

# Improving Health, Supporting Justice

A consultation response from  
The Mental Health and Criminal Justice  
Third Sector Forum

## **About the Mental Health and Criminal Justice Third Sector Forum**

The Mental Health and Criminal Justice Third Sector Forum is a collective of several leading mental health and criminal justice organisations, all of whom have the shared aim of improving the lives and opportunities for rehabilitation of people involved in the criminal justice system. The Forum has a particular focus to work together and share best practice and ideas, to support better mental health and emotional well-being for these people, whose offending behaviour is often linked to a wide range of problems, and who come to the criminal justice system with high levels of social exclusion and deprivation.

While the views presented here are submitted on behalf of the Mental Health and Criminal Justice Third Sector Forum, individual members may have also submitted separate responses on behalf of their organisation.

## **Summary**

- We welcome the vision set out in the consultation document and the fact that government is taking offender health and social care seriously.
- For the strategy to succeed, the current imbalance between public protection and the health and social care needs of offenders needs to be redressed.
- More detail is needed in the final strategy about the role of social care and about how commissioners will be encouraged, supported and held to account for achieving the vision.
- Enhancing capacity for diversion from police stations and courts is vital. Without it prison mental health care will never be able to meet demand. This will need to be consistent with the findings of the Bradley Review.
- Resettlement needs a much higher priority in the criminal justice system. The apparent shelving of Custody Plus is regrettable given the importance of this agenda.
- Key deliverables should include increased GP registration for all offenders and better access to mainstream services as well as reduced reoffending.

## **Introduction**

The Mental Health and Criminal Justice Third Sector Forum welcomes the opportunity to respond to the Government consultation on *Improving Health, Supporting Justice*.

The Forum is encouraged that the document notes that 'many offenders have particular health and social care needs which may be causally linked to their offending behaviour' and that it is recognised that there is 'a strong case for the links between the socially excluded population, offending, and poor health'.

Research has for some time shown that there are high levels of mental ill health among prisoners (Singleton et al 1998; Gunn 2000) and those serving community sentences. More needs to be done to ensure that health and mental health are prioritised in both settings. In our view, prison does not, and should not, provide an appropriate environment for offenders with severe mental illnesses.

The consultation document shows that the Government takes the health and mental health of offenders seriously. The Forum hopes that the outcome will be a robust strategy that brings services together to meet the often complex and multiple needs of people involved in the criminal justice system, which supports rehabilitation and resettlement, and is not dominated by a public protection and punishment agenda.

For this strategy to succeed, a sea-change is required in the thinking and ethos of policy makers, criminal justice organisations and professionals, the media and the public, to put health, resettlement and rehabilitation at the forefront and centre of offender pathways, to improve health while *supporting* justice, not being *dominated* by justice and the public protection agenda as is currently the case.

## **Overall comments**

We are pleased that the document applies to all offenders at whichever point of the criminal justice system they have come into contact, that all offenders have the right to access to services, and that it promotes a consistent and equivalent approach, including reference to both primary care and social care needs.

We also welcome the fact that the document is an inclusive one that takes into account the needs of women, young people, and people from Black and Minority Ethnic communities, who often have a very different experience of both the criminal justice and health and social care systems.

The consultation document – and much of the wider work on offender health – focuses on how health and social care can adapt to meet the needs of the criminal justice system. In many instances, however, it is criminal justice agencies themselves that need to improve their practice so that offenders are better able to make best use of health and social care provision. For example, moving offenders from one prison to another seriously affects the continuity of care offered and is likely to reduce the effectiveness of resettlement strategies.

There is little explanation within the document of the social care people in contact with the criminal justice system require. Additionally, in some sections of the document there is little or no reference to social care. We would wish to see the final

document recognise this and address social care more fully. This is particularly important given that the absence of stable housing and employment are two of the main causes of increased re-offending.

Improved mental health training for those involved in criminal justice at all the stages needs to include awareness raising and issues of stigma and discrimination, which challenges perceptions, and involves people using services where possible.

In addition, we feel that many services for offenders – particularly social care services – are provided by voluntary or Third Sector organisations. This may be for a variety of reasons including a general distrust or dissatisfaction by offenders – especially offenders with mental health needs – of statutory services. However, the consultation document makes few references to the role of voluntary and Third Sector organisations. They should be involved at all levels of partnership working including strategic development, planning and provision. We would hope that the final strategy reflects the crucial role that many of these organisations play.

