



Government response to the Justice Select Committee's Report: Towards Effective Sentencing

**Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice**

**By Command of Her Majesty
October 2008**



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Introduction

The Government welcomes the Justice Select Committee Report: *Towards Effective Sentencing* and is grateful to the Committee and all those who gave evidence in the preparation of this Report.

The Government's response to the conclusions and recommendations of the Report are set out below.

Government's response to the Committee's recommendations and conclusions

We have identified 67 separate recommendations or conclusions from the Committee's report, which we have numbered, and for which we have provided paragraph references.

Background

- 1 Changes in sentencing policy and practice leading to longer sentences have been a significant contributor to the unexpected and unplanned increase in both prison and probation populations. We urge the Government to address sentencing policy in a more considered and systematic way and to reconsider the merits of this trend. This would also provide an opportunity to deal with the proliferation of a complex range of unimplemented, or ineffective provisions. (Paragraph 17)**
- 2 The sentencing regime has been complicated by both the pace and volume of constantly changing legislation. In addition to dealing with new or short-lived criminal offences, sentencers are faced with Acts intended to simplify and clarify sentencing regimes that are themselves swiftly amended. The Government should undertake much more effective policy appraisal in advance of legislation, rather than implement hasty legislation which has previously resulted in unplanned but predictable consequences. (Paragraph 20)**
- 3 The Criminal Justice Act 2003 is a particular example of legislation which was not thought through and had inadequate provision for its implementation. (Paragraph 21)**

This is the first Government since the war to cut crime, and to do so by a third generally, to reduce household burglary by 50 per cent and car crime by almost 60 per cent. We have created safer communities through firm punishments which not only deter but also reform. We need make no apologies, therefore, about our approach to law and order.

We have created new sentences for serious violent and sexual offenders to ensure that they are kept in prison or under supervision for longer periods than previously. These public protection sentences do what they say – enable society to be better protected from serious dangerous criminals. We have provided that previous convictions, where they are recent and relevant, should be regarded as an aggravating factor which increases the severity of the sentence. This is only right and provides for the courts to treat previous convictions in a consistent way. Such reforms have increased sentence severity for serious, and seriously persistent offenders.

But at the same time we have created more flexible sentencing options for the courts including, for less serious offences, the generic community order which enables the courts to tailor the sentence to the offence and the offender. We have also been consistent in our message that prison must be reserved for the most serious, dangerous and persistent offenders but that tough community sentences often provide a more effective alternative to short custodial sentences. This is a considered and sensible sentencing policy which has delivered greater public protection and significant reductions in re-offending.

The increase in the prison population in recent years is the result of a number of factors, not simply any increase in sentencing severity, and the interaction between these factors is complex. For a fuller explanation of this see *The Story of the Prison Population*, Ministry of Justice, December 2007.

The Government recognises the concern, especially among practitioners, for less frequent changes in the law. There is however a need to balance the requirement for stability against the need to ensure that the system and the substantive law are responsive to fast-moving developments in a dynamic society and to changing demands from the public and practitioners.

Prison sentences which punish and reform are a vital part of a justice strategy which has contributed to this fall in crime. Prison is the right place for the most serious, violent and seriously persistent offenders and we will always ensure that there are enough prison places for such offenders. Since 1997 the Government has increased prison capacity by over 23,000 places, and we are committed to bringing capacity up to 96,000 by 2014.

This is the right approach and the one that will best protect the public. However, we also recognise that prison is not the right answer for every offender; for some the most effective way of turning them away from crime is through a tough community sentence where they may both pay back their debt to society as a

punishment but also have the opportunity to address their offending behaviour. So we have ensured that the courts have a full range of sentencing options at their disposal, including fines, which are now more effectively enforced than ever before and which represent the most efficient and effective response to many offences.

4 Lord Carter's review was a missed opportunity for a fundamental consideration of problems with sentencing and provision of custodial and non-custodial facilities in England and Wales. We share the concerns expressed to us that Lord Carter's review was based on wholly inadequate consultation and a highly selective evidence base. (Paragraph 29)

We do not agree. Lord Carter's report was a key contribution to the debate on the use of custody and the Government is grateful to him for his valuable work. Offender Management and Sentencing (OMS) Analytical Services (previously RDS NOMS) in the Ministry of Justice provided a range of evidence in response to requests from the Carter Review team. The evidence was subject to the Ministry of Justice usual quality assurance processes. This evidence was made available to the Justice Committee and OMS Analytical Services has continued a dialogue with the Committee dealing with further queries to support its understanding of the impact assessment model used to generate options for prison and probation caseloads for the Carter team.

The Government supported the independent review by seconding two OMS Analytical Services staff to provide advice and evidence for Lord Carter's demand workstream. The two members of staff were managed by Lord Carter and his team for the duration of the review.

5 The Government's focus on huge public investment in building more prison places is a risky strategy. Building new prisons will not solve the fundamental and long-term issues that need to be addressed in order to manage the escalating prison population and move towards an effective sentencing strategy. Moreover, this approach was initiated without sufficient investigation into the costs and benefits and in spite of the Government's own statements that the provision of new places does not present a long-term solution to the current prison crisis. (Paragraph 33)

Protecting the public is our most important goal. It must be achieved through a criminal justice system that punishes and reforms offenders and has the confidence of the public. Prison is essential to protecting the public and punishing offenders. Prisons are the right place to punish and reform the most violent, serious and persistent offenders and we will always provide enough places for

such people. Where custody is not appropriate it is also incumbent on the Government to provide effective community sentences, which it has delivered through the reforms in the Criminal Justice Act 2003. We have put in place a sentencing framework designed to ensure that each offender is handed down a sentence that best meets the needs of the particular case, at any level of seriousness, and as the court judges this.

It is incumbent on the Government to provide sufficient places to meet the sentence requirements of the courts, as well as to hold those defendants whom the courts consider it necessary to remand in custody prior to trial. It is vital that we plan to meet expected demand, which is why we are investing in a programme of prison building. This expansion will not only secure a significant number of additional places but will also allow us to modernise the estate; much of the prison estate is old and not best designed for efficient and humane management of prisoners. It is, therefore, incumbent on us to modernise the estate and, when capacity permits, to release some of the older and more uneconomic prisons for other uses.

Our approach is, however, based on more than just expanding the prison estate. A substantial achievement of the past decade has been to make prisons far more constructive institutions to reform and punish offenders. We have invested in drug treatment, training and education which are essential for reducing re-offending and cutting crime. Prison drug treatment funding has increased year on year since 1996/97 - up 1179 per cent, and spending on offender learning has almost trebled since 2001, and now stands at £164m.

A consultation on larger prison complexes has recently ended. Ministers' conclusions on this will be announced in due course.

6 Lord Carter's recommendation for the consideration of potential longer-term mechanisms to provide structure to sentencing are welcome. Nevertheless, we are concerned that an ambitious timetable was set for the working group tasked with this consideration. The Government should not seek to implement major changes in this area without effective evaluation of the potential consequences and the resources required to make such changes effective. We will continue to monitor developments in this area.
(Paragraph 38)

The Government and the Lord Chief Justice have received the report of the Sentencing Commission Working Group. Both the Lord Chancellor and Lord Chief Justice are currently considering its recommendations.

Imprisonment for Public Protection sentences and the pressure on the Parole Board

7 The primary objective for Imprisonment for Public Protection (IPP) is the prevention of future harm and offending by incarceration, rather than punitive imprisonment triggered by an actual offence, or rehabilitation. We believe that such preventive detention has to be a rare exception. The use of other, less draconian, measures can be used to manage the risk of individuals to re-offend. Preventative civil orders such as ASBOs, Serious Crime Prevention Orders or Violent Offender Orders, are a complement to Imprisonment for Public Protection sentences where the latter would be disproportionate. Yet, neither the criminal justice system nor civil orders can eradicate the risk of serious offending or re-offending by dangerous individuals. The same problem arises with measures under mental health legislation. Our society will never be a risk-free one; it would be wrong to create the expectation that it can be. (Paragraph 45)

8 Where continued imprisonment for public protection in the form of an IPP sentence is narrowly targeted at those offenders who pose a very serious risk to the public, and is established on the basis of conclusive evidence before a court, we believe it can be a necessary, effective and proportionate penal intervention. (Paragraph 46)

9 We stress that, as a matter of policy and common sense rather than law, it is wholly indefensible to incarcerate prisoners of any category beyond the expiry of their tariff or their eligibility for release on licence simply because of a lack of resources on the part of HM Prison Service or the Parole Board. (Paragraph 55)

10 Imprisonment for Public Protection sentences should only be imposed with a tariff of a length giving the Prison Service a realistic chance to offer the necessary interventions and programmes to allow the Imprisonment for Public Protection prisoner to reduce his or her risk factors and which give the Parole Board the time to carry out the relevant assessments and hearing to determine whether IPP prisoners should be released on licence. Where IPP sentences with tariffs as short as 28 days have been imposed, it is disturbing but unsurprising that large numbers of IPP prisoners have to remain in prison beyond expiry of their tariffs as there

is insufficient time for proper completion of rehabilitative courses and programmes and for the Parole Board to carry out relevant assessments.
(Paragraph 56)

