Response to the Ministry of Justice Consultation 'Punishment and Reform: Effective Community Sentences'
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About the Criminal Justice Alliance
The Criminal Justice Alliance (CJA) is a coalition of 67 organisations - including campaigning charities, voluntary sector service providers, research institutions, staff associations and trade unions – involved in policy and practice across the criminal justice system.[1] The Criminal Justice Alliance works to establish a fairer and more effective criminal justice system.

Introduction
The CJA is pleased to have the opportunity to participate in the Ministry of Justice's consultation on effective community sentences.

We strongly believe in the use and continued promotion of community orders as they have consistently proven to be more effective than short term custody at reducing reoffending, with the most recent rigorously tested research has shown more than an 8% difference. They allow offenders the opportunity to stay with their families and those they are responsible for, minimise the disruption to their employment and can provide positive interventions to address vulnerabilities and needs in a community environment; all of which assist in the desistance process.

We believe there is the need to further promote the use of community orders as alternatives to those on the cusp of custody where appropriate whilst continuing to progressively develop them in line with recent work such as the Intensive Alternative to Custody pilots.

There is a real concern that too great an emphasis has been placed unnecessarily on increasing the punitiveness of sentences in a bid to improve public confidence. We feel that this focus on punishment and the failure to adequately highlight the need for positive rehabilitative and reparative elements will potentially jeopardise the current success and advantages of community orders. There is a need to convey to the public that making sentences more punitive does not mean that they will become more effective in protecting them through a reduction in re-offending. It has the serious potential to deter individuals from engaging with elements of their order when in the past they may have done so.

The additional proposed punitive elements such as the exclusion, foreign travel and driving ban and suggestion that each order must contain a sanction that is primarily punitive are in our opinion unwarranted. It should be left for individual sentencers to decide to hand down individual additions where they believe such is appropriate and merited. Putting in place a specific order that has fixed punitive conditions automatically attached is in a way adopting a one size fits all approach which has proven t be unsuccessful in reducing re-offending[2]. The increased number of requirements will inevitably raise the likelihood of minor infringements and possibility of failure to fully comply. As a result there is a need to allow offender managers a substantial degree of flexibility and discretion when determining breach.

[1] Although the CJA works closely with its members, this consultation response should not be seen to represent the views or policy positions of each individual member organisation.
[2]Weaver, B. and McNeil, F. (2010) Changing Lives? Desistance Research and Offender Management. Report No. 03/2010. The Scottish Centre for Crime and Justice Research.

Proper consideration should be given to the circumstance of offenders have caring responsibilities or are in employment. Jeopardising their employment or the relationships they have with family members will have a significantly harmful impact on their ability to stay away from offending.

The desire to increase the use of electronic monitoring would at present appear to be premature due to the lack of evidence on the effectiveness on reducing reoffending, particularly in the UK context. It is fundamental that any increase does not result in individuals being up-tariffed through the criminal justice system, or that it reduces the vital human interaction often necessary for offenders' pathways to lives free of crime. There is a risk that over reliance on electronic monitoring could reduce engagement with orders to simply tick the box exercises.

Elsewhere, we feel that the confiscation of assets is unlikely to be an effective punishment as many offenders have low incomes, and the non-payment of a fine is not necessarily 'wilful' but rather a result of their difficult financial circumstances.

The case for pre sentence restorative justice has been strongly demonstrated. It leads to greater victim satisfaction, makes substantial financial savings and helps offenders develop a better sense of remorse over their criminal activities. Additionally it allows sentencers greater clarity over offenders' intentions and opinions and has shown to lead to less punitive sanctions. The greatest way of increasing its benefits is to simply ensure that it is used more widely across the country. A duty should be placed on criminal justice agencies to offer restorative justice to all victims of crime pre-sentence, whenever an offender pleads guilty and agrees to participate in the process, and where it is appropriate and safe to do so.

The CJA sees it as a positive step that the government is actively attempting to increase the use of community sentences. The most recent figures show that 2011 saw an 8.4% decrease in the use of community sentences when compared to corresponding figures for the previous year[3], despite imprisonment increasing and crime reducing.

However, the way in which the government is planning to alter the orders, through an intensive punitive focus, could reduce their effectiveness and with it public confidence, in effect doing the opposite of what it set out to achieve.

Response to the consultation questions
We have responded to the consultation questions on which we have a view below.

1. What should be the core elements of Intensive Community Punishment?

The Government contends that the Intensive Community Punishment will add to the Intensive Alternative to Custody pilots with the addition of core punitive elements. The CJA believe it would have been helpful if a more expansive research and evaluation project had been carried out on these pilots to allow a better informed decision as to the success of the orders. However, the fact that all the pilot areas have succeeded in remaining operational despite receiving no additional central government funding beyond 2011 demonstrates the faith that local police, agencies and sentencers have in them.

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[3] Ministry of Justice (2012). Criminal Justice Statistics, Quarterly Update to December 2011.

We disagree with the concentrated effort to increase the punitive levels of community sentences, and the justification for doing so. As mentioned, the IAC pilots which are intense orders but allow greater discretion, have been well-received by local agencies who have strong confidence in them. However, if this is to be pursued, it is imperative that the additional punitive elements do not detract from the importance of focusing on the rehabilitative needs and vulnerabilities of the offenders receiving an ICP. To do so would undermine the efforts of the IAC pilots and significantly reduce the potential of the new orders to assist in reducing reoffending rates and increasing public confidence in community orders.

Community payback should be a core element of ICP for those offenders who are able to participate in such. It should be viewed as positive reparation so that both communities and offenders see the beneficial contribution that is being made. However we do not advocate for high visibility of offenders while they are carrying out the work as suggested by Louise Casey in the past. Additionally, too much has been made of the fact that some offenders carry out work that other individuals voluntarily do. According to prominent academics the promotion of participation in activities, which allows offenders to feel positive about their work, can assist in sustaining desistance through a process of pro-social socialisation and identity change[4]. The CJA is not advocating that the reparative work be easy or non intensive, merely that it should be meaningful and wherever possible develop offenders skills. There are deep concerns that the resources to set up this form of work is simply not available, especially with competition with local jobcentres.

We do not believe there is the need for the additional proposed punitive elements, namely the exclusion, foreign travel and driving ban, and do not feel they should in any way be seen as core elements. It should be left for individual sentencers to choose to decide to hand down individual additions where they believe such would be appropriate. One size fits all approaches will not work in reducing re-offending[5]. In general, research has shown that sentencers, for the most part, do not require further community options when sentencing, it is more important that the existing requirements are available to them in their localities.[6] It is our view that providing more requirements such as mental health and alcohol treatment facilities should be seen as a greater priority to the above purely punitive measures.

Tackling the causes of crime through appropriate interventions, where they are warranted and justified, should be seen as core to the order. Courts will have the ability to add both rehabilitative and reparative requirements as they see fit and should be encouraged to use appropriate interventions that assist with the causes of the criminal behaviour.