One further general point is that the consultation separates the stages into separate silos e.g., police, courts, prisons. While there is a need to consider the specific concerns at different stages of the criminal justice system, we would look to see a strategy that considers the system as a whole rather than this rather disjointed approach.

### **Multi-agency working**

The Forum agrees with the document that addressing offenders' 'complex, multiple needs, requires active and effective partnership working across the range of health, criminal justice and social care agencies'. We note that the consultation makes repeated reference to multi-agency and holistic working as the most effective way of supporting and rehabilitating offenders, and we agree with this sentiment.

The multi-agency partnerships that are required to ensure that holistic packages of care and rehabilitation are provided to those in the criminal justice system are, however, hindered by over-stretched and under-resourced services. In the prison and probation systems, prison overcrowding and record high volumes of offenders serving sentences in the community have made it difficult for health and social care agencies to work as well as they can with offenders with complex needs.

More people are being sentenced to prison and to community penalties than ever before. Sentences are also getting longer, while the use of the fine as a criminal justice sanction has faded (Home Office 2007a). The number of prisoners who are recalled, often for technical reasons, is also on the increase and accounts for a high proportion of the numbers of new entries to custody.

The number of people who are held on remand in custody prior to conviction or sentencing, seen most starkly when looking at the situation for women, is far too high (Home Office 2007a). While the Forum accepts that this is in some part the

responsibility of sentencing and the courts, these are also problems created as a result of penal policy, and they need to be looked at alongside strategies to promote health (see Home Office 2007b). Many people enter prison on remand also because of a lack of temporary supported accommodation to ensure they meet bail conditions. Most approved premises only take high risk offenders and can exclude those with mental health issues.

## **Commissioning**

While the approach to multi-agency working in *Improving Health, Supporting Justice* is a first step on the road to achieving the kind of support offenders desperately need, to make a significant difference the final strategy will need to give much more detail for commissioners. The idea of 'aligned' commissioning between the NHS, local authorities and criminal justice services has potential but it will not work without clear goals, proper guidance and a high priority from government.

Commissioning services for people with mental health problems who offend or are in contact with the criminal justice system must take a range of issues into consideration. For example, offenders have complex needs and are likely to require the inputs of a variety of services. Therefore integrated service provision should be a crucial part of any commissioning for these groups.

It is also necessary to develop meaningful needs assessment. Comprehensive offender health and mental health commissioning must be informed by a thorough understanding of need. Data on prevalence rates of mental illness alone will not inform commissioning effectively. Any top-down assessment must be supplemented from the ground-up with local stakeholders, to get some perspective of local needs and 'what a good service should look like'.

Finally contestability will introduce competition between the public, independent and voluntary sectors as commissioning incentivises new markets. Contracted out prisons have been in use for several years but more recently some functions in public prisons, such as health care at HMP Wandsworth, have been awarded to providers from other sectors (Sainsbury Centre, 2007b).

The consultation document notes that several of the new public service agreements (PSAs) are relevant to the strategy. How commissioners are held to account for their delivery of these PSAs will be critical to its success.

## **The Police and the Crown Prosecution Service**

The shortage of effective and well-resourced criminal justice liaison and diversion schemes in police stations or in courts has contributed to the growing mental health crisis in the criminal justice system. The Forum welcomes the consultation's commitment to link police with health care more closely. Robust and early assessment and identification of people with complex needs or mental health

problems by a trained mental health professional at the police station is important and can ensure that unnecessarily high levels of punishment or inappropriate custodial sentences are avoided. Better training in mental health awareness for police, and more places of safety away from police stations, will help to ensure that early diversion from criminal justice to social and health care is attained (Nacro 2007).

The criminal justice process can provide a good opportunity, through the use of 'diversion', to direct and link up vulnerable people with high levels of needs with health and social care services, when in other circumstances they might be hard to reach, or where they might otherwise be reluctant to get involved. 'Diversion' does not mean avoiding prosecution or stopping people from taking account for their crime, but can ensure that health and mental health needs are addressed in concordance with criminal justice and the criminal law.

We therefore welcome the consultation's vision that 'Court diversion/assessment and liaison schemes will be available to all offenders and integrated into mainstream mental health services' and that 'where a health or social care related problem is identified, court staff will be equipped with a range of skills to ensure that the person is dealt with in an appropriate and timely manner.'

To support this, consistent standards will be needed for initial screening to ensure mental health issues and details such as previous contact with services are better identified.