11 The removal of judicial discretion in relation to the imposition of Imprisonment for Public Protection sentences for certain second-time offenders was a retrograde step. (Paragraph 61)

12 The substantial number of Imprisonment for Public Protection sentences with short tariffs demonstrate that this type of sentence has not been targeted at those offenders who positively pose a grave risk to the public for fear of committing serious violent or sexual offences, but has been imposed on a much larger group of offenders whose offending behaviour does not merit a disposal as draconian as an IPP sentence. It is difficult to understand why an offender who might only receive a short determinate sentence should be given an Imprisonment for Public Protection sentence for having a previous conviction for a comparatively minor offence and be considered as ‘dangerous’ and thus merit an indefinite custodial sentence.
(Paragraph 62)

13 We welcome the changes made to the Imprisonment for Public Protection sentence provisions in the Criminal Justice Act 2003. Judges will now regain unfettered discretion in relation to the imposition of Imprisonment for Public Protection sentences so that this type of sentence can be targeted at those offenders posing a very real and serious risk to the public. However, we will be keeping a close eye on the impact of the changes to Imprisonment for Public Protection sentences as they by no means guarantee an effective and appropriate structure for risk based sentencing. (Paragraph 68)

The Government welcomes the recognition that there is a place for public protection sentences. The first duty of any Government is to keep the public safe. Protecting them from known dangerous offenders – possibly for a very long time indeed – is entirely appropriate, and the public protection sentences make a significant contribution to this. However, the Government recognises some of the criticisms the Committee makes and, as the Committee notes, the Government has introduced reforms to the public protection sentencing regime. These should have the effect of minimising the number of public protection sentences with very short tariffs; and they are designed to give a wider discretion to courts so as better to target these sentences on the most dangerous offenders. We believe this refocusing will enable the public protection sentences to be even more effective.

We will continue to monitor the number of Imprisonment for Public Protection sentences (IPPs) and Extended Public Protection sentences (EPPs) given.

14 The system of Imprisonment for Public Protection sentences presupposes a rigorous risk assessment prior to sentencing so as to put the sentencing judge in a position to make an informed and reliable decision on the risk to the public an offender poses. Robust pre-sentence assessment procedures need to be put in place to allow the reformed system of Imprisonment for Public Protection sentences to work in the way Parliament intends. We believe that, in order to be effective, Imprisonment for Public Protection sentences require the judge to be provided with a pre-sentence report including a comprehensive risk assessment. We believe that the Government needs to make adequate resource provision for these purposes. (Paragraph 72)

The Government agrees. A robust pre-sentence risk assessment process already exists in pre-sentence reports underpinned by the use of the Offender Assessment System (OASys). The system is kept under constant review to ensure that it is as effective as possible. Latest information suggests that the judiciary are largely requesting pre-sentence reports and that these are being produced expeditiously. Considerable extra resource has been invested in the Probation Service – since 1997 the real terms funding has increased by 67 per cent.

15 The Government failed to engage in adequate resource and capacity planning for the coming into effect of the Imprisonment for Public Protection sentence provisions in April 2005. Imprisonment for Public Protection sentences were the ‘flagship’ in the Government’s crime reduction and public safety agenda in the Criminal Justice Act 2003, but this policy was not accompanied by the level of custodial resources required to make IPP sentences work. (Paragraph 75)

The Government disagrees with the Committee’s assertion that there was inadequate planning for the introduction of IPP sentences. The increase in the newly convicted IPP population has been broadly in line with projections and has not yet impacted significantly on prison capacity. Prisoners who have received IPP sentences would (prior to the implementation of the 2003 Act) have received lengthy determinate sentences: they are not new prisoners. However, the shortness of the tariff given to many IPP prisoners has caused serious problems for a prison system which in many instances has not been able to prepare prisoners for parole in time for their first parole hearing. Consequently, there has been a build up of IPP prisoners who might otherwise have been released.

We have responded to these problems by introducing, in January 2008, a new streamlined process for assessing and managing IPP offenders through the implementation of offender management for IPPs. Also as a consequence of implementation of offender management and following a strategic review of the management of IPPs, resources are being directed towards early assessment and prioritisation of places on offending behaviour programmes. In addition, further funding of £3m was made available in 2007/08 specifically for the management of indeterminate sentence prisoners, including interventions and a further £3m has been allocated in 2008/09. Changes to the design of the sentence introduced in the Criminal Justice and Immigration Act 2008, discussed above, will help to prevent similar problems occurring in the future.

16 Although the Government has increased the financial resources of the Parole Board, we doubt whether this investment will significantly and sustainably reduce the pressure on the Board caused by Imprisonment for Public Protection sentences. The availability of judicial members of Parole Board panels will remain an issue unresolved by an increase in the Board's budget. It needs to be solved as a matter of greatest urgency as capacity shortages of Parole Board panels directly affect the liberty of the subject where decisions relating to release on licence are concerned. (Paragraph 77)

The Parole Board's budget has increased by 50 per cent over the last five years. Steps have been taken to recruit more judicial members; and various measures to reduce the workload of the Board in areas that are not key to its role in dealing with dangerous offenders – such as the introduction of fixed term recall in the 2008 Act – will provide relief in respect of the overall volume of cases. In addition, Her Majesty's Courts Service has made more judicial time available from September 2008 to March 2009 to address capacity issues. Modelling work is being undertaken to identify and agree the necessary level of judicial time for future years.

17 Realistic resource planning, both for the Prison Service and the Parole Board, cannot be done in the absence of centrally-held comprehensive tariff expiry and release eligibility data. Collating such data is not a matter of large and complicated databases and programmes like the ill-fated C-NOMIS. Collating these data has to be seen as a core management task for NOMS and the Prison Service. We recommend that such a database be created immediately and we expect to be informed of the progress of the central collection of tariff and release eligibility data of all categories of prisoners. (Paragraph 80)

The data are already available. NOMS has two databases which, between them, hold information on release eligibility for both indeterminate and determinate sentence prisoners.

The NOMS Public Protection Unit Database (PPUD) holds details of tariff and release eligibility in respect of all indeterminate sentence prisoners. This database informs NOMS on the eligibility for consideration of release of all indeterminate sentence prisoners whose tariffs have expired. Additionally, in response to the particular issues arising in relation to IPPs, the NOMS IPP database has been established. This database records more detailed information in relation to the progress of IPPs throughout their time in custody.

The Prison Service Inmate Information System (IIS) contains data on the eligibility for either release or consideration for release of all determinate sentence prisoners. Prisons rely upon IIS to ensure that all determinate sentence prisoners have their cases reviewed or are released on the appropriate eligibility date.

18 The Parole Board is charged with making judicial decisions about the sentence length for life and Imprisonment for Public Protection prisoners. It is absolutely vital for the Board to be able to draw on the resources and personnel (including, crucially, members of the judiciary to sit on lifer and IPP panels) to carry out its judicial work. The Ministry of Justice should ensure the adequate functioning of the Parole Board as a court. We recommend that it take urgent action to discharge this duty. (Paragraph 83)

The Government does not consider that the Parole Board is under-resourced. However, as noted above, methods of providing judicial time are being put into effect.

19 Where the Parole Board operates as a court effectively determining the length of custodial sentences for a large number of prisoners it will need the requisite powers to discharge its functions appropriately and in a timely fashion. We recommend that the Parole Board be provided with powers to compel the attendance of witnesses and to make wasted cost orders. (Paragraph 85)

The Government is not persuaded that such powers are necessary. Work is underway to improve the timeliness of hearings through more effective end to end processes.

Short custodial sentences

20 A key element of the coherent sentencing strategy envisaged under the Criminal Justice Act 2003 was to deal with low level offenders by community punishments rather than short custodial sentences. It is clear that this strategy has not worked. (Paragraph 95)

The new sentencing framework introduced under the Criminal Justice Act 2003 was designed to provide the courts with effective sentences to meet the needs of the particular case at every level of seriousness. This included the introduction of the generic community order which provides the courts with a much greater degree of flexibility to put together a tough sentence to manage less serious offenders safely in the community and to address their offending behaviour.

Community sentences are a popular option with the courts. The total number of community sentences given at all courts increased by 44 per cent between 1996 and 2006. The increasing numbers who complete drug rehabilitation requirements, unpaid work, accredited behaviour programmes and other elements of community sentences is testimony to the good work done by the Probation Service and indicates that sentencers can have confidence in the delivery of community orders. This is also reflected in large reductions in re-offending. Between 2000 and 2006 there has been a 23 per cent reduction in the average number of offences committed by adult offenders commencing court orders under probation supervision.

The Government will continue to promote the use of community orders where appropriate, and we have increased resources to deliver intensive alternatives to custody, which we detail below. We will also continue to develop further public confidence in such sentences by giving local communities a say in the unpaid work projects they would like to see done by offenders in their area and by making such work more visible through the introduction of high visibility jackets for offenders engaged in such work.