Restorative Justice should be a core element of the order. All offenders should be presented with the option of going through a restorative process. It is popular with victims, enhances offenders' ability to develop remorse, and helps reduce reoffending.

Central to the creation of an ICP should be a procedure to ensure there is some form of continuous offender management by an individual. There is a risk that with the number of requirements being placed on an individual they will feel they are being passed from pillar to post between different agencies and professionals. A large body of research has shown that that desisting from crime can be assisted by providing a continuous individual who

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[4] Maruna, S. (2001) *Making Good: How Ex-convicts Reform and Rebuild their Lives,* Washington, D.C.: American Psychological Association.

[5] Weaver, B. and McNeill, F. (2010) Changing Lives? Desistance Research and Offender Management Weaver and McNeill 2010

[6] Mair, G. Cross, N., and Taylor, S. (2007) The community order and the suspended sentence order: the views and attitudes of sentencers. Centre for Crime and Justice Studies.

shows faith and trust in the offender and allows them to build confidence within themselves[7].

These orders will be more punitive than the average community sentence with a greater number of requirements, thereby raising the likelihood of minor infringements. We therefore believe that a core element should be a stronger degree of flexibility and discretion for offender managers when determining breach. This should not be seen as a soft approach, but if there is too much rigidity you will end up with the oft-criticised position of having individuals who solely engage formally with the intervention without any substantive participation, the latter being a far greater determinant of desistance.

Finally, in line with the progression of community/problem solving courts we think that the introduction of the ICP as a national order presents the opportunity to introduce into the sentence some form of procedural review for sentencers.

2. Which offenders would Intensive Community Punishment be suitable for?

The consultation sets out that the ICP should be reserved for offenders who require a significant level of sanction but who are better dealt with in the community to maintain ties with work and with family.

We concur that the order should be given only to those whereby judges and magistrates believe they have committed a serious enough offence to warrant a significant punishment and are undecided as to whether or not a custodial sentence should be handed down, those deemed to be on the cusp of a custodial sentence. In addition, we would like to see a more explicit commitment to use the orders as an alternative to short custodial sentences.

There is the very real risk, recognised by NOMS[8], that there could be a large degree of net widening and up-tariffing for an order such as this. It will be very important that guidance given to sentencers' and other agencies makes clear these orders should be appropriately targeted, ensuring those not at risk of or close to receiving a custodial sentence should not receive one of these orders. This is important in order to maintain the principles of proportionality and fairness in sentencing.

The limited IAC evaluation found that "feedback from stakeholders suggests they perceived offenders with the following characteristics to be most suitable for an IAC order: a chaotic lifestyle, multiple needs, previous custodial sentences and motivation to change". We agree with these sentiments.. An ICP will not be appropriate for those with chaotic lifestyles with chronic problems as they may not be able to meet the requirements unless there is some leniency and discretion when dealing with levels of compliance.

In particular, we believe that the ICP would be suitable for young adults with several previous offences, depending on their risk of harm to the public and to themselves and level of maturity. As the Riots Panel expressly pointed out, the current system of imprisonment for dealing with this group is clearly not working[9]. Using ICP's could be a good starting point for dealing with these individuals. In this regard the support services tailored to the distinct needs of the young adult group must be in place.

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[7] Burnett, R. and McNeill, F. (2005) The place of the officer-offender relationship in assisting offenders to desist from crime, Probation Journal vol. 52 no. 3 221-242
[8] Michael Spurr's speech to Criminal Justice Alliance, 18th April 2012.
[9] After the Riots (2012). The final Report of the Riots Communities and Victims' Panel.

Where individuals have caring responsibilities or full time employment and they are on the cusp of custody they should be able to receive an ICP but proper consideration should be given to their circumstances. Jeopardising their employment or the relationships they have with family members will have a significantly harmful impact on their ability to stay away from offending.

3. Do you agree that every offender who receives a community order should be subject to a sanction which is aimed primarily at the punishment of the offender ('a punitive element')?

The CJA is of the opinion that to try and determine whether a particular sanction is aimed primarily at the punishment of an offender is an exercise of extremely limited value and threatens to jeopardise achieving the required balance to the five purposes of sentencing.

Each individual offender has wholly personal circumstances restricted to them alone. Determining whether a sanction is primarily punitive will require taking into consideration all elements of the offenders life, something which should be better directed towards looking at rehabilitative interventions and what will aid them in reducing their offending behaviour.

The extent to which we believe it is necessary for an offender to receive a punitive sanction is that it assists them to appreciate the wrongness of their actions and the need to change their behaviour in the future[10]. Adding punishment purely for the sake of general deterrence and increasing public confidence has shown to have very limited positive effects. Very often it simply achieves building resentment and a sense of injustice amongst offenders. This makes restorative justice a much more powerful tool in creating remorse and a sense of wrongdoing.

We strongly endorse the view of the Justice Select Committee that making sentences more punitive does not mean that they will necessarily be effective in protecting the public by reducing re-offending[11]. The Justice Select Committee points out that the use of punitive measures may provide a cheaper yet publicly acceptable alternative to supervision for some offenders, but their benefits need to be carefully explained to the public, as they do not address the root causes of offending.

It is concerning that the consultation states that community sentences do not effectively signal to society that wrong doing will not be tolerated. This is tantamount to stating that community sentences need to become more punitive in order to have a greater deterrent effect. Deterrent orders have consistently been shown to have minimal effect in both individual reoffending and reducing crime in general as seen evidenced most explicitly in the Halliday report[12].

We do not believe that there is a desire for this increased punitiveness amongst the general populace or indeed in fact from perhaps the most relevant group, victims. A recent study by Victim Support cites a 2007 survey conducted for the Probation Service which found that 81% of victims of crimes would prefer an offender to receive an effective

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[10] Anthony Duff (2003) – Probation, Punishment and Restorative Justice: Should Altruism be engaged in Punishment? Howard Journal of Criminal Justice. Vol 42, No. 2 (2003).

[11] House of Commons Justice Committee (2011). The role of the Probation Service. Eight Report of Session 2010-12. Volume I.

[12] The Halliday Report (2001) – 'Making Punishment Work: A Review of the Sentencing Framework for England & Wales

sentence rather than a harsh one, and reports, from research it conducted recently, a "common view" amongst victims that the desired outcome of sentencing is that the offender does not commit crime again.[13] So long as there is some degree of punishment within a requirement, where this is appropriate, there should be no reason why it needs to be primarily such.

Making community overly harsh and punitive can come at the expense of internal legitimacy, without which compliance and desistance is jeopardised[14]. Public interest would be better served by community sanctions that can generate long term substantive compliance and with it the secure basis for lasting change in the lives of offenders.

4. Which requirements of the community order do you regard as punitive?

Every requirement contains a degree of punishment, the level of which depending on the individual involved. A compulsion to partake in an activity that one does not wish to be involved in can only be viewed as punitive, likewise being forced to remain in an specific area is a deprivation of liberty.