Gaps in legal training must also be closed. Many lawyers dealing with serious mental illnesses have had little or no training on the subject. This is particularly important for duty solicitors, who may be able to facilitate diversion at the court stage.

Greater transparency about the whereabouts and allocation of secure beds is also required. All offenders should be entitled, when required, to a Judicial Review to determine the right to a bed when a court has ordered admission to hospital, and should have the right to treatment.

The Forum notes the announcement of a review by Lord Bradley into mental health, diversion and criminal justice, and looks forward to the final report. We hope that the strategy resulting from the *Improving Health, Supporting Justice* consultation document will be consistent with and embraced by the Bradley Review's findings and recommendations.

## **Courts and Sentencing**

A number of mental health interventions are available to the courts, yet they are infrequently used despite the high levels of mental health problems among people who pass through the court process.

When community sentences are issued, very few are given with a mental health treatment requirement (MHTR). Less than 1% of Community Orders or Suspended Sentence Orders include a MHTR, despite findings that half of offenders serving community sentences have an emotional or well-being problem that is linked to their offending behaviour (CCJS, 2007). Because the MHTR is only available as an option for offenders whose illness is not serious enough that it requires the use of the Mental Health Act, it is in theory an ideal option for the courts where an offender has a low-level or more moderate underlying mental health problem.

A shortage of timely and cost-effective psychiatric reports has meant that many courts are unable to issue an MHTR as desired. Delays in obtaining psychiatric reports have also, at times, resulted in remanding vulnerable people to prison, with the courts reluctant to release people with complex needs back into the community on bail. This is a very improper use of custody, and needs to be addressed with some urgency.

In addition, some courts have a lack of confidence in, and limited or no relationship established with, mental health services to enable joined-up working. This relationship is critical, as it is mental health services and practitioners who deliver this requirement. Further, many courts will issue a drug treatment requirement in favour of a mental health treatment requirement. This is in part due to the reasons outlined above, but is also because there are national targets for the courts to issue drug treatments as part of community sentences, where no such targets exist for mental health treatments (Seymour and Rutherford, 2008).

The Forum is also concerned that the number of sentences of Imprisonment for Public Protection (IPP) has increased while the number of Hospital Orders has decreased. In addition, there are concerns that a large and increasing number of IPP prisoners will require transfer to medium secure forensic mental health services.

It is possible that the courts are identifying 'dangerousness' (a prerequisite of IPP) rather than obtaining a diagnosis for a mental illness or personality disorder. Research at the Sainsbury Centre is currently under way to explore the mental health implications of IPP, which will try to assess the impact of indeterminate sentences on prisons and forensic mental health services.

The Forum is also very concerned about the high numbers of non-criminal sanctions, such as Anti-Social Behaviour Orders (ASBOs), which are being issued to young and vulnerable people, many of whom have mental health problems or learning and behavioural difficulties. Without the proper support to abide by the requirements of such civil law Orders, are drawn further towards the criminal justice system, and in some cases people are being sent to prison for breach (Sainsbury Centre, 2007a). We note that *Improving Health, Supporting Justice* is published in partnership with the Department for Children, Schools and Families. The Secretary of State for Children recently stated that it was a sign of 'failure' every time an ASBO is issued to a child. The Forum hopes that this indicates that the Government is looking towards reforming this area of policy, which has been shown to do more harm than good (IPPR, 2008).

In response to the consultation's specific point on women-only courts, the Forum feels that it is more important that there is women-focused criminal justice provision after sentencing, as advocated by the Corston Report (Home Office, 2007a).

The Forum supports Baroness Corston's recommendation for small, urban based units to treat the multiple and complex needs of many women offenders, over a women-only court where current criminal justice sanctions and options exist.

The notion of mental health courts is one that requires further piloting and evaluation before implementation in the UK, but it has shown some good outcomes in terms of diversion, improving health, and reducing reoffending in the US and Canada.

## **Prisons and rehabilitation**

In 2002, the Social Exclusion Unit found high levels of social exclusion and mental ill health among prisoners in England and Wales. While many prisoners experienced a lifetime of social exclusion, it was estimated that mental health problems affected around 70% of the prison population. As many, if not more, were found to have alcohol or drug abuse problems. The report noted that prison may cause a person's mental and physical health to deteriorate further, that life and thinking skills will be eroded, and that prisoners will be introduced, or have greater access to, drugs (SEU, 2002).