21 The key to understanding why this change has not taken place is to examine who receives these sentences and why. Unfortunately, the data is

extremely limited. It will never be possible for the Government and key stakeholders to develop appropriate punishments for people if they do not know who they are, what they have done and therefore what punishment might be appropriate. We urge the Government to review current data collection on sentencing practice, identify what areas have gaps relating to key policy objectives and set in place mechanisms to fill them as a matter of urgency. (Paragraph 96)

A significant amount of sentencing data is made freely available: Sentencing Statistics are published on the Ministry of Justice website as National Statistics on an annual basis, once data has been checked and corrected. These data are used internally to assess changes in sentencing. Also published is a Quarterly Sentencing Statistics brief on high level trends in court sentencing. A report on local variations in sentencing in England and Wales was also published on the Ministry of Justice website in December 2007.

These statistics do not give information about the reasoning behind sentencing decisions. Therefore, the recent Sentencing Commission Working Group commissioned a Crown Court Survey exploring the feasibility of conducting an exercise to capture information on factors that influence sentencing outcomes. The survey comprised a one month data collection exercise from 30 April 2007 to 30 May 2008 in ten Crown Court centres. Sentencers were asked to provide information on the factors associated with sentencing in four offence categories: assault, sexual assault, robbery and burglary. The survey successfully captured the key factors that appeared to influence sentencing decisions for the courts and the offences surveyed. It demonstrated that this type of data collection is possible and provides a model for collecting information more widely. The survey results provided a basis for further work on the provision of guidance on aggravating and mitigating factors. The report of this survey was published on the Ministry of Justice website on 10 July 2008.

The main report from the Sentencing Commission Working Group, *Sentencing Guidelines in England and Wales: an evolutionary approach*, recommended that a more comprehensive system of data collection in respect of sentencing in the Crown Court and the magistrates' courts should be devised and put into effect as soon as possible. The Working Group considered that the Sentencing Guidelines Council (SGC) should conduct a sentencing survey on a national basis along the lines of the Crown Court Survey mentioned above.

The issues raised by the Sentencing Commission Working Group are currently being considered.

22 Short custodial sentences are very unlikely to contribute to an offender's rehabilitation; in fact, short custodial sentences may increase re-offending. (Paragraph 101)

23 Custodial sentences, even very short ones, are often seen as the ultimate punishment and an assumption is made that achieving the punishment aim of sentencing compensates for deficiencies in meeting other aims such as rehabilitation or reparation. We disagree with this approach to using custodial sentences. (Paragraph 102)

24 We are disappointed at the Government's apparent acceptance of the use of short custodial sentences for repeat offenders. There is no evidence that a short prison term will tackle recidivism. We recommend that the Government should instead produce a range of sentencing options, based on suitable evidence, after consulting sentencers, probation and other services, on what successfully removes offenders from a cycle of crime and repeat offending. (Paragraph 107)

25 We are concerned that, in the absence of identified effective mechanisms for dealing with repeat offenders, defendants may be receiving disproportionate sentences for current offences based on a legislative framework that requires penalties to be ratcheted up. The Government should, as a matter of urgency, assess the impact of provisions requiring previous convictions to be treated as aggravating factors. (Paragraph 108)

Sentencing Statistics 2007, to be published in November 2008, will include a chapter on sentencing trends for offenders with different criminal histories. This will be based on consistent data for the years 2000 to 2007 inclusive.

In general, the Government shares the Committee's view that short prison sentences for certain offenders may not be the most satisfactory of disposals. But the courts must be able to punish with imprisonment where the offence meets the custody threshold and where they consider, in all the circumstances, that only imprisonment will suffice. That may include imprisonment for seriously persistent offenders as a means of protecting the community. The Government has made available to the courts a wide range of tough non-custodial penalties and encourages the use of these wherever possible and appropriate. The courts will have regard to the principles of sentencing, including the reform and rehabilitation of offenders, when passing the appropriate sentence in each individual case.

26 We welcome the Ministry of Justice's statement of January 2008 announcing improved funding for intensive alternatives to custody and for drug treatment. If non-custodial sentences are ever to be used appropriately then they must receive adequate funding to make them effective. However, making effective community sentences available requires more than funding for pilots or specific initiatives. The Government needs to set clear, long-term objectives and allocate resources to them. (Paragraph 111)

Community sentences are a core part of the criminal justice system, with 1,737,800 being imposed between 1997 and 2006. In terms of all sentences passed, community sentences have increased from one in ten in 1996 to one in seven in 2006.

Court orders under probation supervision (such as community orders and suspended sentence orders, as well as the community sentences which these orders replaced) have been associated with large reductions in re-offending. Between 2000 and 2006 there has been a 23 per cent reduction in the average number of offences committed by adult offenders starting court orders under probation supervision.

The Government is allocating increasing funding, including £40m to probation in 2008/09, so that sentencers can be more confident that the resources are in place to deliver effective community punishments. The Government is funding at least six intensive alternative to custody projects over the next three years. These projects will use existing legislation to develop innovative intensive community sentences specifically targeted at offenders who currently receive less than 12 months in custody. The results of this will inform the actions of commissioners in future years. Commissioning is our process to ensure the optimal allocation of resources to meet the priorities of reducing re-offending and protecting the public. The National Commissioning and Partnership Framework published in February 2008 lays out how we will more effectively commission and deliver services to reduce re-offending, cut crime and protect the public.

27 Eliminating short sentences from the statute book would be an unnecessary limitation to sentencers' discretion and would not deal with the real issues around providing an appropriate sentence structure for low level offenders. However, taking no action is also not an option. Judicial discretion seems already limited because of the lack of available alternatives. (Paragraph 116)

We do not accept that judicial discretion is limited. On the contrary, a wide range of community and financial penalties is available.

The Government has consistently said that tough community sentences can provide a more effective alternative to short custodial sentences, where appropriate. The reforms contained in the Criminal Justice Act 2003 provided the courts with more flexible sentencing options, including a generic community order which has 12 possible requirements. Community orders can, therefore, be tailored to the offence and the offender and may contain both punitive and rehabilitative elements.

The Government is developing a number of Intensive Alternative to Custody demonstrator projects to encourage the greater use of intensive community sentences as a diversion from custody by both bolstering the supervision that offenders receive whilst on an community sentence and building sentencer confidence in their efficacy.

These projects are designed to strengthen existing use of current legislation to maximise the use of the community order, especially in those cases where the court may be considering custody but where the Probation Service believes a community sentence may be more effective in reducing reconviction.

These projects will seek to develop learning and improve practice in the application and use of intensive community sentences as an alternative to the use of short-term custody.

There will be a number of projects starting across the country during 2008 and 2009 with funding of £13.9m.

28 The ‘Custody Plus’ proposals had the potential to deal with one of the key criticisms of short custodial sentences, namely that they have no rehabilitative value. Whilst we accept that to implement these proposals without the resources to operate them effectively would be likely to make the situation worse rather than better, we recommend that the Government considers how some of the key elements of the Custody Plus sentences, such as enhanced resettlement support, could be brought in within the current legislative framework. (Paragraph 117)

The Government regrets that it has not so far been possible to implement Custody Plus. We are glad that the Committee recognises that introducing Custody Plus without the required resources would be counter productive. We should highlight

that there is some provision for resettlement for offenders released after short-term custodial sentences, notably through the Home Office's Drug Interventions Programme partnership with prison teams, and some locally funded support for prolific and other priority offenders (PPOs), and through other locally supported schemes. Nonetheless, the Government is keen to explore other options that seek to provide support to offenders released from short-term custody. One such initiative is the Home Office and Ministry of Justice sponsored Integrated Offender Management programme. The pioneer areas within the programme are testing new approaches to providing supervision and rehabilitation services to offenders via police-probation-prison partnerships. The areas are focused on working with offenders who present the highest risk to their local communities, including those who have been released from prison under no supervision. Integrated Offender Management emphasises access to services to help the offender re-integrate into their community whilst holding them responsible for their actions. The Government will be evaluating these pioneer areas to determine whether this approach is effective.

29 There is a contradiction in stating that prison should be reserved for serious and dangerous offenders whilst not providing the resources necessary to fund more appropriate options for other offenders who then end up back in prison. Unless this contradiction is resolved we fear that the twin aims of the Criminal Justice Act 2003 will not be realised. (Paragraph 118)

Under this Government real terms spending on probation has increased by almost 70 per cent and additional funding, as set out above, has been provided to promote effective alternatives to custody.