5. Are there some classes of offenders for whom (or particular circumstances in which) a punitive element of a sentence would not be suitable?

We are pleased that the consultation acknowledges that it is necessary to ensure that any mandatory provision to include a punitive element in all community orders contains exceptions for some groups of offenders.

The example used, individuals with mental health issues, are those the CJA agrees strongly should be removed from facing a punitive sentence. It is likely the consultation is speaking about individuals with a severe and enduring mental health issue, but we feel that all those with mental health problem should be excluded. The criminal justice liaison and diversion schemes are focusing on all levels of mental health problem, and this should be reflected in community sentencing. Similarly young adults with low levels of maturity should fall explicitly outside the category of those receiving primarily punitive orders as it can have a greater effect on their development.

Whilst it may be useful to provide a list of individuals who should be excluded from a punitive element, we feel that there should also be suitable discretion for sentencers to decide in each individual case placed before them whether or not it is appropriate taking into consideration the whole range of the offender's vulnerabilities, circumstances and needs.

6. How should such offenders be sentenced?

The offenders falling within the remit of question 5 should be sentenced in a manner that looks to reduce the likelihood of them reoffending in the future to the greatest extent possible, by addressing their vulnerabilities, criminogenic needs and instilling a degree of motivation and self belief within them that they have the potential to change. Taking into consideration the public interest the CJA believes this is the best course of action and provides the best value to communities.

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[13] Victim Support (2010) *Victims' justice? What victims and witnesses really want from sentencing*, London: Victim Support.
[14] Maruna, S. (2001) Making Good. How ex-convicts reform and rebuild their lives

7. How can we best ensure that sentences in the community achieve a balance between all five purposes of sentencing?

It is essential that the vulnerabilities and needs of all offenders are properly identified and taken into consideration when sentencing. If this is not done then the purposes cannot be appropriately balanced. Punishment should not further add to or damage offenders' existing vulnerabilities of disadvantages anymore than absolutely necessary. The greatest risk to achieving the correct balance between the five purposes of sentencing is over prioritising punishment as doing so can harm offenders' rehabilitative opportunities, increase the likelihood of re-offending and lower public protection.

In order to achieve the reduction in crime and the protection of the public, it is essential all sentences properly consider the underlying causes of offending and take action to address them.

8. Should we, if new technologies were available and affordable, encourage the use of electronically monitored technology to monitor compliance with community order requirements (in addition to curfew requirements)?

There may be some limited benefits from electronic monitoring in terms of allowing some groups of offenders to serve their sentence at home rather than in prison, but equally we must acknowledge the limitations of EM and recognise the limited research and evidence available on it. Most importantly, EM should not replace the vital human interaction and support needed for most offenders. With pressures on budgets this should not be seen as a cheap option – even if it enhances compliance in the short term, the overwhelming evidence shows more clearly that supportive relationships, family ties, employment, housing and stable finances make a real difference to people's ability to steer clear of crime.

EM has proved to be able to provide a means of monitoring compliance with curfew orders, location information that may rule offenders in or out of criminal investigations, trigger intervention to interrupt offending and protect victims and a method to reduce prison population. However, we are more sceptical about its ability to act as a deterrent to re-offend and its rehabilitative qualities as existing research would seem to be far from conclusive, especially as a standalone measure, most recently evidenced in HMPI report on electronically monitored curfews[15].

It is the opinion of the CJA that EM should continue to be used to monitor curfew requirements. It is considerably more cost effective than prison, as found by a 2006 House of Commons Committee of Public Accounts report and a National Audit Office report of the same year[16]. It offers a punitive sanction while avoiding the disruptive effects of prison sentences, such as loss of housing and separation from family and friends, elements that enhances the likelihood of desistance to crime and reduces their contact with other offenders[17].

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[15] HMI Probation. (2012) The Management of Electronically Monitored Curfews

[16] House of Commons Committee of Public Accounts: The electronic monitoring of adult offenders Sixty–second Report of Session 2005–06. National Audit Office 2006. The electronic monitoring of adult offenders.

[17] Hucklesby A (2008) Vehicles of Desistance? The impact of electronically monitored curfew orders: Criminology and Criminal Justice 8. 51-71. Ball, K., Lyon, D. Wood, D.M., Norris, C. and Raab, C. (2006) A Report on the Surveillance Society for the Information Commissioner by the Surveillance Studies Network; Richardson, F. (1999) 'Electronic Tagging of Offenders: Trails in England', *Howard Journal of Criminal Justice,* 28 (2): 158-172. Ball and Lilly, 1986; Richardson, 1999: 161).

However it is important to highlight that the evidence available suggests that in and of itself electronic monitoring may not prevent re-offending and as a result it is vital that it does not replace direct human interaction. We share the concern that it could be a move away from values traditionally held by the Probation Service that involve the 'slow nurturing of inner change in offenders towards the galvanising of rapid processes of outward compliance'[18]. In essence, over reliance on EM could make compliance a tick the box activity which does little to motivate and encourage desistance from crime.

According to the National Audit Office report, most offenders are positive about their experience of being on an EM curfew citing that they could have slipped back into a criminal routine if they had not had the structure provided by an electronically monitored curfew. This can help form constructive motivation to stay away from criminal activities[19]. Offenders do not find the sanction lenient[20]. It is important to note and ensure EM is not used where it is not necessary because of the potentially harmful impacts on people's lives and their families. Therefore the recent report from HMIP stating that only 29% of community orders with EM curfews had been made following a pre-sentence report, compared to 90% in 2008, is concerning, suggesting they could be being targeted ineffectively or used in inappropriate situations, such as cases with domestic violence.

It is crucial that sentencers and other criminal justice agencies do not come to use electronic monitoring devices on those who might otherwise have been informally diverted from the criminal justice service[21]. Some studies have found this to be the case, further increasing the cost to the system, especially when taken into consideration that those brought formally into the system are much more likely to reoffend than those who are not.

In the past EM has been advanced without sufficient planning or the necessary research. We would urge the government to test the marginal effects of EM and publish the results in order to assist in determining the best way of utilising the technology going forward, in order to create safer communities through reduced re-offending,[22].

9. Which community order requirements, in addition to curfews, could be most effectively electronically monitored?

EM could be used to monitor compliance with exclusion orders. Magistrates and District Judges who were interviewed for research regarded satellite tracked exclusion orders as helpful sentencing options because they gave meaning to these exclusion orders by

[18] Bottomley, K., Hucklesby, A., Mair, G., and Nellis, M. (2004) Electronic Monitoring of Offenders: Key Developments Issues in Community and Criminal Justice-Monograph 5 London: NAPO, 2004
[19] Hucklesby, K. (2009) Understanding Offender's Compliance: A case study of electronically monitored curfew orders. Journal of Law and Society 36(2) 248-71.
[20] Payne, B. K., and Gainey, R. (2004) 'The electronic monitoring of offenders released from jail or prison: safety, control and comparisons to the incarceration experience', *The Prison Journal*, 84: 423-434.
[21] Payne and Gainey, 2004: 414; Padgett, K. Bales, W. And Blomberg, T. (2006) Under Surveillance: an empirical test of the effectiveness and implications of electronic monitoring. Criminology and Public Policy. 5(1) 61-92.
[22] Renza, M. and Mayo-Wilson, E. Can electronic monitoring reduce crime for moderate to high-risk offenders?

providing hard evidence of non-compliance, might deter offenders from committing further crimes, and might keep offenders out of their excluded areas[23].