In October 2007, HM Inspectorate of Prisons carried out its own thematic review of mental health in prisons. It concluded:

"Two findings stand out starkly from this report. The first is that there are still too many gaps in provision and too much unmet and sometimes unrecognised need in prisons. The second, equally important, is that the need will always remain greater than the capacity, unless mental health and community services outside prison are improved and people are appropriately directed to them: before, instead of, and after custody. Those are the two parallel tracks that must be followed if the initial gains are to be built on...Unless those gaps are filled, mentally ill people will continue to fall through them, and into our overcrowded, increasingly pressurised prisons" (HMIP, 2007).

There were 92 self-inflicted deaths in prisons in England and Wales in 2007, an increase from 67 in 2006. Eight of these deaths were of women, compared with three the previous year. The Ministry of Justice noted that:

"The prison population hit an all-time high during 2007 and contains a high proportion of very vulnerable individuals. There are around 130,000 prisoners going through the prison system each year and on any one day prisons keep safe over 1,500 people assessed as at particular risk. Over 100 prisoners were resuscitated during 2007 after serious self-harm incidents" (Ministry of Justice 2008).

Overstretched prison inreach teams, under-funded or non-existent prison primary mental health care, and extremely high levels of overcrowding have made good mental health care in prisons increasingly difficult.

The Forum strongly agrees with the HMIP report's assertion that too many people with severe mental illnesses are in the criminal justice system. As a result, more people than ever are being transferred from prison to forensic mental health facilities (Rutherford and Duggan, 2007). We welcome the 14-day waiting time transfer project, and hope that this will be rolled out nationally. It will be particularly important that this is set up effectively in London, where none of the pilot sites were held.

We are concerned, however, that many of those transferred from prison should have been diverted at the court stage and never entered prison in the first place. In addition, nine in ten people transferred to medium-secure services stay longer in detention than they would have done under the terms of their original custodial sentence (Rutherford and Duggan, 2007). This is partly because there are inadequate step-down options available to medium-secure settings, and because forensic mental health services are becoming increasingly risk-averse and reluctant to discharge patients.

It often appears that, despite some examples of good practice, mental health care and treatment in prison has often been little more than an afterthought or a footnote to the dominant public protection agenda. Key areas for further investment need to be focused on the unmanageable case loads of inreach teams, dedicated specialist GP services in prison, and wider mental health promotion provision in prison in which health care and prison staff are both engaged.

One of the consultation's visions is that all prison staff 'will understand and be empowered to deliver a health focussed environment which also acknowledges the need for public protection'. This would be a welcome move. It would require a major redressing of the balance in current penal policy, prison ethos, public and media expectations and resource allocation. The consultation's proposed guidance for commissioners on reworking the balance between health care and public protection will be very important. It needs to be placed at the centre of budget planning for local offender health strategies.

### **Probation, release and resettlement**

Since the establishment of NOMS in 2005, probation services have been tasked with managing the 'through-care', monitoring and support of offenders serving sentences in the community, and of people who have left prison, for the duration of the time that they are on sentence or license. Probation also plays a central role in the court process and in informing sentencing decisions. Yet because of the sheer number of people who require probation services, public protection requirements have tended to dominate the work of probation, while resettlement, rehabilitation, and linking

people with multiple needs to packages of health and social care have moved out of focus.

The Forum believes that the imbalance between public protection and rehabilitation is in part a result of the outcome measures that are used locally and nationally to measure the success of the criminal justice system. They are dominated by the agenda to measure reoffending and monitor breach of licenses.

Reoffending rates are currently extremely high, with nearly seven out of ten offenders reconvicted within two years of leaving prison. Community sentences are somewhat more successful than prison in terms of reoffending rates, where the rate is closer to five in ten. The revolving door cycle between prison and the community is becoming increasingly apparent.

The Forum regrets the Government's apparent shelving of the much-anticipated Custody Plus scheme, which might have provided end-to-end services for prisoners and better resettlement and rehabilitation packages for those near to release. Greater attention to mental health needs on leaving prison, proactive action to link individuals to local sources of help, and engagement with and information for families and carers is key to both wellbeing and reducing reoffending. The shortfall in such areas, in part a result in the failure to implement Custody Plus, has contributed to the current shortcomings and failure to reduce reoffending. These high rates seem almost inevitable given the lack of aftercare that people receive when they leave prison.

This is particularly a problem for short-sentence prisoners, as there is no follow-up by probation at all for those who have served less than a 12-month sentence in custody. Short prison sentences are often just long enough for a prisoner to lose (if they had any of these before being sent to prison) their home, job, family, benefits, health and mental health. Yet they are rarely long enough to establish robust resettlement plans, and they rarely achieve positive health, housing or employment outcomes (Rutherford, 2008).