Non-custodial responses to offending

30 The intended switch from the use of short custodial sentences to community punishments in the form of Community Orders and Suspended Sentence Orders has not occurred. Instead, all the evidence points to these sentences replacing fines. The 2003 Act, in common with other legislation, seems only to have added to an inexorable rise in sentences. We believe the aim should be to achieve consensus as to what is the appropriate sentence in different circumstances. (Paragraph 129)

31 We welcome the Government's recognition of the 'uptariffing' problems caused by Community Orders and Suspended Sentence Orders and the attempts through the 2008 Act to control them. Nevertheless, the lesson of the 2003 Act is that legislation is not a useful mechanism to prevent 'uptariffing'. We urge the Government to bring forward proposals as to how to tackle the issue of 'uptariffing' through non-legislative mechanisms. We suggest that the Government explore public information, sentencing training and effective evaluation and development of local projects as part of these proposals. (Paragraph 130)

The Government has been providing the public with information about sentencing options for some time. The Ministry of Justice is currently undertaking promotional activity about community sentences, continuing work that has previously been carried out by the Home Office. Better information about the content of community sentences is designed to increase public confidence in criminal justice. Proposed activities for community sentences planned or already undertaken for the year 2008/09 include a publication (*Community Sentences – cutting reoffending, changing lives*¹) that brings together our best evidence of the benefits of community sentences in reducing re-offending. This was launched in early June.

The Ministry of Justice has launched *Judge for Yourself* (the interactive sentencing exercise) on-line on DirectGov, the Government's website for public information.²

¹ [http://www.probation.homeoffice.gov.uk/files/pdf/Community%20Sentencing%20Report%20\(English\).pdf](http://www.probation.homeoffice.gov.uk/files/pdf/Community%20Sentencing%20Report%20(English).pdf)

² <http://www.direct.gov.uk/en/CrimeJusticeAndTheLaw/index.htm>

Judge for Yourself has been endorsed by the Association for Citizenship Teaching for use in schools and the Association will make teachers aware of it for use in the classroom. Other work to promote its use in schools is being taken forward by some local probation areas, and there will be work with the education trade press during the autumn to further promote it.

Ministerially-led regional discussions with community groups, such as residents' associations, are taking place. One discussion took place in Gorton, Manchester in July and further discussions are scheduled in the autumn for Cardiff (during the national Inside Justice Week), Newcastle upon Tyne and Birmingham. Local media are invited to participate and stimulate the discussion. The Manchester event was supported by a large feature in the Manchester Evening News and on their TV channel and website.

During the year there will also be a series of case studies and features prepared for national high circulation magazines, and we will be inviting radio presenters to experience or learn more about community sentences and their advantages. This repeats a scheme run in 2006/07 where local radio DJs were put 'on service' with community payback unpaid work projects. 'DJs on service' won a major public relations industry award in the broadcast category in 2007.

We will continue with the Probation Service's existing Mayoral Project³, where newly elected Mayors are involved in nominating and monitoring progress of unpaid work projects for the duration of their year of office. A brochure on last year's projects has been distributed via local probation to local authority elected members and into courts.

We actively support others who have an interest in promoting community sentences, including those in the voluntary sector, and specifically we are supporting the Probation Association-Magistrates' Association jointly-run Local Crime: Community Sentence initiative. This provides presentations to community groups, using a magistrate and a probation officer co-presenting a structured discussion based on case studies. Although applied on a relatively small scale, this has been shown markedly to change attitudes during the course of the presentation, in favour of greater use of community sentences.

³ <http://www.probation.homeoffice.gov.uk/files/pdf/Community%20Payback%20Mayoral%20Projects%20Brochure.pdf>

As part of the public relations work, we have been targeting the trade press of the police because of their influential position in passing information to the public on criminal justice matters⁴.

All activity is designed to improve public confidence, as measured by the British Crime Survey.

The training of the judiciary is a matter for the Judicial Studies Board who provide a range of training opportunities covering issues of current concern.

As noted above, court orders under probation supervision (such as community orders and suspended sentence orders, as well as the older community sentence) have been associated with large reductions in re-offending. Between 2000 and 2006 there has been a 23 per cent reduction in the average number of offences committed by adult offenders starting court orders under probation supervision, compared to a 15 per cent reduction for adult offenders discharged from prison. Where appropriate, they ought to be used.

The Intensive Alternative to Custody (IAC) programme has been developed to incorporate evaluation of the demonstrator projects from the outset so as to aid their development, identify good practice and barriers to implementation.

Evaluation of IAC will be twofold: to address issues around implementation and assess the impact of the projects, involving qualitative process evaluations in regions and a national impact assessment, centred on re-offending rates, conducted at the end of the pilot. This research programme will provide evidence of the overall success of the schemes in meeting their aims. This will provide evidence on the effectiveness of the projects in providing a viable alternative to custody (in terms of re-offending rates) and provide information on implementation issues to aid project delivery and analysis of the outcome assessment.

32 The delivery of robust community sentences has the potential to reduce re-offending and re-conviction rates. However, we are concerned that the full package of requirements that can be associated with Community Orders is not being used to its full effect and, as a result, Community Orders are not meeting the purposes of sentencing as envisaged in the 2003 Act. (Paragraph 135)

We know that community sentences are proving effective at reducing re-offending. In the six years to 2006 there has been a 23 per cent reduction in the number of

⁴ MORI – Criminal Justice System staff survey Wave 4. 2007. Office for Criminal Justice Reform

offences committed by offenders within one year of starting a court order under probation supervision.

The Government is looking further into the effectiveness of community order requirements and new research is being developed which includes an evaluation of a large cohort of offenders on community orders. The research will identify characteristics and needs of offenders, interventions and offender management received (including extent to which needs were met), and the associated outcomes (including re-offending). The study will link with a unit costs study, thus allowing NOMS to evaluate value for money of interventions delivered to offenders on community orders. The findings will be used to inform our evidence-based interventions strategy and decide how resources are best used to address the needs of people on community orders and will be crucial for informing the commissioning process. Nonetheless, it was never envisaged that there would be anything like equal use of the various requirements; some are quite specialised in nature whereas others have much wider applicability.

**33 We recommend that the Government undertake an immediate audit of the use of the twelve potential requirements of Community Orders and of the success of specific requirements in delivering the purposes of sentencing.
(Paragraph 136)**

The Government is already undertaking work to extend the use of less well used requirements, where appropriate, and to assess the effectiveness of all requirements. The use of the 12 requirements was considered as part of the National Audit Office report on community orders, published in January 2008. This report identified inconsistencies in the availability of certain requirements across England and Wales. In particular it focused on the Alcohol and Mental Health Treatment Requirements as being under used in comparison to the level of need identified in offender assessments. It quotes a study conducted by the Centre for Justice Studies at Kings College London demonstrating that alcohol is a driver of offending in 45 per cent of probation cases whereas only 1 per cent receive an alcohol requirement: the equivalent figures for mental health are 43 per cent and less than 1 per cent respectively.

However, we would not expect all requirements to be used to the same degree. Offenders have different levels of need and, for example, the treatment requirements of a community order are designed for those offenders with a very high intensity of offending related need. Offenders who have low level drug, alcohol and mental health problems can be dealt with through a range of services,

including community based supervision and treatment via a supervision requirement.

As noted above, research is being developed through a longitudinal cohort study into the effectiveness of community orders. It is anticipated that the overall finding from the research will be available in 2012, with re-offending information in summer 2014. A variety of other relevant research is also underway or planned for the near future: this includes research on female offenders and research focusing on particular requirements available under community orders, notably drug rehabilitation requirements and alcohol treatment requirements.

34 Effective community sentences require effective resources. There is no evidence base on which to determine where resources are most needed for effective sentencing options. (Paragraph 145)

OMS Analytical Services has recently developed an analytical framework designed to help inform strategy, policy and operational decisions with evidence-based analysis. This is based on a 'public value' approach which considers outcomes, services and public trust. This work is based on the principle that a key strategic goal for offender management should be to increase public value per unit of available resource expended. This requires focusing resources on those offenders for whom public value delivered net of cost is likely to be greatest. Continuing work includes segmentation of offenders and development of cost-benefit appraisal.

35 An urgent assessment is required to evaluate whether the additional resources devoted to Probation are at the correct level to support the increase in services that have to be provided as a result of the greater use of community sentences. (Paragraph 146)

The Government has invested heavily in the Probation Service. In the ten years from 1996/97 to 2006/07, real terms spending on probation has increased by 70 per cent. In 2008/09 Probation Areas' Main Resource Grant has increased (in cash terms) by an average (across all the areas) of 8 per cent (including the £40m mentioned below). The overall direct increase for probation areas is 6.5 per cent.

In April 2008, the Secretary of State for Justice announced an additional £40m investment in the activities of the Probation Service for 2008/09. This funding is specifically intended to:

- facilitate the use of community orders rather than short prison sentences, where deemed appropriate by the sentencing court; and

- improve offender compliance with community orders and release licences thus reducing the need for breach and recall action.

All the funding for 2008/09 has been allocated to the 42 probation areas in England and Wales and a national plan has been developed encompassing a series of projects to make best use of the additional £40m. Each of the 42 probation areas has submitted a local plan, which is monitored routinely against expected outputs.

Each of the local plans is based on local data and intelligence, including engagement with the courts about what type of resources sentencers would expect to be available. This enabled areas to establish the potential for greater use of community orders rather than short prison sentences, where appropriate, and for fewer breaches as a result of increased compliance. Local implementation plans set out how areas will spend the additional resources to achieve targets for 2008/09.