If EM was extended to other community orders the CJA believes it would be imperative to provide sufficient testing and planning in advance of any form of roll out especially as it can be extremely expensive, taking active tracking as the prime example.

If EM is extended to cover community orders other than simply curfews there is an even greater need to establish strong communication links between those responsible for supervising compliance and those responsible for offender management. It has been found that where the offender manager is not responsible for breach issues can arise[24], something which could certainly pose even greater difficulties when greater competition is introduced into probation and there is an assortment of private, public and voluntary sector organisations and employees involved.

10. Are there other ways we could use electronically monitored curfews more imaginatively?

Research shows that at present there are very few cases where EM is making a contribution to offender management.[25] Where an electronically monitored curfew was part of an order with other requirements, most offender/case managers were found to view it as a separate punishment outside their jurisdiction. This is disappointing. Too often, unless the case was identified as PPO or subject to MAPPA, no information was sent to the offender/case manager about any minor violations until the offender reached the threshold for breach action. Electronic curfews could be used positively to help offenders break long-established patterns of behaviour as part of an integrated package of interventions. They should be used much better in terms of integration of offender management instead of simply being seen to run parallel with offender management[26].

Where EM curfews are better linked with offender management more evidence led timing of curfews could be used. For example, curfews could be placed on individuals the evening before a probation meeting to better ensure attendance, thereby reducing the risk of breach.

Improved technologies that increase compliance rates should be utilised as much as possible, including sending text message reminders to offenders when their curfew is about to start, as set out in ‘Breaking the Cycle’, and informing families about the realities of living with an offender on a curfew order[27].

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[23] Shute, S. (2007) Satellite Tracking of Offenders: a study of the pilots in England and Wales. Research Summary 4. London: Ministry of Justice.
[24] A Complicated Business: A joint inspection of electronically monitored curfew requirements, orders and licences
http://www.hmcpsi.gov.uk/documents/reports/CJJI_THM/OFFM/electronic_monitoring_thema1-rps.pdf

[25] Criminal Justice Joint Inspection. 2008. A Complicated Business: *A joint inspection of electronically monitored curfew requirements, orders and licences.*
[26] Nellis, (2003) 'They Don't Even Know We're There: The electronic monitoring of offender in England and Wales', in Ball, K. and Webster, F. (eds) *The Intensification of Surveillance: crime, terrorism and warfare in the information age.* London: Pluto.
[27] House of Commons Public Accounts Committee (2006) *The Electronic monitoring of adult offenders*, Sixty-second report of session 2005-6, London: The Stationery Office.

11. Would tracking certain offenders (as part of a non-custodial sentence) be effective at preventing future offending?

As stated above, more research would have to be carried out in order to answer this question conclusively or with any degree of authority. Existing evidence does little to show what effect EM has on re-offending or promoting rehabilitation. Unfortunately this was the situation some five to six years ago and is still the case now. Providing EM as a simple add on to other requirements without the appropriate level of forethought will increase the cost of the orders, the level of breach, and having a negative impact on reoffending rates.

The primary research carried out in the UK on EM demonstrated that more than 58% of offenders being monitored were returned to jail or had their tagging orders revoked because of breaches and 21% of them committed fresh crimes while being tracked[28]. As a result the Ministry of Justice decided that the trials would not be rolled out but the technology would be kept under review. More recently Ministers admitted to MPs that in regard to UK research, "current evidence suggests that electronic monitoring has a neutral effect on reoffending".

An evaluation of three Canadian electronic monitoring programmes found no clear evidence that they had a positive impact on re-offending[29]. Other studies have found that there were no significant differences in compliance levels for electronically monitored curfew orders compared to a comparison group serving other community penalties[30]. More recently there has been some more positive research suggesting that for certain groups it can reduce reconviction levels[31] even when compared to other community sentences[32]. However this is still far from conclusive and some have suggested the positive results could be attributed to other actions[33].

Despite this there has been some positive signs that were EM is used alongside positive interventions and treatments the level of reoffending can be reduced[34]. For example, there was a 10% recidivism reduction for studies that included a modicum of treatment in addition to the primary EM interventions. Support from probation officers being highlighted as being specifically important in relation to compliance levels[35]. Some Scottish findings indicate that the sanctions had some limited success in reducing anti-social capital in the young offenders' lives, particularly when they were complemented by mechanisms for rehabilitation and care. However, when used in isolation the sanctions often failed to build pro-social capital and, in some cases, functioned as an additional

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[28] Shute, S. (2007) Satellite Tracking of Offenders: a study of the pilots in England and Wales. Research Summary 4. London: Ministry of Justice.

[29] Bonta, J., Wallace-Capretta, S. and Rooney, J. (2000b) 'Can electronic monitoring make a difference? An Evaluation of Three Canadian Programs, *Crime Delinquency,* 46: 61-75

[30] Suggs, D., Moore, L. and Howard, P. (2001) *Electronic Monitoring of Offending behaviour: reconviction results from the second year of trails,* Home Office Research Finding 141. London: Home Office; Renzema, M. and Mayo-Wilson E. Can electronic monitoring reduce crime for moderate to high-risk offenders? Criminal Justice Program, Kutztown University, Kutztown.

[31] Marklund, F. and Holmberg, S. (2009), 'Effects of Early Release from Prison Using Electronic Tagging in Sweden', *Journal of Experimental Criminology*, vol. 5. 41–61

[32] Killias, M., Gillieron, G., Kissling, I. And Villetaz, P. (2010) Community Service versus electronic monitoring – what works better? Results of a randomised trial. British Journal of Criminology 50. 1155-1170.

[33] DeMichele, M. and Payne, B. (2010) Electronic supervision and the importance of evidence based practices. Federal Probation 74(2).

[34] Payne, B. and Gainey, R. (2000) The Electronic Monitoring of Offenders Released from Jail or Prison: Safety, Control, and Comparisons. *The Prison Journal* 2004; 84; 413

[35] Gibbs, A. and King, D. (2003) 'Is home detention in New Zealand disadvantaging women and children' *The Journal of community and Criminal Justice,* 50 (2): 115-126.

social strain conducive to further criminal offending[36]. This evidence combined furthers the argument that EM should not replace the vital human interaction needed for most offenders and highlights it limitation when operating on its own.

12. Which types of offenders would be suitable for tracking? For example those at high-risk of reoffending or harm, including sex and violent offenders?

