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The Magistrates' Association welcomes the opportunity to respond to the Green Paper — Breaking the Cycle. Members of our Association have also contributed to the discussion events which have taken place during the consultation period. We have also been able to have additional meetings with Ministry of Justice officials and look forward to further discussions on specific issues as these are developed.

Funding for the proposals is, of course, an important issue. We know that the government wants to do more with less — but the government must invest to make savings in the future.

Punishment and reparation: Chapter One, pages 14-23, questions 1-7

Work in prisons (paras 50-58)

Curfews with electronic tagging (paras 60-65)

Community payback (paras 66-70)

Compensation and fines (paras 71-74)

Victims (paras 75-83)

Work in prisons (paras 50-58)

The Association agrees that prison should not be purposeless and, in principle, supports the concept of '*working prisons*' as described in paragraphs 53 to 55.

With regard to short sentenced prisoners, the average time served in prison (as against time sentenced) is 6 weeks and a significant proportion of that time will be taken up with the administration of their reception, including assessing the risks they pose and their mental and physical health, and of their discharge. We think it is too optimistic to expect that a working regime can be provided in this short space of time with newly arrived prisoners whose risk assessments may still be provisional until the staff know them better. For these prisoners, it would be more practicable to provide education (basic literacy and numeracy), drug and alcohol treatment and pointers to employment and accommodation on release. We acknowledge that the Green Paper evidence report shows that there is no proof that such

interventions (as opposed to accredited programmes) reduce reoffending but it also states that there is only limited evidence that a regime of 40 hours work per week would do so either.

At present the prison service concentrates its limited resources on longer sentenced prisoners, allowing it to target the most receptive candidates for the courses (usually accredited programmes) on offer. It is however the short sentenced prisoners who are the prolific offenders, who are going to reoffend more quickly (according to the Green Paper evidence report) and whose re-offending can be assumed to be all the greater if they receive no help while inside. For short term prisoners, programmes must extend beyond the period of imprisonment if they are to have any long term effect.

Association paper 10/78 addresses the issue of rehabilitative work for short sentenced prisoners.

Q1. How should we achieve our aims for making prisons places of hard work and discipline?

In the first instance, we recommend that working prisons are for lower risk prisoners, ie. those who can work in open conditions and for private sector companies who have real work to be done for which economic wages can be paid.

Many offenders do not possess the basic tools to live within mainstream society. Hence, in order for some prisoners to engage with work, an intensive induction/training programme may be required.

For short term prisoners, an intensive rehabilitative training programme could be more productive — in order to address offending behaviour and to provide support for practical problems on release, such as accommodation and relationships.

On release, resettlement is key. Linking released prisoners with services (alcohol, literacy, drugs etc) within their local community must be of paramount importance.

We assume that these proposals will also apply to Young Offender Institutions (YOIs).

Q2. How should we best use the expertise and innovation of the private and voluntary sectors to help develop the working prison?

Engage in discussions with the private sector and voluntary organisations that already have experience of working with offenders.

Q3. How can we make it possible for more prisoners to make reparation, including to victims and communities?

The concept that offenders should pay compensation to victims is welcomed. Currently victims of those sentenced to custody often receive little or nothing. However, the scheme should be as simple as possible and the Association believes that the only practical and fair

way would be to make deductions from *all* prisoners' earnings to be paid to a central compensation fund — and for victims to be compensated from that fund.

An alternative might be to consider a scheme whereby prisoners do voluntary work in prison and the 'money earned' is given direct to charity.

Curfews with electronic tagging (paras 60-65)

The Magistrates' Association supports the proposals for an increase in curfew hours to a maximum of 16 hours a day and an increase in duration from 6 to 12 months. Curfew can be an effective tool in preventing re-offending and giving respite to victims. It can allow the 'home regime' to remain in place, which in turn can maintain the stability of any relationship, which could be jeopardised by a custodial sentence eg. through loss of earnings/benefits and accommodation. Greater use of curfews can reduce custodial costs and potential on-going costs to society.

Extending the maximum hours and the length of a curfew would assist youth magistrates in their very genuine attempts to keep young people out of custody.

We would also urge Government to consider extending the hours to 16 for electronic tagging when used in remand situations.

Q4. How do we target tough curfew orders to maximise their effectiveness?

The proposed increases to 16 hours per day and 12 months duration in total would be most useful in allowing imaginative weekend curfews, particularly for offenders in employment and for those whose offences are associated with binge drinking or other weekend activities.

16 hours would allow either a single curfew from 7pm to 11am on a Friday and a Saturday night, or allow the current typical 7pm to 7 am with another 4 hours in the middle of the day. This would represent a very significant restriction of liberty, even for 6 months of weekends, let alone for 12 months. Magistrates are aware however, that where curfew hours vary from day to day or the curfew hours are divided up into two or more blocks of time within any one 24 hour period, it can be difficult for many offenders to keep track of the requirements — which can ultimately lead to an increase in breaches. There also comes a point when the court has to consider whether it is not also punishing those with whom the offender lives if curfews impose long periods of detention at home.