Following publication of the National Audit Office report and the creation of the new National Offender Management Service agency in April 2007, a new programme of work to develop specifications, benchmarking and costings across the activity of the Probation Service was established. Through the initial use of benchmarking this programme will ensure the efficient use of resources and create standard operating models and processes. Over time the programme will design and deliver a robust framework of costed service specifications making clear the outputs to be delivered, for use in Service Level Agreements/contracts. This will provide greater transparency on the use of resources and enable modelling of the effect of changes in the use of community sentences.

**36 The Probation Service does not know with any certainty how many Community Orders it has the potential capacity to deliver within its resources, nor has it determined the full cost of delivering Community Orders; we recommend that this data be collated as a matter of urgency.
(Paragraph 147)**

The Government agrees that the Probation Service needs to understand better its capacity and use of resources. The move to a commissioning model has highlighted this issue and work is in hand to develop further an appropriate measurement of capacity. A workload measurement tool already provides areas with a means to manage workload, and this tool is now being developed to provide a means for measuring capacity. Work is currently being done to improve the quality of the data that feeds into the model to ensure that it is robust. This work is due to finish at the end of the year and the model is one of number of approaches

that can then be used to build a picture of the Probation Service's capacity to deliver within its resources.

NOMS is committed to improving its understanding of the full cost of orders and services and the extent to which these provide value for money for the taxpayer and deliver intended outcomes in terms of reduced re-offending and effective rehabilitation of offenders. In order to get this understanding a new Specifications, Benchmarking and Costing Programme has been established. A core task of the programme is to develop costed service specifications for community orders and through this establish the overall capacity of the service. The programme will also enable us to model the impact of changes in the use of orders. The creation of service specifications will be used to support commissioning and the implementation of a Best Value framework in probation. This will contribute to ensuring that services are delivered more efficiently and effectively.

37 We are encouraged by evidence of successful local projects based upon joined-up provision of services at local level, such as those in Staffordshire and Thames Valley. The local authority is a key partner in the effective delivery of these services for the criminal justice system but also for important areas such as mental health and drug treatment. (Paragraph 157)

38 We are convinced of the benefits of magistrates being closely involved in the systems that deliver and monitor community punishments. The Government should encourage magistrates to build on the projects that support their engagement in individual areas. However, the Government should also consider more systematic means in order to involve magistrates with the provision of community punishments. (Paragraph 158)

The Government agrees that there is value in sentencers being closely involved in the monitoring of compliance with community orders. The Criminal Justice Act 2003 provides for court review of community orders which impose a drug rehabilitation requirement and also includes a provision under which the Secretary of State may, by order, enable all or specific courts to conduct periodic reviews of community orders.

The power to review a community order is currently being piloted. To date, it has been given, by order, to those court areas which include the 13 current community justice initiatives, with the power being used only by the community justice courts. So far, this has not generated sufficient data to permit a robust evaluation of the costs and benefits of the power.

The Government is therefore seeking to expand the pilot to increase the data available for a full evaluation and to provide an assessment of the impact of court review on the courts and probation. Once a full evaluation has been conducted the Government will consider whether the review power should be made available nationally.

Since December 2005, two drug court pilots have been running in West London and Leeds magistrates' courts. The evaluation, published in April 2008, gave positive indications that increased judicial continuity led to offenders being less likely to be re-convicted, less likely to miss a court hearing and more likely to complete their community order. We have now committed to extending the model to up to four more sites and we aim to identify these by October 2008. We plan to evaluate these sites further, exploring issues such as implementation and best practice.

The Probation Service publishes a Bench Handbook and a Bench Guide specifically for judges and magistrates. Both these set out the provisions of the community order and describe the different requirements available and how the Probation Service meets these requirements. Additionally, there are local sentencer forums where magistrates and probation staff can discuss areas of mutual concern. All probation areas encourage magistrates to visit their offices to see the delivery of interventions at first hand.

39 Local areas and individuals cannot operate in a vacuum. The Government needs to implement a sustained delivery and implementation strategy for increased use of community punishments. This is crucial for boosting public confidence in the robustness and efficacy of non-custodial sentences. (Paragraph 159)

Since 1997, the Probation Service has increased in size by over 7,000 staff and probation resource budgets have increased by nearly 70 per cent in real terms. An additional £17m has also been found for the Probation Service for each area's budget for 2008/09. Guidance and support on managing resources is being provided to all probation areas which are responsible for their own budgets, distributing resources effectively and fulfilling a range of responsibilities in their area.

In 2006/07, probation had its best year, in performance terms, with the highest rate of enforcement, record numbers of offenders completing accredited courses and unpaid work and more offenders starting and completing drug rehabilitation than in any previous year.

The courts' use of community sentences has increased by 44 per cent in the ten years to 2006. Since the creation of the community order in the Criminal Justice Act 2003 (implemented in April 2005), there has been positive independent feedback from the judges who perceive the orders as avoiding having to send an offender to imprisonment and they see them as a credible alternative to custody⁵.

New research methodologies and data-collection techniques have made it much easier to illustrate the outcome of different sentences for different types of offenders and these are being published and, specifically, provided to sentencers who need the information for their decision-making.

⁵ The views and attitudes of sentencers.2008 Centre for Crime and Justice Studies

Back-door sentencing

40 We welcome the Government's acknowledgement that the recall system set out in the 2003 Act is not appropriate, as evidenced by the changes to the system in the 2008 Act. The 28-day fixed recall system should deal with particular concerns about the strain placed on the Parole Board resources by the need to review every recall decision. (Paragraph 170)

41 We remain concerned, however, that the system for recalling prisoners on breach of licence is unnecessarily rigid. Changes to the recall system do not extend the flexibility that people working with offenders need if they are to enable the highest levels of compliance. (Paragraph 171)

The Government considers that a rigorous approach to breaches of licence conditions and the requirements of a community sentence is essential both to promote compliance on the part of the offender and to ensure public confidence in the criminal justice system. NOMS and the Probation Service have been successful in establishing a nationally consistent approach to the enforcement of licences and community sentences.

Recall to prison is as an effective tool in terms of relapse management and the changes to the system introduced in the Criminal Justice and Immigration Act 2008 will provide greater flexibility in dealing with breaches of licence conditions. Far from it being disruptive, the fact that the offender will be re-released on licence on renewed conditions has the potential to contribute to successful rehabilitation.

42 We urge the Government to reconsider the systems by which the Probation Service and the courts are required to deal with breaches of conditions or breach of licence. A more flexible system which enables these services to support compliance, rather than automatically punish what may be minor infringements, would contribute much more in the long run to public protection by preventing re-offending than sending people to prison. (Paragraph 175)

The Government does not agree that offenders are routinely recalled to prison for minor infringements. There is no evidence to support this contention. In 2007,

there was an examination of the reasons for recall. Around a quarter were found to have been recalled having committed new offences. Almost all the remaining 75 per cent were found not to have been recalled *simply* for failing to keep in touch, but that various reasons (failing to keep more than one appointment, failing to attend treatment appointments, no longer living at the address known, losing their job or benefits, a return to alcohol or drug abuse) indicated a rising concern about escalating risk of re-offending and causing serious public harm. Many offenders, who committed serious offences whilst under supervision, had recent experiences of community breakdown such as those above immediately before the offence.

The Government wholly supports an approach to community orders which concentrates on compliance with the sentence of the court, although it also believes that unacceptable failure to comply must be dealt with firmly.

Her Majesty's Courts Service (HMCS) launched its *Criminal Compliance and Enforcement Services, A Blueprint for 2008 to 2012* in July 2008. Its purpose is to set out a strategic direction for criminal compliance and enforcement. It states that HMCS wants to achieve a greater level of compliance with all court orders by 2012 and the document sets out how that can be achieved.

In addition, a revised *Best Practice Guide - Compliance* was issued to probation areas on 31 July 2008. Its purpose is to share approaches developed by areas to improve offender compliance, at both a strategic and an operational level. It will be complemented in September 2008 by the publication of more detailed case studies under the knowledge management programme; this will capture activity generated by the compliance workstream in the £40m Investment in Probation 2008/09 National Delivery Plan.

On enforcement, the Criminal Justice Act 2003 introduced new arrangements for dealing with breach of community orders. Offender managers now have to take action in response to any unacceptable failure to comply with the requirements of a community order, by issuing a warning (no more than one per year) or by returning the offender to court. This makes it clear to the offender that compliance is required and that violations of an order will be firmly dealt with. However, it is up to the offender manager to decide what constitutes an unacceptable failure to comply, providing a degree of flexibility to the system.

The 2003 Act provisions also require a court, once breach has been proved, either to re-sentence the offender or to amend the terms of the order so as to impose more onerous requirements. There is no power for the court simply to impose a fine or do nothing. This differs from the provisions for dealing with breach of

offences committed under earlier legislation, which merely gave the courts a power to deal with a breach and, if they choose to exercise the power, specific disposals, including a fine and unpaid work. The decision to strengthen the courts' response to breach was deliberate Government policy taken to stop the frequent outcome of offenders being required to continue their sentence with no additional penalty or just a small fine. Such disposals led offenders to believe that breach was not regarded as serious which in turn did not encourage compliance or command public confidence.