Certain types of offenders have been shown to be more likely to benefit from electronic monitoring including lower level offenders[37] who may not require the same degree of interaction with probation officers to maintain crime free lives as those categorised as higher risk.

13. For what purposes could electronic monitoring best be used?

As stated above, the best use of electronic monitoring is for those who would otherwise receive a custodial sentence, thus allowing individuals, especially low level non-violent offenders, to remain within their communities and families where their networks of social and personal capital is best positioned to aid their path way towards desistance from crime whilst minimising the impact on their employment and care responsibilities.

14. What are the potential civil liberties implications of tracking offenders and how can we guard against them?

Monitoring offenders at all times would seem pointless for the vast majority of offenders. For those who are serious enough offenders then they will in all likelihood have received custodial sentences.

15. Which offenders or offences could a new power to order the confiscation of assets most usefully be focused on?

The CJA believes that the confiscation of assets is unlikely to be an effective punishment, and has serious concerns about the use of such a measure, whether as a sanction following non-payment of a fine or as a punishment in itself. Many offenders have low incomes, and the non-payment of a fine is not necessarily 'wilful' but rather a result of their difficult financial circumstances.

In addition, many offenders are also in debt, which will further hinder their ability to pay: a report by Citizens Advice, for instance, has documented the widespread nature of this problem amongst prisoners. The same report also highlights that, among prisoners, a significant proportion of debts are arrears on credit cards or unsecured loans. [38] As such, the CJA would question the idea that there are offenders who are cash poor but who are able to pay through their assets. In many cases, assets will have been purchased using credit cards and high-interest loans, and cannot, therefore, truly be said to reflect an ability to pay. The CJA also believes that the seizure of assets will have a disproportionate impact, with the punishment effected through this extending to the families of offenders.

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[36] Deuchar, R. (2012) The impact of curfews and electronic monitoring on the social strains, support and capital experienced by youth gang members and offenders in the west of Scotland. Criminology and Criminal Justice, 12 (2).

[37] Gainey et al, 2000

[38] Citizens Advice (2007) *Locked out: CAB evidence on prisoners and ex-offenders*- available at http://www.citizensadvice.org.uk/locked_out_full_report_text_final-2.pdf

Asset seizure is, moreover, likely to have a particular effect on the families of women offenders, many of whom have dependants, and many of whom may be the sole carer for these. 66% of women prisoners, for instance, are mothers with dependent children under 18[39], and at least one third of women offenders are lone parents prior to being imprisoned.[40]

16. How could the power to order the confiscation of assets be framed in order to ensure it applied equitably both to offenders with low-value assets and those with high-value assets?

If a confiscation of assets order is introduced it should be implemented based on average daily earnings so that the punishment is proportionate.

18. What would an appropriate sanction be for breach of an order for asset seizure?

There should be no consideration of increasing the sanction or imposing an additional fine as compliance with that would likely be exceptionally low.

19. How can compliance with community sentences be improved?

As mentioned earlier, community sentences are already more effective than short term prison sentences. However, we agree that more could be done to strengthen community sentences and reduce the number of infringements and breaches of the orders.

It is the view of the CJA that greater compliance with community sentences can be achieved by focusing more on substantive rather than merely formal engagement. Presently, formal engagement is seen as paramount. This can mask defiance and risk and therefore the potential of reoffending. Whereas formal non-compliance can mask attempts to substantively comply. This situation risks creating cynicism and superficiality, undermining legitimacy. It creates an atmosphere whereby turning up and signing in is seen as all that matters, thereby inviting subversion[41]. We feel it is preferable that individuals substantively engage with orders through active participation e.g. in drug treatment orders or put effort into community payback programmes.

Introducing extra punitive measures or harsh breaches have proven in the past to have a very minimal effect[42]. A pilot introduced to increase compliance by threatening the reduction of Job Seekers Allowance had the very modest reduction of 1.8% in breach rates. The reason for this limited effect is that the sanction was not described as a major influence on their behaviour, the sanction was constrained by their limited consciousness of it and by existing attitudes to attendance.

Non-compliance to community orders is very often affected by factors such as unstructured or chaotic lives, problematic drug and alcohol use, and confrontational attitudes to probation and the consequences of breach. Where non compliance relates to these difficult personal issues, a rejection of probation or where offenders have no personal motivation to address their criminal behaviour using an additional punitive

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[39] The Fawcett Society (2009) 'Women and the criminal justice system: The facts' – available at http://www.fawcettsociety.org.uk/index.asp?PageID=432

[40] Smee, S. (2009) *Engendering Justice – From Policy to Practice*, London: The Fawcett Society.

[41] McNeill, F. and Robinson, G. Rethinking Compliance in the Community. Fergus McNeill, Gwen Robinson.

[42] Knight, T., Mowlam, A. Woodfield, K. Lewis, J. Purdon, S. And Kitchen, S. Evaluation of the community sentences and withdrawal of benefits pilots http://research.dwp.gov.uk/asd/asd5/rports2003-2004/rrep198.pdf

measure has been found to have very limited impact. It will usually only have the potential to give a small additional incentive to comply among those with other reasons to do so, or whose behaviour was not entrenched whilst simply increasing the chances of further non compliance with the remaining group of offenders. Research has shown that making the order more onerous often simply sets offenders up to fail, as they had proved themselves unable to cope with an order of lower intensity[43].

As briefly mentioned earlier, providing a consistent offender manager who shows trust and belief in the offender has a positive impact in terms of re-offending and compliance rates[44]. Active and participatory probation officers who are seen as reasonable and fair have been seen to "engender a sense of personal loyalty and accountability". What seems clear from the desistance research is that, through the establishment of effective relationships offender managers can be a crucial factor both in preventing breach and preventing recidivism by persuading offenders to comply with the law[45].

Sanctions, such as community payback and alcohol requirement orders, on their own can help build necessary human capital, in terms of increased employability etc, needed to support lives outside of crime but they cannot generate the social capital that is extremely important to encourage desistance[46], that resides in the relationships through which we achieve participation and inclusion in society, namely with our families and communities. Promoting desistance from offending and compliance with community orders means developing the offender's strengths—at both an individual and a social network level—in order to build and sustain the momentum for change.

We are aware of the low completion rate of the drug rehabilitation requirement (DRR). A 2010 National Audit Office report[47] reported that only 47 per cent of offenders completed their DRR in 2008-09 and expressed concerns about the failure to evaluate the impact of DRRs. In order to build on the lessons of Drug Treatment and Testing Orders and Drug Rehabilitation Requirements and further develop community sentencing options and increasing levels of compliance more evidence and evaluation must be made of these orders. Without an impact evaluation the Ministry is not able to assess the impacts of the Requirement, such as any change in offenders drug use and criminal activity. Nor will it be able to understand how to improve the percentage of drug users who comply with, and complete, the requirement, or the value for money provided.

20. Would a fixed penalty-type scheme for dealing with failure to comply with the requirements of a community order be likely to promote greater compliance?