As a punishment, the curfew should be more tailored around the lifestyle of the person under curfew eg. football supporters could be made subject to a weekend curfew, alcohol related offenders could be subject to a curfew during popular licencing hours and exclusion from the town centre at night. Where there is a victim of an assault / intimidation / harassment then curfews could be tailored to prevent the parties from coming in contact by the use of more sophisticated tracking equipment. For young people, the curfew needs to be targeted to times which are most valuable to them, such as Friday and Saturday nights, times of football matches, parties etc.

The Association welcomes the suggestion of exploring the scope and cost of using satellite tracking technology. The current GPS technology is very accurate. Urban areas and buildings do not present an unsolvable challenge with regards to signal strength. The use of text messages (outlined in paragraph 64) is particularly relevant— given the significant use the 18-24 year age group make of this method of communication and also provides a record of the instruction given.

If satellite tracking technology was made available to the courts it could be used in at least two ways:

- It would give more confidence to sentencers to use exclusion and prohibited activity requirements as part of a community order, because they could be monitored automatically and rigorously.
- It would allow typical bail conditions such as *'not to go to a named street, a named shop or a named town'* to be enforced electronically.

Association paper 10/56 sets out more of the Association's ideas on the development and imaginative use of curfew.

Community payback (paras 66-70)

Although magistrates would welcome improvements to community payback, many would argue that the regime already has the capability of being rigorous and demanding if it is working properly. What is required is more support for the probation service in managing offenders who are undertaking community payback.

Generally, failure to comply with community payback falls into a number of categories:

- The work is not started because offenders refuse to comply;
- The concept of work is alien to some offenders, who have never worked at all;
- The offenders' lifestyles are chaotic and appointments are not remembered / kept;
- The community payback 'location' puts people in a situation where they meet 'rivals' who can cause conflict resulting in subsequent non attendances.

Q5. What are the best ways of making Community Payback rigorous and demanding?

Programmes should start as soon as possible after a court sentence. As with programme requirements, there may be cases where probation needs to do some work before an offender is suitable for an unpaid work requirement of their order, but generally it should be possible for the work to begin virtually straight away. Hours set by the courts should be used specifically for unpaid work requirements and should not include probation meetings as is currently the case.

Working hours should be as close to a working day as possible.

Q6. How can communities be more involved in influencing the type of work completed by offenders on Community Payback?

Probation Trusts should be required to demonstrate the extent to which they have consulted the community in the same way as local authorities are required to demonstrate it in the compilation of local development plans.

The proposals to build on the Citizens Panels pilots and Community Payback websites could provide a simple and cheap vehicle for local communities to nominate areas of work that meet the criteria for Community Payback as well as giving a highly visible local feel to the benefits of Community Payback.

Q7. How should we seek to deliver Community Payback in partnership with organisations outside government?

We are aware that there is already a competition under way for private sector companies (and other not for profit consortia) to bid for community payback (unpaid work) contracts — and believe that members of the judiciary should be clearly involved in the design of the contracts. Meanwhile, we have a couple of general points.

- Private sector companies should be allowed to bid to complete socially desirable projects such as the construction or maintenance of social housing using, in part, the labour of those required to do unpaid work.
- Clearly some form of safety/security is needed to organisations that propose projects as being suitable for Community Payback. One solution could be the use of electronic monitoring/satellite tracking of individuals to provide such confidence.

Victims (paras 75-83)

It is rare at present for victim impact statements to be read out in magistrates' court proceedings. We therefore recommend that the police/CPS should always offer a victim the chance of making a victim impact statement and the CPS should confirm to the bench that this has taken place.

There is some concern that statements elicit expectations in victims that cannot be delivered, for example, that they are able to influence the sentence being given by the court. Victims should therefore be made aware that the statement is to help the court in understanding the effects of the crime on the individual victims involved — and to assist the court in assessing the sentencing requirements to provide justice to the victim, as well as deciding on the most appropriate sentence in line with the totality principle.

Rehabilitation: Chapter Two, pages 24-37, questions 8-21

Integrated offender management (paras 84-88)

Drug strategy (paras 89-103)

Women offenders (paras 104-107)

Reform of the ROA (paras 113-118)

Management of mentally ill offenders (paras 122-126)

To what extent are the proposals applicable to young people? For example, will drug recovery wings be available in YOIs?

Q11. How can we use the pilot drug recovery wings to develop a better continuity of care between custody and the community?

The pilot drug recovery wings can be used to develop a better continuity of care between custody and the community by arranging for staff, particularly health professionals, to work both in prisons (and YOIs) and in the community, ensuring continuity of care and of trust.

Reform of the ROA (paras 113-118)

The Association supports the proposals to include:

- Broadening the scope of the Act so that it covers all offenders who receive a determinate sentence
- Producing a clearer, simplified classification of rehabilitation periods, with perhaps as few as two or three classes
- Modernising and simplifying the language of the legislation

Q16. What can we do to secure greater commitment from employers in working with us to achieve the outcomes we seek?