The Government does not intend substantively to change the present arrangements, which it believes actively encourage compliance with community orders.

The Government has also considered and rejected the possibility of offender managers being given powers to deal with breach without reference back to a court. It concluded that there is nothing to be gained that is cost effective because of the need to ensure that an offender is entitled to an independent review of any decision to penalise him. By virtue of Article 6 of the ECHR, any decision to extend an offender's sentence taken by offender managers would be subject to review by a court or court-like body. When the costs of this are taken into account, the idea represents poor value for money.

In addition, there is considerable opposition to the idea from a range of stakeholders, including the senior judiciary and magistracy. A similar proposal was included in the consultation paper *Making Sentencing Clearer* published in November 2006. The majority of those who responded were opposed to such a scheme, chiefly because they believed that varying sentences is properly a function of the courts and to pass responsibility to offender managers would be contrary to ordinary principles of justice.

Vulnerable people

43 Categories of offenders such as women, young people and people in need of mental health or drug treatment have been identified as particularly vulnerable in prison. Clearly not all offenders in particular categories can be considered vulnerable or automatically unsuitable for custody and we recognise that there will be offenders who, because of the gravity of their crime and the dangers they pose, cannot be dealt with safely in the community. However, it is generally agreed that more emphasis must be placed on ensuring that those vulnerable people who do not fall into this group are not sentenced to custody for want of practical community alternatives. (Paragraph 178)

44 We support the views expressed by Baroness Corston, that there is a need for more alternative sanctions and disposals which are gender-specific and in which sentencers have confidence. We recommend the extension of a larger network of community centres. In particular, we support services set up explicitly to consider the needs of women with children and to develop specific measures to support women and their families. (Paragraph 192)

The Government is committed to this agenda. In her review of *Women with Particular Vulnerabilities in the Criminal Justice System*, Baroness Corston recommended that the Together Women Programme should be extended and a larger network of community centres developed. In response the Government committed to set up a project to review current women's centre provision and identify how to build on existing services. To take forward this commitment, a cross-departmental project has been set up to examine the extent and nature of current generic women's centre provision. The women's centre project is exploring how existing services and support in the community could be developed, learning from what already exists such as the Together Women Programme, 'Turnaround' in Wales and a number of other community based services, to deliver an improved and co-ordinated response to women's needs. We are working with a number of existing women's centres to identify how they can deliver mainstream services and meet a range of Government targets and priorities across criminal justice and social exclusion agendas.

This project is supported by the National Service Framework which aims to improve the services we deliver to women offenders (see response below). Regional Offender Managers and Directors of Offender Management are currently looking at how they can improve services to women offenders in advance of full specifications and the Ministry of Justice is supporting them to do this. A workshop for NOMS regional teams to share best practice and identify a way forward is being held in October.

A Social Exclusion Task Force Project study project has been set up with the aim to optimise the use of diversion - both prevention and alternatives to custody - in order to improve the life chances of women offenders and their families, whilst meeting the needs of communities through harm reduction and the effective delivery of justice. This project is being delivered in partnership by a joint Ministry of Justice and Cabinet Office team.

45 We recommend that NOMS conduct a full regional audit of the provision of services and examine the current scale and nature of provision in comparison to the scale and nature of need. Where gaps are identified these should be built as a matter of urgency into programmes commissioning women's services. (Paragraph 194)

The Government agrees with this recommendation. Regional Offender Managers have already begun work in this area by profiling existing services and provision for women in their regions, as part of the Government response to Baroness Corston's Report, with the intention that the results could be used to identify what packages of measures are required to address women's multiple needs.

On 30 May 2008, the first National Service Framework for Women Offenders was published which aims to improve the services we deliver to women in the criminal justice system to enable them to reduce their re-offending. The Framework is intended to deliver the Government's high-level vision for how services should be delivered to female offenders and is to be used by all commissioners and providers who have a responsibility for delivering these services. This Framework is supported by the National Probation Service Offender Management Guide for Working with Women Offenders along with the Gender Specific Standards for women's prisons which provide more detailed operational guidance for prison and probation staff delivering services for women on the ground.

NOMS is currently working on developing the framework into a series of detailed costed service specifications for women in custody and in the community. Regional Offender Managers and Directors of Offender Management have been

asked to consider regional and more local implications and potential changes to current service provision, including the opportunity for early gains by implementing specific improvements to current services. NOMS regional commissioners and providers will work closely with providers of services for women from all sectors to identify the gap between current services and what is needed; design and deliver services to fill the gap; and promote the services to courts and other potential referrers.

46 The failure to invest in community provisions for women is a central factor in driving the sustained increases in the number of women sentenced to custody. We welcome the Government's acceptance of most of the recommendations of the Corston Report, as well as the recent NOMS National Service Framework for Women Offenders and the Offender Management Guide to Working with Women Offenders. We are also encouraged that the Secretary of State for Justice emphasised his commitment to reducing the numbers of women in custody. However, we share the disappointment expressed to us by the Chief Inspector of Prisons and the Director of the Prison Reform Trust that sufficient resources have not been made available to deliver appropriate community provision for women and their regret that such provision for women has been overshadowed by the drive to expand prison places. (Paragraph 199)

The fact that the Government has not announced major new investment does not mean that the commitments in the Government response to the Corston Report will not be taken forward. Implementation of many of the commitments will be possible within the resources already identified for providing more effective interventions and services for offenders. It will be a question of ensuring that, in applying those resources in respect of women offenders, they are used in a way which is appropriate and effective for women, and takes account of Baroness Corston's recommendations.

Implementation of the National Service Framework will involve using resources and approaches more effectively, both in custody and the community, so that they are better targeted at meeting the needs of women. NOMS and delivery partners will use the National Service Framework to specify the exact size, cost and nature of provision in order to deliver upon these priorities.

Working closely with other government departments is key to making sure women offenders and women at risk of offending are able to access existing community resources, including health, mental health and detox facilities.

The cross-departmental women's centre project is looking at the sustainability of funding for women's centres through working in partnership with local authorities and with other government departments.

We have provided funding for a number of projects:

- to help support a more community-based response to women's offending; £9.15m funding was allocated in March 2005 to establish new initiatives to tackle women's offending in the community – the Together Women Project. The Together Women Project is developing an integrated approach to routing women to appropriate services to meet their needs at various stages of their offending history, from prevention and diversion from custody, to resettlement on release;
- a demonstrator project has been set up in Wales – 'Turnaround' - to focus specifically on providing a women-centred approach to meet the needs of women offenders and their children, and women in the community who are at risk of offending. The Ministry of Justice contributed £120K to the set up costs of the project and is providing further funding of £200K to March 2009; and
- Ministry of Justice funding was also allocated to the South West region to develop a specification and commissioning model for accommodation services for women offenders; and we will provide funding to test the potential of a women's centre combining residential and day facilities in the South West.

A project has been set up in the South East region which will focus on improving the efficiency and effectiveness of services for women who come into contact with the South East region, specifically in Surrey.

47 We invite the Government to reconsider the recommendation to establish a Commission for Women Offenders which would provide a stronger driver to the implementation and resourcing of Corston's reforms. We are convinced that women's offending will only be reduced by urgent investment in a network of community provision designed for women offenders. In addition, we believe that the small local custodial units with 20-30 places suggested by Baroness Corston, should be genuinely tested through a pilot in an area where there is currently a gap in provision for women, such as Wales or the South West. This would allow for evaluation of

whether the working group's concerns are well founded or can be dealt with.
(Paragraph 200)

In its response to Baroness Corston's Report, the Government accepted in principle the recommendation to establish a Commission for women who offend or are at risk of offending. The Inter-Ministerial Group (IMG) on Reducing Re-offending now provides high level governance and has Corston implementation as a standing agenda item. Maria Eagle, as Ministerial Champion for women and criminal justice matters, has convened a sub-group to the IMG to drive forward implementation of the commitments made in the Government's response. A cross-departmental Criminal Justice Women's Strategy Unit has been established, headed by a senior civil servant, which manages and co-ordinates the work. The Department of Health, Government Equalities Office, the Home Office and the Attorney General's Office have already committed resources and negotiations are continuing with other relevant government departments to contribute resources to the unit.

The Criminal Justice Women's Strategy Unit is leading on the cross-departmental project set up to examine the extent and nature of current women's centre provision and will look to develop existing services and support for women in the community, learning from what already exists such as the Together Women Project, 'Turnaround' in Wales, and a number of other community-based services, to deliver an improved and co-ordinated response to women's needs.

The Working Group set up to determine the feasibility and desirability of Baroness Corston's recommendation on Small Custodial Units for 20-30 women found that it would not be possible to deliver the wide range of services to meet women's often complex needs in a unit of that size. It was considered likely that women would need to be moved around the estate more often than at present to access specific services, disrupting offender management and making it more difficult to maintain family links. The Working Group also noted that it is possible such units could lead to increased bullying.