Presently, an offender who is sentenced by a court but fails to comply with any of the requirements of their community order must be dealt with in one of two ways set out in statute; either vary the existing order by making its requirements more onerous or revoke the order and resentence the offender as if they had just been convicted of the original offence. We support the addition of the option of a fixed penalty fine where it

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[43] Mair, G. Cross, N. and Taylor, S. (2008) The community order and the suspended sentence. Centre for Crime and Justice Studies.
order: the views and attitudes of sentencers
[44] Rex, **S. (**1999**),** Desistance from Offending: Experiences of Probation. The Howard Journal of Criminal Justice, 38: 366–383
[45] McNeill, F. and Maruna, S. (2007) 'Giving Up and Giving Back: Desistance, Generativity and Social Work with Offenders', In G. McIvor and P. Raynor, (eds), *Developments in Work with Offenders*. London: Routledge
[46] Farrall, S. (2002) *Rethinking What Works with Offenders: Probation, Social Context And Desistance From Crime*. Cullompton: Willan Publishing.
[47] National Audit Office. (2010) Tackling Problem Drug Use.

has the potential to lead to fewer incidents of breach of community sentences and with it the number of people being received into custody.

We believe that a fine can be an appropriate response in itself in cases where the offence is serious enough to merit a community order. We therefore believe that there is the potential to use a fixed penalty for individuals who have seriously failed to comply with their community sentence in a substantial manner and their offender manager would otherwise have instigated breach proceedings against them.

We would hope that it is not seen as a softer option than the existing warning and as a result used more freely for those responsible for administering them. Ideally it is used as a mechanism whereby an individual would otherwise be given an automatic breach. It is important that they are seen to be a mechanism that assists in reducing the level of breach and as a result those who are not in a position to pay a fine should not be issued with one as it is simply setting them up to fail.

The CJA would emphasise the importance of enquiring into the financial circumstances of the offender and taking these circumstances into account when issuing the financial penalty. As stated in response to question 15, many offenders have low incomes, with a significant proportion in receipt of benefits. Imposing a fine that is beyond their means will make payment of it unlikely, and may also make it more difficult for them to turn away from offending behaviour.

A report published by Revolving Doors, a member of the CJA, highlights a significant issue in relation to fixed penalty schemes. For those with multiple needs, they are “a significant financial penalty … the majority of people we interviewed would struggle to pay the fine in the 21 days. These fines may lead people to resort to crime as a means of getting the money to pay the fine. For many people this is the only way they know to get money in a short period of time... can be seen as a fast track into the criminal justice system for vulnerable people if used inappropriately.”[48] As such the use of non-means tested financial penalties need to be carefully applied.

21. Would a fixed penalty-type scheme for dealing with failure to comply with the requirements of a community order be appropriate for administration by offender managers?

As offender managers are those with the greatest knowledge of the individual circumstances of the offender and the extent to which they are attempting to comply with their respective community orders it would seem appropriate that they administer the fixed penalty scheme with perhaps some degree of oversight from sentencers. They are in the best position to determine the legitimacy of justifications and the seriousness of non compliance by an offender. They are also highly skilled in the area and so their discretion is something that should be properly valued and utilised.

However, there are some serious concerns amongst probation officers that we share. Pressure could be placed on them to use these fines in place of more informal warnings that are handed out and as a result lead to greater levels of breach proceedings. This could also reduce levels of trust individuals have in probation services.

[48] Pratt, E. and Jones, S. (2009) *Hand to mouth: The impact of poverty and financial exclusion on adults with multiple needs*, London: Revolving Doors.

22. What practical issues do we need to consider further in respect of a fixed penalty-type scheme for dealing with compliance with community order requirements?

As mentioned, the fixed penalty scheme should be used as a mechanism whereby an individual would otherwise be given an automatic breach, and should not be handed out where an offender would otherwise have received a warning. It is important that these measures assist in reducing the level of breach. There is also a danger in giving out fines to people who are not in a position to pay immediately which is simply setting them up to fail.

Additionally, the proposals would suggest that any offender manager could issue a fine for unreasonable non compliance. If an offender fails to pay there is to be automatic breach proceedings instigated. However, the power to determine a breach in the public interest was to be reserved to public probation. If a low risk offender was managed by an individual from a private or voluntary agency and they failed to pay a fine when issued with one for non compliance of an order then the reservation that public probation must decide on breach would therefore be bypassed.

24. How else could more flexible use of fines alongside, or instead of, community orders be encouraged?

If implemented with regard to people's ability to pay and their circumstances, then fines can often provide a proportionate and sensible response to the offending behaviour. We agree there is no reason why courts should not consider imposing a high-value fine rather than – or as well as – a community order.

In order to encourage the use of fines the CJA feels strongly that magistrates must build up a greater degree of confidence in them. A report prepared by the Magistrates' Association declared that they feel there is a real step down between community penalties and fines. They also felt that by imposing a fine rather than a more obvious punitive sentence the system may be seen to be bringing in one law for the rich etc.[49] which cannot generally be justified. It must be demonstrated to them that fines should be seen as being on the same level as most community orders.

Research has shown that sentencers have avoided the use of fines in the past due to the problem of collection. Many people who appear before the magistrates courts are serial offenders, who come back to court every few months for a variety of minor offences and have rarely cleared one fine before the next is imposed. To assist in this periodic court reviews could be instigated which would hopefully avoid offenders suddenly stopping their payments and subsequently finding themselves at a Fines Enforcement Court. Whilst we currently have Fines Enforcement Officers a better system might be to introduce regular review courts in much the same way as the currently piloted Community Courts.

Fines are entirely punitive, and therefore there may be occasions when sentencers feel that the best way to stop someone offending would be to provide them with support from the Probation Service. The CJA believes that although this may produce positive results it has been evidenced that there are occasions where issuing a positive intervention for rehabilitative reasons actually produces negative results and a fine would have been a more productive sentence.

[49] The Magistrates' Association. (2009)Sentencing Policy and Practice Committee. The Use of Fines – Policy.

26. How can we establish a better evidence base for pre-sentence RJ? 27. What are the benefits and risks of pre-sentence RJ?

We believe it is appropriate to take the responses to Q.26 and Q.27 together.

The Criminal Justice Alliance believes that a duty should be placed on criminal justice agencies to offer restorative justice to all victims of crime pre-sentence, whenever an offender pleads guilty and agrees to participate in the process, and where it is appropriate and safe to do so. We fully support the responses by the Restorative Justice Council and Prison Reform Trust, members of the CJA, on this point.

We think that there is already a strong evidence base for the use of pre-sentence RJ but more could be done in order to disseminate this to the public. Establishing an even stronger evidence base would simply require offering more victims and offenders the opportunity to partake in pre-sentence RJ and monitoring their experiences, feelings and general outcomes.

The CJA strongly believes that for victims of adult offenders, pre-sentence RJ should be the primary delivery point for offering RJ in the adult criminal justice system. This is because RJ as an alternative to prosecution – which should still be an option for the CPS/Police (eg to refer to a Community Justice Panel) – is currently likely to be acceptable to society only for more minor offences by adults.