Legislation should be introduced to protect employers who decide to take a reasonable risk in employing an ex-offender. At present, many employers are not prepared to take any risk — and of course this can relate to insurance arrangements.

Financial incentives might be offered, eg. reduced National Insurance contributions.

Q17. What changes to the Rehabilitation of Offenders Act 1974 would best deliver the balance of rehabilitation and public protection?

- A much simpler and fairer method of criminal record disclosure is required.
- The decision whether or not to disclose details of a criminal record should be fair, unambiguous, and proportionate.
- The length of time for which an offence should be disclosed should depend upon the seriousness of the offence and the age of the offender.

The Youth Courts Committee of the Magistrates' Association is concerned about the impact of criminalizing young people and the long-term effect this can have on their life opportunities. It cannot be right for a young person who committed a minor offence several years earlier to find themselves precluded from pursuing an occupation in nursing, teaching, or other exempted occupations, without the matter having been given detailed consideration regarding their suitability. The current system is very indiscriminate — institutions and organizations involved in such occupations are merely provided with a list of previous offences, from which they must determine their own thresholds.

We believe that if the Government intends to bring about a rehabilitation revolution, this is an area of work that requires attention and we are therefore pleased to see it covered in the Green Paper. We feel that the time parameters under the Rehabilitation of Offenders Act (ROA) are about right. However we urge the government to review the adverse effect that introducing the Criminal Records Bureau, the Bichard report, and the management of police information have had on complicating the effects of the ROA and extending its reach, thus affecting the future life opportunities of young people and adult offenders. We acknowledge that the introduction of the Independent Safeguarding Agency (ISA) should go some way in redressing the presumption of exemption that currently exists, and we suggest that the following could further improve the situation.

Currently it is permissible for any person to have an enhanced CRB check, for any occupation, if the inquirer pays the necessary fee. We suggest that this practice should stop forthwith and that only those roles requiring ISA registration should be cleared for enhanced disclosure. This would balance the need for records to be maintained (allowing police and the courts to have access to a person's full offending history), whilst at the same time protecting the public from unsuitable persons entering into sensitive occupations. It would also protect the individual's right to have their offending history considered fully exempt in line with the Rehabilitation of Offenders Act. It would reduce bureaucracy for police forces, who currently have to facilitate such requests by searching their own databases for records of contact with these people.

Consideration should also be given to the ISA supplying guidance to academic institutions regarding admission policies for courses that lead to exempted occupations. This would standardise the entrance restrictions that appear to be arbitrarily imposed at the present time.

Management of mentally ill offenders (paras 122-126)

Q19. How can we ensure that existing good practice can inform the programme of mental health liaison and diversion pilot projects for adults and young people?

There are four groups of offenders/patients for whom a well structured liaison and diversion process would be of benefit. Those suffering from relatively minor mental health issues would still have to be dealt with by the court but would/should be encouraged to seek professional help for their health issues and should have their mental health difficulties properly reflected in any report on them prior to sentencing. Those with undiagnosed

serious mental illness and thus not currently 'on the books' of specialist services would have their referral expedited by their arrest/court appearance. The earlier a serious mental illness is diagnosed the better the prognosis, especially with younger people. For those already in specialist treatment the liaison/diversion process would signal a review of treatment and a re-assessment of the risks involved in managing the patient in the community. Finally of course the presence of a structured liaison/diversion service could trigger the process of applying the provisions of detention under the Mental Health Act, either through the forensic route or by s.2 Admission for assessment. As such it would supplement the current police involvement in 'Place of Safety' cases under ss.135 and 136.

It is necessary to establish whose responsibility it would be to pay for obtaining a properly conducted mental health assessment. It is unacceptable for this to be left to local agreement as, too often, the result is that no one takes responsibility.

Payment by results: Chapter Three, pages 38-48, questions 22-31

Designing the payment by results model (paras 127-149)

Paying providers by results (paras 150-158)

Reforming services (paras 159-164)

We are reassured that *'provision of advice to the court will remain the preserve of the public sector'* (paragraph 159).

If private contractors are to be used to deliver community sentences, it will be vital to ensure that sentencers remain confident about the services provided and we make the following comments in this respect:

- Magistrates have already had some experience of outsourced services, notably the provision of curfew and electronic monitoring services, the execution of warrants and the provision of prisoner transport to court and custody officers at court.
- In general curfew arrangements have worked well, but some magistrates have concerns about the prisoner transport service, apparently attributable to staff shortages, and long and complicated journeys involving multiple pick-ups and drop offs which result in delays to prisoners arriving at court. Warrants remain unexecuted if the offender has moved to a different part of the country, outside the area covered by the warrant contract, eg. from South East England to London or vice versa.
- If outsourcing means that contracts are awarded to providers who are prepared to over extend themselves to get the cost down, and who are prepared to overlook shortcomings in the delivery of court orders to meet the financial targets in the contract, then magistrates will lose confidence in community orders and be more inclined to impose sentences with which they are more familiar and trust more, which could mean more use of custody.
- Contractors will need to do more than just win the contract. They will need to gain the confidence of sentencers by explaining their proposals for managing, monitoring effectiveness, breaching and reporting on results, as well as promptly addressing any concerns which are raised.
- The current liaison arrangements between magistrates and probation staff at bench level will need to be extended to include those contractors working outside probation control or for whom probation can no longer answer.
- These points apply equally to sub-contractors.