In light of these findings the Government announced in June 2008 that it would not be taking forward Small Custodial Units for women but that it accepted the principles underpinning Baroness Corston's proposal of supporting family links, providing multifunctional accommodation, creating a supportive environment and supporting re-settlement. The Working Group found that these could be better met through a model of a range of smaller units within a medium sized prison. This would allow greater flexibility to ensure services are delivered according to need, while also giving the flexibility to provide a balance between the need to freely

associate and the need for privacy, as well as manage the population across the units.

The Government has committed to testing how these principles will work in practice and the design of a new 77-place wing at HMP Bronzefield (due for completion in 2009) will provide an opportunity to do this. The current design proposes for the unit be divided into three small blocks holding about 25-30 women with a range of flexible spaces for education, interviews and association allowing for more private space for women, whilst providing areas for association and allowing for flexibility in managing the population and delivering the range of services. We will amend the principles as necessary in the light of the experience of Bronzefield and seek to take them into account as we develop the women's prison estate in the future.

48 Health Authorities should not have a choice as to whether or not they fund diversion and liaison schemes with criminal justice agencies.

Accordingly we recommend that there should be a statutory requirement to provide funding for these schemes. The Ministry of Justice should work with the Department of Health to promote knowledge and understanding of diversion and liaison schemes amongst NHS Commissioners. (Paragraph 206)

The Government agrees in general terms with the points made by the Committee about diversion and liaison schemes. However, the Department of Health has a restricted range of opportunities to direct Primary Care Trusts to commission. The Offender Health Directorate in the Department of Health is currently in the process of developing a Health and Social Care Strategy for offenders and as part of this will look at encouraging engagement from NHS organisations and developing support for commissioners.

The Ministry of Justice, through the Office for Criminal Justice Reform, has been working to promote knowledge of diversion and liaison schemes. In particular, this has included commissioning work to identify effective practice with regard to mentally disordered offenders (the report of which is expected to be published later this year); and the development of a *Mental Health Effective Practice – Audit Checklist*, which aims to identify and assess best practice in diversion and liaison schemes, and which earlier this year was used by the Care Services Improvement Partnership in an assessment of the provision of such schemes throughout England. This will report to Lord Bradley's review and form the evidence basis of his findings and recommendations in relation to diversion and liaison schemes.

49 Comprehensive court diversion and liaison schemes should be made available nationally as a matter of urgency. Whilst we welcome efforts to make NHS commissioners more aware of the benefits of such schemes, we believe that simple encouragement to fund them is insufficient.

Strengthening guidance on diverting mentally disordered offenders will be similarly ineffectual while there continues to be a lack of suitable hospital and community provision to divert them into. Without additional funding the availability and effectiveness of such schemes is unlikely to improve.

(Paragraph 208)

Lord Bradley's review is looking at court liaison and diversion schemes and ways to improve their consistency across the country. As part of the review, an audit of current court liaison and diversion schemes is being undertaken, which determines the key elements necessary to make up a model of good practice.

The review team has looked at schemes currently being piloted in magistrates' courts in the South West region and North West London by Her Majesty's Court's Service and Offender Health in partnership. These schemes are testing local service level agreements for the provision of timely psychiatric reports. A further joint scheme is being tested at the Central Criminal Court whereby Central and North West London and Oxleas NHS Trusts have introduced an assessment service that aims to reduce delay, provide timely psychiatric reports and improve health outcomes for offenders.

In addition, £10K has been given by Offender Health to each of its regional teams to produce an action plan relating to the need for court-based assessment and liaison services. This will go some way towards identifying the costs and services needed.

50 We consider sentencers would benefit from better guidance on their options with regard to persons requiring different levels of mental health support – including diversion schemes and mental health treatment requirements as part of a community sentence. We recommend that such guidance is provided as soon as possible. (Paragraph 210)

The Government agrees that guidance for sentencers would be useful. Guidance on the available disposals on sentencing, both under mental health and criminal justice legislation was issued to the courts in March. In respect of the pre-court stages of the criminal justice process, an update of earlier guidance is in preparation but Lord Bradley has recommended that it should not issue until his

review has reported so that it might incorporate any changes brought about by his findings and recommendations. Ministers have agreed to this.

Lord Bradley's review will be looking at what information needs there are throughout the criminal justice system on people with mental health needs and the different levels of support they may need. Sentencers have already been highlighted as a priority group needing information. In addition, development of court liaison and diversion schemes, as set out above, will also support information available to sentencers and link them more closely with local services.

51 We recommend that NOMS work with the Department of Health to conduct an audit in each region as to how much community mental health provision is available to those outside prison in relation to needs.

(Paragraph 215)

This recommendation is met by the Mental Health Mapping Project, commissioned by the Department of Health, which already collects information on community mental health provision. The project provides information on local teams and services and is available for local use. This information has been collected for several years.

52 Addressing the crucial issue of the lack of community mental health provision for offenders will require co-operation between Primary Care Trusts, regional NOMS commissioners and Probation Trusts. The Government needs to take a lead role in supporting and structuring engagement between these organisations, and should not simply rely on commissioning to solve these problems. (Paragraph 218)

The Government rejects the assertion that there is a lack of community health provision for offenders. We accept that there are some difficulties in the lack of connection between the commissioners, Primary Care Trusts and NOMS commissioners, and Probation Trusts. Lord Bradley's review is looking at how these organisations work together and what improvements can be made. Local partners are already working on regional development plans for offenders' health and the publication of the Offender Health and Social Care Strategy will serve to strengthen these.

53 We agree with the Sainsbury Centre for Mental Health which recommended a review of the facilities available to prisoners for compulsory health treatment. This should consider the scope for timely transfers to

treatment in facilities other than simply medium-secure accommodation.
(Paragraph 222)

The Department of Health undertook a review of bed numbers in 2006. In addition, work is already in train to speed up the processes by which offenders with severe mental health problems are transferred to hospital under the Mental Health Act. The Department of Health want to continue to drive down the length of time that people have to wait and have recently completed pilots of a new waiting standard of just two weeks.

54 We recommend that the current review by Lord Bradley into the diversion of offenders with mental health problems from the criminal justice system and prison conduct a needs-based review of mentally disordered offenders, including an examination of the need for various types of prison and other residential treatment and community based treatment. (Paragraph 224)

Lord Bradley's independent review of the diversion of offenders with mental health problems and learning disabilities has been underway since January 2008. The review is now well into its work and is due to report in December. Lord Bradley is happy to receive the Justice Committee Report as formal evidence and will incorporate it into its deliberations.

55 The Government should urgently proceed with assessing the potential impact of Mental Health Courts. We believe that the Bradley Review of the diversion of individuals with mental health problems from the criminal justice system and prison should examine and consider the costs and benefits of Mental Health Courts. (Paragraph 225)

The Government intends to pilot mental health courts, building on the drug court model and experience gained from schemes currently piloting a service level agreement for the delivery of timely court psychiatric reports and linking with the emerging findings of the Bradley review. Areas of focus for a mental health court are likely to include access to services such as criminal justice mental health teams and psychiatrists, and reviews of community orders with supervision and mental health requirements. In consultation with the judiciary and criminal justice and Department of Health partners, work is now ongoing to identify pilot sites at two magistrates' courts to start in early 2009.

56 We welcome the recent changes to responsibility for youth justice policy and sponsorship of the Youth Justice Board which became the joint

responsibility of the Ministry of Justice and Department for Children, Schools and Families following machinery of government changes in June 2007. We urge the Government to address the welfare of young offenders as an explicit purpose of sentencing. (Paragraph 229)

The Criminal Justice and Immigration Act 2008 requires sentencers to have equal regard to the welfare of the child, the purposes of sentencing and the principal aim of the youth justice system, which is to reduce offending and re-offending. We believe that this provides clear direction that welfare is a primary concern when young people are sentenced. However, we believe it is right that courts also consider the aim of reducing offending and the purposes of sentencing as set out in the Act to ensure that victims' needs are taken into account and that the public has confidence in the youth justice system.

57 We welcome the introduction of the conditional caution as an additional mechanism to keep low level cases out of the youth justice system. It is essential that an assessment of the resources required to support their use is made prior to their implementation, and that implementation is supported by clear guidelines on their intended use. (Paragraph 234)

We agree with the Committee that appropriate resources should be provided for cautioning. As those who will be cautioned would most likely have previously been dealt with by the courts, there is unlikely to be a need for net additional resources. We will be developing a statutory Code of Practice for the Youth Conditional Caution and will also ensure that any additional guidance is prepared in time for their launch in April 2009.

58 There should be a stronger Crown Prosecution Service policy against prosecution in less serious cases when other more effective measures are available. The Department for Children, Schools and Families, the Ministry of Justice and the Youth Justice Board must work together to develop proposals to ensure that schools and children's care homes expand the use of Restorative Justice for minor incidents. (Paragraph 236)

There is currently an Invest to Save Bid running in Leicestershire on the use of restorative justice in children's care homes. We are monitoring the progress of that and await the outcomes with interest as we believe such an approach to resolving issues in those environments may offer substantial benefits to all concerned. There are currently restorative approaches used in schools developed from experience of restorative justice in the youth and criminal justice systems. The

principle is that the pupil causing harm is held to account for his or her behaviour. There is a range of restorative approaches, from informal meetings with pupils, where they can talk through their issues in a structured way, to – at the most formal end – a restorative conference with an independent facilitator. Restorative approaches can be effective, when the requisite time and resources are invested, but it is important that they are used in conjunction with, and not in place of, sanctions. The most extensive evidence of the effectiveness of restorative work in schools can be found on the Youth Justice Board website. It is clear from this and other sources that schools which successfully adopt restorative approaches do this when there is commitment throughout the school to cultural change.