Reoffending rates, if used as a measure of success or failure, demonstrate that the criminal justice system is in most cases failing. However, while preventing reoffending is one important ultimate goal, other outcomes, such as health improvement or sustained employment, are just as important from a perspective of overall benefits to society. We would welcome modest deliverables including:

- An increase in GP registration for all offenders;
- A reduction in the number of 'revolving door' cases in contact with the criminal justice system;
- The ease with which offenders can get access to mainstream services;
- Whether practitioners feel they have greater options and access to services for their clients.

While these outcomes require more sustained and longitudinal analyses, research has shown that stable accommodation, a secure job and good health care are in

themselves essential components to reduce reoffending, even though they may have little to do with traditional methods of public protection or risk aversion. Clearly a balance needs to be set between the two agendas, but we hope it will move to a very different position to that which exists today.

## References

Centre for Crime and Justice Studies (2007), Community Sentences Digest, <http://www.crimeandjustice.org.uk/opus267/community-sentences-2007.pdf>

Gunn J (2000), 'Future directions for treatment in forensic psychiatry', *British Journal of Psychiatry*, 176, 332-338

HM Inspectorate of Prisons (2007), *The Mental Health of Prisoners: a thematic review of the care and support of prisoners with mental health needs*, HMIP

Home Office (2007a), *A report by Baroness Jean Corston of a review of women with particular vulnerabilities in the criminal justice system*, London: Home Office

Home Office (2007b), *Sentencing Statistics 2006 England and Wales*, London: Home Office

IPPR (2008), *Make Me a Criminal: Preventing Youth Crime*, London: IPPR

Ministry of Justice (2008), 'Deaths in Prison Custody 2007', <http://www.justice.gov.uk/news/newsrelease010108a.htm>

Nacro (2007), *Effective mental healthcare for offenders: the need for a fresh approach*, <http://www.nacro.org.uk/data/resources/nacro-2007101000.pdf>

Rutherford M (2008) *The Corston Report and the Government's Response*. London: Sainsbury Centre for Mental Health

Rutherford M and Duggan S (2007), *Forensic Mental Health Services: Facts and Figures on Current Provision*, London: Sainsbury Centre for Mental Health, [http://www.scmh.org.uk/80256FBD004F3555/vWeb/fIKHAL76WBRP/\\$file/scmh\\_forensic\\_factfile\\_2007.pdf](http://www.scmh.org.uk/80256FBD004F3555/vWeb/fIKHAL76WBRP/$file/scmh_forensic_factfile_2007.pdf)

Sainsbury Centre for Mental Health (2007a) *Anti-Social Behaviour Orders and Mental Health*, London: Sainsbury Centre [http://www.scmh.org.uk/80256FBD004F3555/vWeb/fIKHAL78SE69/\\$file/sainsburycentre\\_asbo\\_consultation\\_response\\_nov07.pdf](http://www.scmh.org.uk/80256FBD004F3555/vWeb/fIKHAL78SE69/$file/sainsburycentre_asbo_consultation_response_nov07.pdf)

Sainsbury Centre for Mental Health (2007b) *The Commissioning Framework for Health and Wellbeing: A response from the Sainsbury Centre for Mental Health* [http://www.scmh.org.uk/80256FBD004F3555/vWeb/fIKHAL73NCMS/\\$file/commissioning\\_framework\\_scmh\\_response.doc](http://www.scmh.org.uk/80256FBD004F3555/vWeb/fIKHAL73NCMS/$file/commissioning_framework_scmh_response.doc)

Seymour L and Rutherford M (2008), The Community Order and the Mental Health Treatment Requirement, London: Sainsbury Centre for Mental Health,  
[http://www.scmh.org.uk/80256FBD004F3555/vWeb/fIKHAL7ANJRM/\\$file/scmh\\_mental\\_health\\_treatment\\_requirement\\_paper.pdf](http://www.scmh.org.uk/80256FBD004F3555/vWeb/fIKHAL7ANJRM/$file/scmh_mental_health_treatment_requirement_paper.pdf)

Singleton, Meltzer & Gatward (1998), Psychiatric morbidity among prisoners in England and Wales, London: Office for National Statistics.

Social Exclusion Unit (2002), Reducing Reoffending by Ex-prisoners, London: Cabinet Office

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It is additionally supported by Forum Members including:

**The Howard League for Penal Reform**  
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