Designing the payment by results model (paras 127-149)

Q22. Do you agree that the best way of commissioning payment by results for community sentences is to integrate it within a wider contract which includes ensuring the delivery of the sentence?

We are reassured that magistrates are to be involved in the design of contracts for payment by results and detailed comments will be made at the forthcoming meetings. Meanwhile, we have the following general comments.

Care must be taken when one contractor is responsible for delivering all parts of the sentence in that, if a contractor is given the responsibility for delivering all parts of the sentence and uses sub contractors to deliver individual programmes or activities, then the courts must not be steered away from the sub contracted activities just because it is more profitable for the main contractor to keep as much as possible 'in house'. Magistrates must not be hampered by contractor availability and the full range of community penalties must always be available.

Paying providers by results (paras 150-158)

Q25. Do you agree that high risk offenders and those who are less likely to reoffend should be excluded from the payment by results approach?

In principle we believe that high risk offenders should be included in the approach and that the weighting of success/payment is adjusted to the potential level of reoffending.

However, if high risk offenders are not included then care must be taken that those excluded are not neglected in the programmes available to either punish or rehabilitate.

Q27. What is the best option for measuring reoffending and success to support a payment by results approach?

The Association favours the results model that uses all proven offending as shown in section 154. It is vital that all level of convictions including out of court disposals are used in the assessment.

Reforming services (paras 159-164)

The Association strongly supports the statement in paragraph 159 which states that the Government expects that provision of advice to the court will remain the preserve of the public sector.

Sentencing and sentences: Chapter Four, pages 49-66, questions 32-47

Sentencing framework (paras 165-172)

Custodial sentencing (paras 173-197)

Community penalties (paras 198-206)

Financial penalties (paras 207-213)

The right court for the right case (paras 214-216)

Out of court disposals (paras 217-223)

Foreign nationals (paras 224-229)

Sentencing framework (paras 165-172)

The government says that it is looking for a system that puts the notion of ‘responsibility of the offender’ back at its centre — but the system must be transparent if the public is to know and understand how these responsibilities have been discharged.

We also know that the government’s aim is for people to be more interested in outcomes than processes — but processes and procedures have to be clear if people are to appreciate how outcomes have been achieved.

Q32. What are the best ways to simplify the sentencing framework?

There is a sentencing framework, but this does not cover the entire spectrum of how offending behaviour is dealt with — which stretches from cautions and other non-judicial disposals and interventions, through summary jurisdiction in magistrates’ courts, either way offences in magistrates or Crown Court, to indictable only offences in the Crown Court. The government should establish a clear and continuous framework which includes definitions of responsibilities and descriptions of processes at all stages. This should include how the restorative justice approach can be appropriately used at each level. Only this will help the public to understand how everything fits together and — to paraphrase Nick Herbert — to see how ‘offending always has consequences’.

The current confusion can be demonstrated by considering the multitude of out of court disposals ranging from fixed penalty tickets to conditional cautions. The difference between them is not understood by the public neither is the difference between them and the court process understood. Out of court disposals need simplifying and that can be achieved by reducing the number to just a couple of processes. Namely cautions for a fixed type and level of offence and fixed penalty tickets for specific measurable offences.

Q33. What should be the requirements on the courts to explain the sentence?

The court should explain any sentence, in the first instance, **for** the offender. It is the offender who needs to know what sentence has been passed, why it has been passed and what it entails. There is a further requirement in explaining to victims why a particular sentence has been passed, what it sets out to do and how it will be monitored. Together, these explanations should meet the needs of the general public.

The sentence should be delivered simply stating the basic aggravating and mitigating elements which have been taken into account. With simple prosecutions such as motoring, the reduction for a 'guilty' plea is possibly the only necessity additional to the fine and points imposed.

For any imprisonable offence, the basis of the sentence should be simply and succinctly explained (eg. guilty plea, premeditated / group action, etc. together with the simple aggravating or mitigating offender factors such as long history of similar offending or isolated incident by someone of previous good character, etc.). Those in court (and thereby the public) should be advised that when determining the appropriate sentence what is intended by each of the principal purposes of the sentence (punishment/ rehabilitation/ protection of the public/ reparation/ restoration, etc.).

The technical parts need only be stipulated if, in the court's opinion, it is just and necessary so to do. Often, confirmation that the offender has read and understood the requirements of a proposed community order [or similar] may be all that is necessary.

The pronouncement need only identify the basic requirements of the community order, although the court should always have the discretion to decide what further information should be forthcoming rather than have to strictly comply with any particular 'formula'.