Offering RJ at the pre-sentence point for more serious offences makes it clear to the public and to the judiciary that these offenders will still come back to Court and receive an appropriate sentence, and that the final decision about their sentence remains squarely with the judiciary. It helps to inform judges in their sentencing decisions.

In modelling provided to the Government in 2010, the Restorative Justice Council and Victim Support showed that if restorative justice was provided pre-sentence for victims of serious offences – burglary, robbery and violent offences – it would lead to £185 million cashable cost-savings to criminal justice agencies through reductions in re-offending alone[50]. Further savings would be made through changes in sentencing patterns.

The Irish Government Commission on restorative justice examined the international evidence and legislative arrangements for RJ. Its final report recommended that RJ be delivered primarily at the pre-sentence stage for adult offenders, with post-sentence restorative justice available as a back-up[51].

Pre-sentence restorative justice, can help offenders to understand the impact of their crime. It can also enable victims to move on from the offence: Ministry of Justice research found that more than 70% of victims felt that they had been provided with a sense of closure. The meeting can then be taken into account at the point of sentencing, so that an offender's remorse can be recognised. This can result in less severe sentencing, helping to relieve some of the pressure on the prison and probation services, whilst maintaining the confidence of victims. Case law and research evidence suggests that, delivered pre-sentence for adult offenders, restorative justice leads to changes in sentencing patterns.

28. How can we look to mitigate any risks and maximise any benefits of pre-sentence RJ?

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[50] Victims' justice? What victims and witnesses really want from sentencing. Victim Support 2011.

[51] Irish Department of Justice (2009). National Commission on Restorative Justice.

We are strongly of the view that the best way of maximising the benefits of pre-sentence RJ is to make it widely available to all victims across the country. We believe this can be achieved through new legislative provisions, highlighting this as an option to sentencers and providing them with guidance on the kinds of cases where it might be particularly beneficial to request RJ be offered to the victim and offender pre-sentence.

The best way to mitigate the risks in relation to RJ are to ensure that training is of high quality and complies with the Restorative Justice Council Trainers Code of Practice and that individual practitioners are Accredited and Registered with RJC.

29. Is there more we can do to strengthen and support the role of victims in RJ?

The CJA appreciates that the role of victims during the restorative justice (RJ) process is of paramount importance. Unless the victim feels safe and secure, the success of the entire process, especially in terms of victim satisfaction, is likely to be undermined. As Victim Support has highlighted, restorative justice can help victims to feel a sense of closure, and can be effective in alleviating post-traumatic stress symptoms for victims of serious crime. In this way, the process by itself can substantially help make victims feel safer.

The primary method for ensuring the safety of victims is to guarantee that they voluntarily sign up to the restorative programme. In order for this to happen they must be made fully aware of all stages of the process and understand all potential outcomes. There should be no undue influence or pressure put upon them to partake or contribute to a restorative scheme. The process of offering and explaining to victims RJ services is therefore very important and should be done by appropriately trained individuals.

Once victims have agreed to partake in restorative justice it is important that they are supported through all stages, their feelings monitored and the optimum methods of supporting them quickly identified. This should not stop when the RJ process concludes. There should be a duty to support victims afterwards, to ensure that they have suffered no negative or adverse outcomes as a result of the process.

Victims may wish to engage with the offender at different stages of the criminal justice system. They should therefore be offered the opportunity to partake in restorative justice at all stages, including pre and post sentence.

Practitioners involved in restorative justice should receive the appropriate level of training. The Restorative Justice Council, a member of the Criminal Justice Alliance, has set out a Trainers Code that outlines the standards that should be met when people receive training.

Additionally practitioners should work to the National Occupational Standards (2010) and Restorative Justice Council Best Practice Guidance (2011). These national, evidence based standards, endorsed by the Ministry of Justice and Victim Support require practitioners to offer informed choice; ensure the process is voluntary; risk assess and manage the safety of all participants in a restorative process, throughout the process; follow up and evaluate the process. Maintaining these standards is the best way of ensuring the safety of victims in restorative justice. All practitioners who register with the Restorative Justice Council commit to uphold these standards, and have to evidence their ongoing practice and continuing professional development to stay on the register; practitioner registration is the key way to ensure and maintain the quality of restorative practice nationally.

30. Are there existing practices for victim engagement in RJ that we can learn from?

The evidence shows that it is not the agency, nor the professional background of the facilitator, nor the offence type, that leads to positive outcomes, but the quality of facilitation, including the quality of preparation and follow up with all participants. Both volunteers and employees in a wide range of agencies can deliver a good restorative process, if their initial training is good and the skills and ethos of their work are supported and maintained by the agency. Guaranteeing maximum victim engagement and thereby best ensuring positive victim opinions is to promote the quality of facilitators.

It is vital that the facilitator remains impartial and there is the appropriate follow up support and feedback to victims. Any disagreements about the facts of a case should be dealt with during preparation for a meeting.

32. What more can we do to boost a cultural change for RJ?

As mentioned, we firmly believe the next step is to legislate for RJ to ensure it is available to all victims who request it. This would produce the boost for cultural change that the MoJ is seeking.

The Ministry of Justice research has found that victims participating in restorative justice were significantly more likely to think the right sentence had been given than those who saw offenders sentenced 'conventionally'. So there is solid evidence that cultural change is possible with the adequate profile and increased availability of RJ.

36. How else could our proposals on community sentences help the particular needs of women offenders?

Almost two thirds of women in prison are there for non-violent offences. In June 2009, 26% of female prisoners were held for drug offences.[52] The majority of women serve very short sentences, in 2007 63.3% of women were sentenced to custody for six months or less. [53] 28% of women in prison have no previous convictions – over double the figure for men. [54] These are just some of the statistics that demonstrate the need to increase the use community sentences for women and how sentencers are all too often handing out needless short term prison sentences for female offenders. This has the support of the public, as 86% of people agree with a shift away from the use of custody towards the use of community penalties for non-violent women offenders.[55]

Women offenders are substantially more likely to be primary carers than males. Electronic monitoring must take consideration of this. They should not be frightened to leave their homes when their responsibilities are called into action such as bringing a child to school or an unexpected doctor's appointment etc.

As expressed earlier we are supportive of the increased use of fines, especially were they replace unnecessary community sentences or reduce the rate of breach. However, many women in contact with the criminal justice system do not have the means to pay fines. There is a concern that an increased use of fines could be counter-productive as much of their offending is related to a lack of money.

In general the CJA is disappointed with the limited effect the proposals within the consultation will have on women offenders. The consultation admits that women are less likely than their male counterparts to receive a community and yet little is talked about how to address this significant issue. As a report the CJA published earlier this year highlighted[56], too many woman are still going to prison for non violent first time offences. We support the commitment to continue funding the essential and excellent work that Women Centres are carrying out but it is not in our view sufficient.

