, using positive communication skills and body language and listening more. I also get a sense of pride in not reacting negatively to things that wind me up, which I would have done before.'*

Whilst another graduate told the CSJ:

*'Whilst the programme was quite a time commitment, it was still great and I got so much out of it. I've got three boys, and I have responsibility for the two eldest who live with me. The course helped me to improve the relationship I have with them and understand how I can best support them. I've got so much more confidence in myself as a parent.'*

Evaluation findings from the second phase of trials have demonstrated increases in confidence in parenting, communication skills, feeling part of a community and knowledge of accessing relevant support services. Participants were also more likely to feel they could be a positive role model to their children.<sup>119</sup>

Just because families can be a positive influence on offenders, however, does not mean they always are. Many offenders' families are likely to push people towards, rather than away from, crime. Where this is the case, there is an important role for mentoring to fill the gap. The CSJ believes mentoring has a crucial role to play in rehabilitating offenders. Jonathan Aitken, in a paper written for the CSJ, *Meaningful Mentoring*, outlined in detail a number of recommendations to make better use of mentors.<sup>120</sup>

Where there are available family members who will be a positive influence to support those on sentences in the community, the CSJ believes they should be enabled to play a far larger role. It is inexpensive to involve them in sentencing plans and there is evidence that they could significantly increase the likelihood that repeat offenders will stop committing crime.

There are a number of ways the NPS and CRCs can facilitate greater involvement of families:

- Family members could be invited to and involved in probation meetings;
- Family members could be provided with a contact number to enable them to feed information into the sentence plan so practitioners can adapt it where appropriate;

118 Ministry of Justice, *Justice Data Lab Re-offending Analysis: Family Man – Safe Ground*, 2014 [accessed via: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/289253/safe-ground-report.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/289253/safe-ground-report.pdf) (10/04/14)]

119 Adam Moll in evidence to the CSJ, March 2014

120 Aitken, J, *Meaningful Mentoring*. The Centre for Social Justice, April 2014

- The NPS and CRCs could change the default location of meetings with offenders from the probation office to either the offender's home or a venue nearby. They could also hold more supervision sessions at evenings or on the weekends to make it easier for family members to attend;
- The NPS and CRCs could partner with voluntary organisations, such as Safeground, who have pioneered interventions to strengthen family support for offenders.

### Recommendations

- The NPS and CRCs engage with offenders' family members and actively seek their involvement by, for example:
  - Inviting family members to supervision sessions
  - Offering dialogue with an appointed family member
  - Meeting at times and in places that best facilitate family involvement
  - Partnering with charities that strengthen family support for offenders



# Conclusion

Sentences in the community have the power to radically reduce reoffending. By ensuring that offenders receive interventions that tackle the root causes of their behaviour sentences in the community can turn around offenders' lives and cut crime.

Yet this paper has demonstrated that community sentences and suspended sentence orders are not living up to their potential. Too many offenders fail to comply with their sentence and go on to commit further crimes. This failure has led to an increasing number of prolific offenders churning through the criminal justice system. Over a quarter of those given a sentence in the community for indictable offences now have at least 15 previous convictions or cautions – almost double what it was a decade ago.<sup>121</sup> This is having a disastrous effect on communities: every year around 160,000 crimes are committed by those given a sentence in the community in the previous 12 months.<sup>122</sup>

We have become far too comfortable with the failure of these sentences to stop offending in its tracks. To correct this, reform is needed in two areas.

First, we need offenders to receive interventions that will address the root causes of their offending. This requires that magistrates and district judges know whether offenders complied with their sentences or went onto reoffend. This feedback loop will enable them to learn from their sentencing successes and failures and hand out ever more effective sentences. Families need to be placed at the heart of the rehabilitation process. They want to be involved and are proven to often have a positive effect on offenders, and yet are currently frozen out of sentences. Finally, the drug rehabilitation requirement needs urgent reform. It currently cares more about whether offenders are on time for meetings, than whether they are getting off drugs. It needs to be focused on abstinence.

Second, we need to make sure that offenders start, engage with and complete their sentences. If a requirement does not start, or an offender does not turn up to one, then it does not matter how effective those interventions could have been, that offender is likely to go on to commit further crime. Requirements in some areas are not starting, on average, for four or five months after a sentence is handed down. In the new probation landscape the NPS and CRCs will need to address this if they are to have a hope of any meaningful reductions in reoffending.

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<sup>121</sup> Ministry of Justice, *Criminal justice statistics quarterly – March 2013*, Table Q7.5, August 2013

<sup>122</sup> Ministry of Justice, *Proven re-offending statistics – October 2010 – September 2011*, Tables 20 and 21, July 2013



To increase offender compliance the CSJ recommends the introduction of two evidence-based reforms: court reviews; and a swift, certain and fair approach to breach. This latter reform involves offenders being sent to prison for a day or two immediately after breaching and has had a remarkably positive effect on compliance and reoffending rates in America. If the Ministry of Justice are serious about cutting crime in England and Wales then they need to fast-track the necessary primary legislation to enable this reform to take place.

The Ministry of Justice's TR Programme is introducing competition and innovation that has the power to improve sentences in the community. Yet by itself it will not do enough to tackle persistent offenders and protect communities. By implementing the reforms set out in this paper, sentences in the community will be enabled to live up to their potential and become a powerful tool that addresses the root causes of offending behaviour, turns around offenders' lives, and cuts crime.

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