Q34. How can we better explain sentencing to the public?

The prime objective must be to ensure that the public understands why a particular sentence has been given and what the legal limitations are to the decision and the process. The public is currently largely unaware of many of the legal requirements that surround the sentencing process. They are not assisted by the media, which persists in ignoring any rules that surround sentencing. It is this that needs attention more than a change to a framework.

Firstly, therefore, more use must be made of the initiatives such as the Magistrates' Association's *Magistrates in the Community* and *Local Crime, Community Sentence* programmes, which are nationally recognised programmes that set out to advise the community about how the criminal justice system works. All of the evidence points to such programmes educating the community about their criminal justice system and the before and after change in perceptions is remarkable and sustained.

Sadly, the work is underfunded. If this is to be a genuine priority for the Government, adequate funding and support should be provided.

Secondly, the media must also play its part as the public gets so much information from newspapers etc. Expressions such as 'walks free from court' when for example, a strenuous 3 year community order has been given do nothing to improve confidence in community sentences.

It would be a great help if the local press was in court more often. Failing that, a list of offences and sentences could be published in the local paper on a regular basis. This would have the additional benefit of encouraging members of the public to take an interest in the work of the courts.

The Government needs to consider ways of communicating results to the media and the public which will be cost effective to the courts and to the media. Greater use of technology must be considered.

Custodial sentencing (paras 173-197)

Q35. How best can we increase understanding of prison sentences?

Early release mid-way through sentence is probably the single factor which most undermines public confidence in the criminal justice system. A sentence passed should in most circumstances be the sentence served. In other words, a three month prison sentence that is passed by a court should mean that a three month prison sentence is served.

We are concerned at the suggestion about remand in paragraph 179. Courts currently have to grant bail unless there are substantial reasons for believing that one or more of the criteria to refuse bail apply. We could accept a requirement that the court should take into account the likely sentence if the defendant pleads guilty or is found guilty. However we would strongly be against losing the ability to remand in custody in cases where there is a possibility of interfering with witnesses, or further offences being committed, or the defendant failing to surrender — all of which would seriously prejudice the interests of justice. The failure to answer bail is just one exception to the Bail Act, but not the only one. Often, a defendant's advocate will urge bail if a non-custodial sentence is probable, but the existing Bail Act provisions have withstood the tests of time and proved to be most appropriate. It should also be remembered that a good proportion of the offenders not subsequently sentenced to custody receive a non-custodial sentence having taken into account the time spent on remand.

Even if a non custodial sentence is probable magistrates need the ability to remand in custody those of no fixed abode, those who refuse to agree to bail conditions, those who are brought back to court having breached bail conditions such as contacting a witness and those who have a history of Bail Act offences, including those who have been apprehended after a long period of being *unlawfully at large*. If this proposal were enacted and the magistrates in giving their reasons for granting bail said it was because a non custodial sentence after trial was probable, then they would have seriously compromised the freedom of the later sentencing bench, including in those cases where the evidence given at trial indicates that the offence was more serious than initially appeared.

We understand that there is concern that about 35,000 defendants are remanded into custody annually who do not eventually receive a custodial sentence — and that it is felt that there must be ways to avoid using remand in custody for these defendants. However, this figure will include:

- those who spend *any* part of their time pre trial in prison — for example those who are charged with assault in a domestic context and are remanded in custody initially to protect a vulnerable victim but a week later make a successful bail application having found alternative accommodation;
- those given bail initially but who are later remanded into custody having breached conditions such as not to contact a vulnerable victim or a witness;
- those who are given not an immediate but a suspended custodial sentence;
- those found not guilty at trial which at an acquittal rate of 20% will amount to 14,000.
- those who, having served a period of remand in custody, the court believes deserve no further custody.

Some remands into custody might be avoided if places were still available in ‘bail hostels’ but this accommodation is generally now fully committed to accommodate those who are released under licence from prison and whose licence conditions require them to live in approved premises.

Q36. Should we provide the courts with more flexibility in how they use suspended sentences, including by extending them to periods of longer than 12 months, and providing a choice about whether to use requirements?

The reoffending statistics highlight the efficacy of the SSO and this could be built on by extending the period of suspension, and the use of a more flexible approach to requirements. There should be a court review of such dispositions so that conditions/requirements could be varied in line with perceived performance, including reducing the suspension term if appropriate.

An SSO can only be used if the offence justifies nothing less than a custodial sentence — but to the general public an SSO without requirements might seem to be nothing more than a conditional discharge. It could however be argued that the difference between 2 or 4 weeks immediate custody and 2 or 4 weeks suspended is not so great and that for an appropriate individual the threat of activation is sufficient to produce the desired change in behaviour. Nevertheless some tangible punishment such as a curfew would seem to be fitting.

Community penalties (paras 198-206)

The probation service does a good job in delivering specific community order programmes DRR / DV / ASRO etc. and community orders can work better than short custodial sentences as an element of rehabilitation is present (which is not currently the case for sentences of short periods of custody).