37. What is the practitioner view of implementing enforced sobriety requirements?

The CJA does not believe that sobriety orders should be seen as a priority for tackling the alcohol misuse issues of offenders. We are concerned that too great an emphasis could be placed on their implementation, taking focus away from existing orders and programmes that are in vital need of increased attention.

Presently alcohol services are also in short supply in the community. A report published this year by the Centre for Mental Health, a member of the CJA, highlights availability of the Alcohol Treatment Requirement as a problem[57] as a result; so too does a 2009 study by the Centre for Crime and Justice Studies[58], also a member of the CJA, and a 2008 report

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[52] P.23: Bromley Briefings, 2009.
[53] P.14: *Bromley Briefings*, 2006.
[54] P.23: *Bromley Briefings*, 2009.
[55] Women and justice: Third annual review of the Commission on Women and the Criminal Justice System. 2007
[56] Hedderman, C. (2012). Emprty Cells or Empty Words?
[57] p.2: Fitzpatrick R. and Thorne L. (2011) *A label for exclusion – Support for alcohol-misusing offenders*, London: Centre for Mental Health
[58] Mair, G. and Mills, H. (2009) *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.

by the National Audit Office.[59] Roughly 3% of all community orders involve this requirement. This is despite a far higher percentage of offenders having an alcohol misuse problem. These programmes seek to deal with the reasons for the alcohol misuse, why it led to offending behaviour and how to assist the individual reconcile the problem. Addressing this inadequate provision of alcohol treatment services in both custody and the community is a more important issue than introducing untested and under researched sobriety orders.

Several months ago the Chief Executive of Alcohol Concern stated his belief that alcohol referral schemes in which the police, once they have apprehended somebody for a crime, refer them on to an alcohol service where that person receives some advice, support and even counselling if needed they are more appropriate than sobriety orders as they address why people are drinking the way they are, unearthing the underlying causes of the problem behaviours.

38. Who would compulsory sobriety be appropriate for?

From the evidence available from America enforced sobriety would appear to have the greatest impact on individuals who have committed several incidents of drunken driving.

Unfortunately the research is simply not there as to the likely success of this in regards other offenders or individuals. The CJA hopes that further evidence will tell us what groups it could potentially help prevent from reoffending. However we note that the planned pilot scheme to be held in Strathclyde no longer appears to be going ahead, as it was expected this would provide us with valuable information.

Plans to introduce sobriety orders for individuals involved in violent offending or those in urban centres on binges may not prove successful. Results of the alcohol arrest referral scheme suggested that the majority of those arrested within the night-time economy are not prolific offenders[60]. There was some evidence of reduced alcohol consumption among those who received the intervention, but for a number of reasons this finding should be treated with caution. Overall there was no strong evidence to suggest that delivering alcohol interventions following arrest could impact on criminal justice outcomes, namely reducing re-offending.

39. Are enforced sobriety requirements appropriate for use in domestic violence offences?

Whilst the CJA recognises there is the potential that the requirement could assist in reducing domestic violence in certain circumstance where the offending is definitively linked to alcohol we are more concerned by the views expressed by some practitioners that it could actually increase domestic offending. By preventing a partner socialising the order could in fact lead to further aggressive behaviour which would be directed at those around them, namely their partners. For this reason we do not believe sobriety orders should be used for those involved in domestic violence and certainly not unless attached to other interventions and programmes that address deeper behavioural issues.

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[59] p.26: National Audit Office (2008) *The National Probation Service: The supervision of community orders in England and Wales*, London: The Stationery Office.

[60]Blakeborough, L. and Richardson, A. (2012) Home Office Research Report 60. Summary of findings from two evaluations of Home Office Alcohol Arrest Referral pilot scheme http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/horr60?view=Binary

40. What additional provisions might need to be in place to support the delivery of enforced sobriety requirements?

The CJA does not believe that enforced sobriety orders should be used as stand-alone devices where the individual involved has alcohol issues. There is a need to offer supportive services within the community that would help them to effectively confront and address their alcohol misuse.

42. What do you consider to be the positive or negative equality impacts of the proposals?

With the exception of gender, the consultation is silent on equality issues, in particular race and disability. This is despite reference to BAME groups within the EIA and with evidence that different BAME groups are disproportionately over-represented throughout the criminal justice system. The encounters BAME groups have with both criminal justice and health services are documented as being different, and predominantly negative to that of their white counterparts. Yet there is no acknowledgement of this.

The equality impact assessment (EIA) is also critically weak in areas; specifically its assessment of policy proposals and its exploration of their likely consequences for BAME groups. In its analysis of the victims of crime, the EIA notes that there are small differences in the risk of being a victim of overall crime, between BAME people and white people. This may be the situation. However, an overall snapshot of victims of crime does not give sufficient insight into specific crimes which are much more emotive and arguably bring greater harm to the victim. This is especially the situation for hate crime. When exploring victim data of hate crime it is evident that people from BAME groups are significantly more likely to be the victim of racial hate crime. This difference must be considered more thoroughly, and mitigated and justified where necessary, when proposing to use restorative justice as an effective community sentence when power dynamics exist.

Furthermore, neither the EIA nor consultation offers adequate analysis or reference to the use of RJ for racial hate crime. Although evidence exists to show the value of RJ, pre and post sentencing at a community level, caution must at least be acknowledged when proposing an upscale in the use of RJ which may involve victims of racial hate crime. This should not only consider the skills of facilitators to conduct mediation sessions subsequent to race hate crime but also the extent of RJ usage in this area.

Neither the EIA or consultation document provides any analysis of the possible equality implications of payment by results. Notwithstanding, it is assumed that payments by results *"will give… freedom to work with offenders in new and innovative ways, and seek to extend and diversify the market of offender service providers"*. This is an unsubstantiated remark which requires sufficient safeguards to ensure it can be realised. As many BAME organisations are small and not long established they do not therefore have the same financial reserves as larger organisations. This makes competing for commissioned services on a payment by results basis unfeasible. It should therefore be expected that commissioned organisations should not only provide monitoring data and comply with the general duty of the Equality Act 2012, but also be verse with the provisions and requirements of the Public Sector Equality Duty.

Additionally, as mental health falls within the protected characteristic of disability, it is surprising that this is not more thoroughly explored. It is absolutely crucial that any services involved in the delivery of treatment requirements or other elements of the community sentence are capable of supporting the different needs of BAME offenders. This is especially the situation as it is well established that mental health services and

learning disability services already struggle to address the specific needs of people from BAME communities.[61] The EIA does indicate that BAME groups constitute a greater proportion of offenders commencing mental health treatment requirements than any other community order requirement. However, this needs to be thoroughly explored and given appropriate reference within policy proposals.

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[61] See Faculty of the Psychiatry of Learning Disability of the Royal College of Psychiatrists (2011) *Minority ethnic communities and specialist learning disability services* and National Mental Health Development Unit (2009) *Delivering Race Equality In Mental Health Care: A Review*