



Document number **17/15**

Date **7 December 2017**

Position statement **Prison population and planning for the future**

Introduction

The Justice Select Committee is currently holding an inquiry on prison population and planning for the future, which closed on 4 December 2017.

The purpose of this inquiry is to find out:

- Who is in prison and who is expected to be imprisoned over the next 5 years
- The reasons prisoners are there, why they stay there and why they return
- Whether the Ministry of Justice and prison services currently have a credible approach to accommodating the changes anticipated.

Whilst the MA welcomes the fact that such matters are the subject of consultation, the call for evidence (which has now closed) fell outside the MA's remit. In sentencing offenders and considering whether custody is necessary in any given case, magistrates use the provided Sentencing Council guidelines and are also assisted by the provision of pre-sentence reports where appropriate.

However, the MA would use this opportunity to draw attention to the issues outlined below.

Ensuring the provision of high-quality community services

Although provision of community sentences would not directly impact on the prison population, as immediate custody is only ordered if unavoidable, it should be noted that successfully rehabilitating offenders when they first interact with the criminal justice system would ultimately reduce the pressure on prison places.

The MA recognise the importance of ensuring high-quality provision of community services which provide real rehabilitative opportunities, as well as providing support for mental health and substance misuse problems, for those who come into contact with the criminal justice system.

Offenders seen in magistrates' court often present with a range of complex needs linked to offending behaviour, and the services offered must be sufficiently bespoke to meet these needs.

It must be recognised that services in the community will often need to be tailored specifically to offenders, who will have their own needs relating to their offending behaviour. The rehabilitative options available, including various treatment requirements, must also meet the expected timeframes for criminal justice matters.

Wider issues

The MA notes the importance of related and interconnected issues which impact on offending behaviour, such as safe and secure accommodation, access to education or training opportunities and employment.

The MA also note the impact of trauma background and domestic abuse on offending behaviour, and the need to address these underlying issues with specialist support.

Enacting Section 178 of the Criminal Justice Act 2003

The MA recommends allowing magistrates to review Community Orders by enacting Section 178 of the Criminal Justice Act 2003.

This would allow magistrates to attach a requirement for review by a judicial office holder to a Community Order (or a Youth Rehabilitation Order in the Youth Court if para 35 of Schedule 1 Criminal Justice and Immigration Act 2008 were to be enacted). This would work to increase the magistracy's confidence in the effectiveness of RARs and Community Orders generally, increasing the effectiveness of sentencing and thus the criminal justice system as a whole.

This is particularly important in cases where the custody threshold has been crossed but sentencers are deciding whether custody is unavoidable (and sentencers need to ensure that the seriousness of the offending behaviour is properly addressed), or in cases where the offender has multiple, complex needs which are linked to offending behaviour. The MA notes the real risk that a lack of sentencer confidence in the content of community sentences could have an effect on their use. A power of review is one way to ensure the necessary confidence in a Community Order in cases where the custody threshold has been passed but sentencers are considering a community sentence as an alternative to custody.

The role for magistrates in relation to recall for those under post-sentence supervision

The MA note the concerning increase in recall and note the option for those people to be brought back before the court via the breach mechanism.

The new legislation around Transforming Rehabilitation required that any person sentenced to a custodial term of more than one day must receive at least 12 months' supervision in the community. Analysis by the Howard League for Penal Reform of Ministry of Justice figures show that, since the changes came into force in February 2015, there has been additional recall of 12,806 people who had served prison sentences of less than 12 months. The increase in recalls has contributed to a significant rise in the number of people who are imprisoned as a result of breaching their licence conditions, which has grown from 150 in June 1995 to 6,554 in March 2017.

The Howard League note that the majority of people sent back to prison are recalled for technical reasons, such as failing to attend appointments with probation officers. It is possible that such cases could be dealt with in the community; and oversight or engagement with magistrates within a court setting may assist in resolving issues around a lack of engagement.