Paragraph 200 talks about an over-centralised approach, which is symptomatic of a problem of resource, which in turn has an impact on the delivery timescale of some orders and in particular intensive alternatives to custody programmes which are not running as they were envisaged through lack of resource.

Freeing up the probation service to use the skills for which they have been trained and creating an alliance with the public sector, to deliver some elements of probation work, which does not need specialist training, eg. supervising unpaid work could help.

Paragraph 202 makes some useful recommendations towards a more flexible approach to the application of national standards. We do not have a problem with this, providing it is within the boundaries of an agreed standard.

Q37. How can we make community sentencing most effective in preventing persistent offending?

Through rigorous supervision and more support for offenders to complete orders. The IAC (Intensive Alternatives to Custody) pilot studies have produced encouraging results so the combination of intensity, mentoring, and several different requirements either concurrently or consecutively appears to have a chance of succeeding. The Green Paper evidence report also suggests this.

There is a resource issue however — in some areas magistrates are actively discouraged from making stand alone supervision orders so how will the resources be found to provide continuing support for persistent offenders?

Q38. Would a generic health treatment community order requirement add value in increasing the numbers of offenders being successfully treated?

Magistrates already face difficulties in getting information in PSRs which identify general health or mental health issues so there would need to be further guidance and criteria set, in order to determine if a defendant displayed any of the attributes which could be addressed by such an order.

There are issues in defining what would fall under this heading. There is a large body of information showing that a disproportionate number of offenders have mental health issues, but difficulties exist in identifying problems and then implementing corrective treatments, simplifying this would be greatly beneficial.

A '*Health Treatment Order*' could be a useful statement tool as long as the defendant is subsequently assessed to ensure the actual order is appropriate to their condition, such as mental health issues.

Paragraph 205 identifies that mental health treatment requirements are rarely used, in part because of the difficulty of getting the required psychiatric report. Magistrates' experiences of these difficulties are completely corroborated by the independent research evidence available on the MoJ website. We think there is little likelihood of the mental health treatment requirement ever being anything but a rarity.

Our view is that if there is a clear enough link between a person's mental health and their propensity to commit offences which requires treatment, then the provisions of the Mental Health Act should be brought into play. If this is not the case then we believe that mental health treatment should not be provided compulsorily under a community order.

Q39. How important is the ability to breach offenders for not attending treatment in tackling their drug, alcohol or mental health needs?

This is vitally important. Breaching offenders who do not comply with drug, alcohol and mental health needs is vital, as these requirements have been added to orders to address the offending behaviour. However, a positive approach — ie. the use of review courts — could work alongside the ability to breach offenders — giving magistrates an opportunity to review progress as well as punish for breach.

Performance in these areas is key to measuring effectiveness of rehabilitation.

Q40. What steps can we take to allow professionals greater discretion in managing offenders in the community, while enforcing compliance more effectively?

We agree that more discretion should be given to probation officers but within the parameters set by the court — and working alongside sentencers to review the progress of the offenders.

We can see merit in allowing the supervising officer to determine the most appropriate penalty (from a prescribed limited set of fixed penalties) for a first breach of a community order. However, any further breaches should be brought to court.

We would support reduction of a third of any community order which is satisfactorily undertaken without any warnings or breaches. This could be an automatic reduction on the certification of a supervising officer without the need to return to court. However we do not envisage any reduction merely for turning up to all meetings on time. The supervising officer would need to be satisfied that the offender had been motivated and engaged to comply with the purpose and spirit of the requirement and had achieved its objectives. The supervising officer would be able to offer this 'carrot' to the offender up front at the initial induction as well as the 'stick' of enforcement action.

On a more general point, whatever arrangements are in place to deliver the programmes, there should be a clear requirement to collect and disseminate reliable and meaningful statistical feedback to sentencers.

Q41. How might we target community sentences better so that they can help rehabilitate offenders before they reach custody?

Priority should be given to those who express motivation to have a community sentence and/or those who can demonstrate a record of keeping appointments and/or those who have

shown a willingness to engage with probation officers or others and (where applicable) have a good record of obeying other court orders e.g. bail, driving disqualifications etc.

The Green Paper evidence report also suggests that motivation is a vital ingredient for success, as is a good personal relationship between an offender and a probation officer. Multi-agency approaches including financial advice, housing support and educational assistance stand the most chance of success in terms of rehabilitation.

Financial penalties (paras 207-213)

Q42. How should we increase the use of fines and of compensation orders so as to pay back to victims for the harm done to them?

There is no point in increasing the use of fines or compensation when so much remains unpaid. We suspect that recent reductions in the collection service will result in even larger amounts of fines outstanding. To establish credibility with magistrates a decent collection service should be provided which should include the return of 'fines courts'. In the past, these have been proved to be a cost effective way of collecting fines.

The Association would support the use of a stand alone compensation order. It does however question how much more rigorous magistrates can be, give that if compensation is not awarded, the reasons for this must be stated in open court.