59 We suggest clear guidelines should be introduced on the tiered approach to the use of the Youth Rehabilitation Order. We also have concerns regarding the cost implications of implementation and the capacity of Youth Offending Teams and partner agencies to deliver the range of requirements necessary to meet the needs of the courts. Lessons must be learnt from the implementation of the generic Community Order, where key requirements have not been used because of lack of resources to deliver them. (Paragraph 239)

The Youth Rehabilitation Order will not be implemented until the Sentencing Guidelines Council has produced a guideline for its use. We have already asked the Sentencing Guidelines Council to do this and they have commenced work on it. Training for Youth Offender Team members in the use of the Youth Rehabilitation Order has been funded by the Government and will be delivered via the Youth Justice Board. The new Order will replace nine existing community sentences and we therefore believe that existing resources will cover the majority of costs. But there will be additional resource demands. One of these is intensive fostering – the fostering requirement – which is currently being piloted by the Youth Justice Board in three areas. Additional money has been provided to the pilot from the Children's Plan pending an evaluation report on the effectiveness of the pilot.

60 We share the concerns of the Joint Committee on Human Rights that simply making Intensive Supervision and Surveillance part of the Youth Rehabilitation Order does not do enough to make custody a last resort. (Paragraph 242)

We believe the Youth Rehabilitation Order clearly sets the Intensive Supervision and Surveillance as a direct alternative to custody. In addition, this has been strengthened by provision in the Criminal Justice and Immigration Act that requires courts, before reaching a decision on custody, to have considered the alternative of

a Youth Rehabilitation Order with Intensive Supervision and Surveillance or intensive fostering. If custody is imposed the court must make a statement as to why the Youth Rehabilitation Order alternative was not used. Taken together we believe these measures will ensure that the courts give proper consideration to the use of intensive community options instead of custody.

61 We are encouraged that the Government shares our view that there is excessive use of custody for young offenders. The Ministry of Justice should concentrate on finding mechanisms for driving down the numbers of young offenders in custody. However, current proposals do not go far enough. There is a need for clear guidance to ensure that the Intensive Supervision and Surveillance requirement is used as a last resort and for Youth Offending Teams and courts to ensure they are realistic about breaching and re-sentencing young people on these orders who, by their very nature, are particularly vulnerable. It is essential that the Sentencing Guidelines Council produce guidelines for the new Youth Rehabilitation Order before implementation. We also have concerns about the funding and the availability of programmes to meet the needs of the court in sentencing young people to this requirement. It is imperative that funding is prioritised to ensure that young people do not end up in custody for want of a place on an Intensive Supervision and Surveillance Programme. (Paragraph 244)

In the Youth Crime Action Plan, the Government set out its view that custody is for serious, violent and persistent offenders and will be used when other interventions would not adequately protect the public from harm or where they have not worked. But nowhere have we said that the current use of custody is 'excessive'. The threshold for custody for all under 18s is already significantly higher than for adults and much higher for the younger age groups. For all the generalised rhetoric about this, we have seen no evidence whatsoever that in a sample of real cases courts would not have appropriately used a non-custodial disposal.

The Government's overall aim is to drive down offending by juveniles and young people (as well as adults). The level of use of custody for juveniles and young people will be a consequence of that aim. A target for reducing the use of custody in itself would be inappropriate and inconsistent with the overriding need to reduce crime by young people.

On 29 August (the latest date for which figures are available), the Youth Justice Board reports that there were 3,019 young people under 18 in custody. Of these, five were aged 12, 32 were 13, and 134 were 14.

As noted above, the Youth Rehabilitation Order will not be brought into effect until the Sentencing Guidelines Council has issued a guideline for its use. We are committed to the aim of reducing the use of custody and we believe that the legislation in the Criminal Justice and Immigration Act 2008 will help to achieve this. The introduction of the Youth Rehabilitation Order, the Youth Conditional Caution and wider use of Referral Orders will extend out of court disposals, build on the success of the Referral Order, and provide a robust and flexible community sentence with direct alternatives to custody available through the intensive requirements. Intensive Supervision and Surveillance is already available nationally and we are working with the Youth Justice Board to ensure the successful delivery of the new sentence including sufficient provision of resources to support the Intensive Supervision and Surveillance requirement. But custody must remain an option for serious, seriously persistent and violent offenders.

62 We have concerns about resources and the capacity of Youth Offending Teams to implement the intensive fostering requirement for young people whose offending is linked to their home environment. We recommend that this element of the 2008 Act is not implemented until the Youth Justice Board is confident that Youth Offending Teams have sufficient resources to do so. (Paragraph 245)

The Government has already provided additional funds to support the continuation and expansion of the intensive fostering pilots. Under the Children's Plan we have invested an initial £4.1m and then £3m for the next two years. We are awaiting the evaluation report of the pilots, which is due in December 2008, before making further decisions.

63 We are concerned that the Youth Justice Board has been unable to reduce or stabilise the youth custodial population and that continued growth is reversing earlier progress in improving the juvenile estate. The efficacy of the use of very short custodial sentences for young people should be reviewed as a matter of urgency. We agree with HM Inspector of Prisons that, where young people have to be held in custody, it is imperative that vulnerable young people are held in establishments close to their families. (Paragraph 249)

The Committee's concern encapsulates one of the central dilemmas in relation to sending young offenders to custody. The Government's position is that custody is necessary in some cases, but should be used only as a last resort and for the shortest possible period. Where a young offender is sentenced to a short Detention and Training Order, we accept that there is limited scope for work to further his or

her education. However, removing such orders would carry the risk that the courts would continue to send these young offenders to custody but for longer periods. That would have a significant effect on the level of the custodial population, about which the Committee understandably expresses concern. The Government believes it is important that young offenders should not be sent to custody for any longer than necessary: we are not therefore planning to increase the minimum length of the Detention and Training Order.

64 There is an urgent need to examine the needs of vulnerable young people in the youth justice system and the appropriateness of secure accommodation for those who need to be held in custody. Better alternatives to secure accommodation for vulnerable young people who do not represent a danger to the public should be found. (Paragraph 254)

Please see above. Young offenders who are sent to custody need to be held in secure conditions (only 3 per cent of young people under 18 who admit, or are found guilty of, an offence are sentenced to custody). For those that are sent to custody it is the judgment of the courts that they should be held in secure conditions. The Government and the courts' prime concern is the duty to protect the vulnerability of victims and the wider community. The Youth Justice Board is currently reviewing the scope for some young offenders to be held in open conditions.

Conclusion

65 Throughout our inquiry we saw that failures in anticipating resource needs and providing appropriate resources for the implementation of policies stood in the way of results. (Paragraph 258)

66 The experience of the 2003 Act also points towards the importance of not assuming that legislation is the only mechanism to achieve policy aims – it is only one tool and, in many cases, not the most appropriate tool. For example, the deficiencies in the 2003 Act illustrate the limited efficacy of legislation in bringing about cultural change such as a shift from the use of short custodial to community sentences. (Paragraph 259)

67 The failures of the Criminal Justice Act 2003 have been compounded by the environment in which it came into operation – one where proper information about sentencing is not available to the public. At a national level those who engage in public debate on sentencing policy risk being labelled ‘soft on crime’. However, we also recognise that the debate on sentencing and criminal justice policy is often a local one. Coverage of court processes in local media has declined; and, while engagement of sentencers in local projects is done well in some areas, it must be encouraged throughout England and Wales. We urge the Government, the political parties and the media to promote informed and meaningful debate about sentencing policy. (Paragraph 267)

The charge that the Government has failed to provide sufficient resources for the correctional services is totally untrue and does not square with the record. Since 1997 the Government has increased prison capacity by over 23,000 places, and we are committed to bringing capacity up to 96,000 by 2014. Over the same period, the Probation Service has increased in size by over 7,000 staff and probation resource budgets have increased by nearly 70 per cent in real terms. An additional £17m has also been found for the Probation Service for each area's budget for 2008/09. In addition, we have recently provided further investment in alternatives to custody.

The Government welcomes the Committee's call for a meaningful and informed debate about sentencing policy. But it does not accept the Committee's implied criticisms of its policy. The Criminal Justice Act 2003 sets out a clear framework designed to protect the public and to punish and rehabilitate offenders. That is complemented by non-statutory work to improve the quality of non-custodial sentences. We have made available to the courts a comprehensive range of

effective sentences, both custodial and community. We will continue to strive for the most efficient, effective and fair criminal justice system it is possible to achieve.

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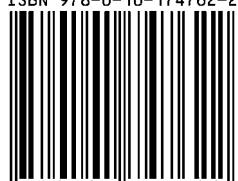
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