A compensation fund is required so that those who are awarded compensation actually receive it when it is awarded — instead of the current system where many such awards are either incompletely paid in irregular small instalments or not at all. This would start to put the victim at the heart of the criminal justice system.

Association paper **10/29** sets out our proposals for a victims' compensation fund.

Q43. Are there particular types of offender for whom seizing assets would be an effective punishment?

The Green Paper identifies the practical problems associated with seizure of assets but in principle this is an initiative to be supported.

It is Association policy that the power to confiscate assets should be extended to magistrates' courts. Magistrates' courts do not have the powers of the Crown Court to confiscate assets but we think this would be a useful power to have, especially for those cases where the offenders are in receipt of benefits but appear to have assets, vehicles for example. The value of those assets may be low — but by confiscating the asset it would reduce the commission of further offences such as driving without insurance and driving while disqualified or without having passed a test.

Those charged with drug offences who have bundles of cash on them when arrested are generally charged with supply and committed to the Crown Court but if the charge was

possession and it was retained by the magistrates' courts, an ability to confiscate assets might be an effective punishment.

Q44. How can we better incentivise people who are guilty to enter that plea at the earliest opportunity?

In order to make a discount system work effectively, the sentence passed should in most circumstances be the sentence served. Once that is in place and understood, then the current maximum discount of one third would have more impact and therefore more effect.

However, in considering discounts — the highest discount should be reserved for those who make immediate confessions to the police at interview, confirmed by a guilty plea at the first court hearing. The next level should be for those who plead guilty on their first appearance in court with a smaller discount for those making no plea at the first hearing for a variety of reasons including waiting for advance information or disclosure and about 10% for those who wait until the day of the trial, and possibly less if that trial follows an election by the defendant for Crown Court trial.

We understand that an increased discount for an early guilty plea is one of the government's principal responses to encourage defendants to elect trial in magistrates' courts instead of Crown Court in either way cases. We point out that competing with this incentive to plead guilty at an early stage is an opposite incentive to plead not guilty. This is because trial waiting times are getting longer and longer and a not guilty plea postpones any action for possibly a year or more in the case of Crown Court trial.

There is another drawback to an increased discount which occurs in cases where on the day of trial or at some point before the trial, the defendant is offered and accepts an invitation to plead guilty to a lesser charge, possibly because the CPS cannot get its witnesses to court. This can happen when a charge of common assault is substituted for ABH. Having downgraded the charge, a 50% discount for a guilty plea at the earliest possible opportunity on that lower charge could make the victims incredulous at the eventual sentence. Finally, many members suggest that a bigger discount would be ineffective in achieving anything more than present discount achieves because of the possibility of acquittal, discontinuance or offer of a lower charge.

So far as referrals through the possible inadequate powers to sentence, the more essential question that really needs to be put is how to keep more cases in the magistrates' courts? Our proposals in this respect are set out in Association paper 10/55.

Q45. Should we give the police powers to authorise conditional cautions without referral to the Crown Prosecution Service, in line with their charging powers?

Q46. Should a simple caution for an indictable only offence be made subject to Crown Prosecution Service consent?

Q47. Should we continue to make punitive conditional cautions available or should we get rid of them?

The procedure involving conditional cautions is bureaucratic and time-consuming. It is noticeable that the fairly recently introduced informal community resolution introduces the same sort of control with far less paperwork and is therefore more attractive to the police. The whole situation involving these two types of out-of-court procedures should be visited and a single simple system introduced in a formal legal way which can be properly recorded as a form of caution on an offender's record where such a disposal is justifiable and with the victim's consent.

So far as punitive conditional cautions are concerned, we are strongly of opinion that the conditional aspect of this is a sentence which is a matter for the judiciary. Sentencing must not be delegated to the police.

So far as the issue of offending immigrants is concerned — the proposal that with certain offences, the offenders agree to a conditional caution and to leave the country — is too weak. A conditional caution seems inappropriate for cases which could otherwise lead to custody.

Youth justice: Chapter Five, pages 67-76, questions 48-55

Crime prevention and preventing re-offending (paras 230-239)

Sentencing (paras 240-251)

Payment by results (paras 252-260)

Governance (paras 261-266)

We are delighted that youth justice warrants its own chapter, and note that young offenders are also mentioned in the second paragraph of the *Ministerial Foreword*. We take this to mean that the Coalition Government will continue to recognise that youth justice is a distinct entity within the criminal justice system, as has been the case for over a century.

The anticipated developments described in the green paper will inevitably result in a significantly increased workload for the YOTs and we feel that this must be reflected in the available funding for YOTs.

Crime prevention and preventing re-offending (paras 230-239)

Youth panel magistrates are keen to prevent young people entering the criminal justice system unnecessarily, but this must be applied fairly across England and Wales. Whether or not a young person is given an out-of-court disposal should not be a 'postcode lottery'. The police and the CPS require clear and unambiguous guidelines, drawn up at national level with contributions from youth magistrates.

We believe that if an offence is judged so minor that it can be dealt with by an out-of-court disposal, it follows that it should not be disclosed in a criminal record check.

Consideration could be given to reviewing the Lord Chancellor's Directions to Advisory Committees which currently prevent magistrates from being members of youth offender panels (see page 136 of the Directions). Referral orders should be more transparent and more robust. Perhaps they could include a menu of requirements, set by the magistrates.

We would welcome the option of imposing a conditional discharge on a young offender pleading guilty to his first offence in court.

We understand that restorative justice is an approach rather than a sentence. However, its use must be defined and it must be used consistently.

Q48. How can we simplify the out of court disposal framework for young people?

Out-of-court (or non-judicial) disposals for young people can be simplified by ensuring a consistent approach throughout England and Wales. They should never be available for an offence which would be indictable for an adult offender. In relation to offences of assault, out-of-court disposals should only be considered for a first offence of a minor common assault.

Magistrates should be involved in deciding whether an out-of-court disposal is appropriate. They are trained, experienced and independent.

There should be only three categories of non-judicial disposal for young people:

- An out-of-court warning imposed by a police officer;
- An out-of-court reparation (order) which should apply the principles of restorative justice;
- An out-of-court punishment which should involve a simple task such as writing a letter of apology, cleaning up graffiti for example, with the local community.

Q49. How can we best use restorative justice approaches to prevent offending by young people and ensure they make amends?

Arrangements should be made for the victim and the offender to meet again on a couple of occasions, perhaps at three months and at six months, after the initial out-of-court encounter.

Sentencing (paras 240-251)

We agree that the youth rehabilitation order, introduced on 30 November 2009, is in theory a very useful order which can be tailored to the specific requirements of the individual offender. It would be wrong to propose changes until the impact of the order has been assessed. However, we remain concerned that not all requirements are available in all areas of England and Wales.

We agree that there are considerable variations regarding breaches of the youth rehabilitation order, and these should be eliminated by introducing specific guidelines.

We very much support the concept of local authorities investing in strategies which help magistrates to avoid the necessity of custodial remands for young people.

Q50. How can we increase the effective enforcement of youth sentencing?

We support the concept of compliance panels but we suggest that such panels should include a magistrate. We believe that if there was no magistrate on the panel, the panel could effectively change the order of the court.

Q51. How can we succeed in reducing the need for custodial remand for young people?

The YOT should be involved with the young person as soon as possible after their arrest and well before they are brought to court. Alternative suitable supervised accommodation should always be available, provided by the local authority. Magistrates should be educated in the absolute necessity to avoid custodial remand if at all possible, and in the methods of doing so.

Payment by results (paras 252-260)

If the local authority is to be responsible for the funding of youth custody, there may be a potential conflict of interest for magistrates who are local councillors or employees of the local authority.

Q52. How do you think we can best incentivise partners to prevent youth offending?

Partners can be encouraged to prevent youth offending by financial incentives and financial penalties.

Q54. What are some of the ways we might be able to further involve local communities in youth justice?

Local communities can be further involved in youth justice by using restorative justice for community offences (anti-social behaviour, criminal damage, drunkenness, etc) as well as for individual offences (assaults, theft from local shops etc). There should be more extensive advertising for suggestions for community payback schemes. Sentences should be published in the local press. There should be closer working with local schools and colleges, such as the Magistrates' Association's "Magistrates in the Community" programme.

Q55. How can the functions of the Youth Justice Board best be delivered by the Ministry of Justice?

The Youth Justice Board has established a very useful and productive relationship with the Magistrates' Association over the last few years. It is absolutely essential that this relationship is continued and further developed with the Ministry of Justice and we have no doubt that this will be of continuing benefit to the entire youth justice system.

Involving communities and improving court practice: Chapter Six, pages 77-86, questions 56-59

Policing (paras 267-269)

Case management (para 273)

Video links and virtual courts (para 274)

Simplifying rules (para 275)

The right court for the right case (para 276)

Problem solving courts (para 282)

Neighbourhood justice panels (para 287)

Better information (paras 293-298)

Q56. What sort of offences and offenders should Neighbourhood Justice Panels deal with and how could these panels complement existing criminal justice processes?

We are concerned at the concept of Neighbourhood Justice Panels if these are to deal with criminal offences — albeit of low seriousness. The Green Paper does not provide sufficient information about the concept to comment in any detail. However, evidence from existing panels tends to suggest that they function with little transparency or accountability and that some of the criminal offences dealt with are of a serious nature. If further panels are to be piloted then it is imperative that a judicial oversight is provided by magistrates, sitting in venues which can be designated as magistrates' courts.

Q59. What more can we do to engage people in the justice system, enable and promote volunteering, and make it more transparent and accountable to the public?

The key to engagement and confidence is education, particularly through the media and through existing programmes, such as our *Magistrates in the Community* programme. Ignorance is at the heart of the lack of confidence in the criminal justice system.

Employers need some sort of incentive, not necessarily financial, to allow employees time to volunteer, perhaps through more flexible hours of work or job-sharing.