



DATE 9TH JANUARY 2025

RESPONSE TO INDEPENDENT SENTENCING REVIEW

ISSUED BY MINISTRY OF JUSTICE

CONTACT POLICY@MAGISTRATES-ASSOCIATION-ORG.UK

ABOUT THE MAGISTRATES' ASSOCIATION

The Magistrates' Association (MA) is an independent charity and the membership body for the magistracy.

We work to promote the sound administration of the law, including by providing guidance, training and support for our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the courts and the broader justice system. With

over 12,000 members across England and Wales, we are a unique source of information and insight and the only independent voice of the magistracy.

January 2025



BACKGROUND

1. We are grateful for the opportunity to respond to the sentencing review. This is a timely and necessary process that reflects the growing need for an in-depth evaluation of sentencing practices.
2. This response outlines the Magistrates' Association's evidence-based perspectives and recommendations on the key themes of the Independent Sentencing Review, focusing on how sentencing practices can better meet statutory purposes, address individual needs, and promote justice for victims, offenders, and communities.
3. Recognising the evolving challenges within the justice system, the response highlights systemic issues such as resource shortages, inconsistent sentencing outcomes, and the need for greater transparency and data-driven decision-making.
4. However, we must also highlight concerns regarding its scope and guiding principles. It is troubling that the review excludes key areas such as remand and youth sentencing. These areas are integral to understanding and reforming the sentencing landscape.
5. We are concerned that their omission undermines the comprehensiveness of this effort. We strongly urge that these areas are reviewed in tandem with, or immediately following, this review, and we will continue to advocate for their inclusion in discussions with policymakers and ministers.
6. The review also omits out-of-court resolutions (OOCRs), such as police-ordered conditional cautions, from its scope. OOCRs represent a significant portion of the sentencing framework and are an essential element of the broader hierarchy of sentencing decisions. We call for reforms to establish clear positioning of OOCRs within the hierarchy of sentencing and greater transparency in the data provided to sentencers.
7. Our 2022 [report](#) on out-of-court disposals outlined our concerns about the troubling overlap between police-issued OOCRs and magistrates' court sentencing powers, which has the ability to potentially undermine the judicial system's integrity, in ways opposed to the will of Parliament. Ensuring that the will of Parliament is reflected in sentencing is clearly a key aim of the review, yet OOCRs are absent from its scope.
8. Our response makes three overarching points:
 - a. First, **magistrates' sentencing options are constrained**, often limited to fines or custody when community options fall short (see paragraph 54 onwards). To address this, magistrates need enhanced tools to sentence constructively and creatively. In particular, the ability to use ancillary orders where they are punitive in the individual case must be better promoted and publicised. Currently available punitive options are

shrinking, and magistrates tell us that they are increasingly limited in their ability to deliver creative, constructive sentences that balance the five purposes of sentencing.

- b. Second, that any increase in community sentence provision must be accompanied by **robust and proper resourcing of probation** (paragraph 44 onwards), both to meet any increase in community sentencing, but to tackle current resourcing shortfalls to meet existing demand.
- c. Finally, we know that **short custodial sentences** (paragraph 62 onwards) are counter-productive for many offenders and offences, due to their disruptive impact on a person's life and the limited potential for rehabilitation in a short sentence. However, they remain a necessary and useful option in specific last-resort cases, ensuring an appropriate response to certain offences. While we are clear that they should not be overused, there are situations where they play an important role in maintaining public confidence in the justice system, providing swift and proportionate punishment, and protecting the public where no viable community alternative exists.

Notwithstanding the aims of the review, it must protect magistrates' ability to impose short sentences in cases where they are the most appropriate response, such as when community sentences are insufficient or unavailable, or when immediate custody is necessary to reflect the seriousness of the offence.

9. Our response does not address Theme 6.

THEME 1: HISTORY AND TRENDS IN SENTENCING

What have been the key drivers in changes in sentencing, and how have these changes met the statutory purposes of sentencing?

10. The current sentencing review represents a critical and timely opportunity to recalibrate the identity and purpose of sentencing. While the statutory framework outlines five purposes, the practical application of sentencing can become skewed disproportionately towards punitive aims.
11. Legislative changes over recent years have contributed to an overemphasis on punitive aims, at times overshadowing the other statutory purposes of sentencing. While these changes aim to address public concern over crime, they have inadvertently deprioritised reform, rehabilitation, and reparation. This is despite their equal weight in the Sentencing Act 2020 and in sentencing guidelines, and the other factors' role and arguable effectiveness in preventing reoffending.

12. The tension between the five statutory purposes is exacerbated by a lack of coherence in legislative changes. Recent reforms often appear reactive and piecemeal, rather than grounded in a comprehensive evidence base. For instance, measures such as the Knife Crime Prevention Orders (KCPOs) were introduced without proper consultation, a clear rationale, nor clarity about their place in the sentencing ecosystem.
13. Our 2021 [position statement](#) on KCPOs called for caution in their implementation, emphasising that existing criminal law already covers the offence of carrying a bladed article without good reason, which we said introduced unnecessary duplication and undermined the clarity of the sentencing framework.
14. The introduction of, for example, the offence of non-fatal strangulation demonstrates how legislative changes can effectively address clear gaps in the law. This contrasts with the creation of overlapping and therefore potentially ineffective measures, such as KCPOs.
15. This section so far outlines a concerning imbalance, which requires urgent attention to ensure sentencing serves a balanced, constructive, and proportional purpose, as intended by the statutory framework.
16. There must be proactive and consultative work before legislation is drafted to understand the gap it is filling. Impact assessments should include duplication checks and additional guidance to determine how new measures fit within the existing sentencing hierarchy, and their effects on use of resources (whether police, probation, or prisons). This will help sentencers understand their role and ensure that new measures do not inadvertently disrupt the balance of the sentencing ecosystem.
17. Other evaluations for pilots that flow from legislative change must be done in a timely manner after they have ended. Success criteria must be published at the start with a strong and independent evaluation at the end. Where these evaluations contain measures or provisions that affect magistrates, or are within the scope of their sentencing powers, they must entail a proper consideration of how these could be made effective in magistrates' courts. This will not only allow sentencers to understand the options that flow from new legislation but will enhance their trust and confidence in their use (see paragraph 61).

THEME 2: STRUCTURES

How might we reform structures and processes to better meet the purposes of sentencing whilst ensuring a sustainable system?

18. We reserve comment on the relationship between the judiciary and magistracy. Magistrates must apply the law as set by Parliament and follow its sentencing framework.
19. Much of the judiciary – and the MA’s – engagement on sentencing is with the Sentencing Council. Magistrates play a vital role in offering feedback to ensure these guidelines are practical and logical, through consultation responses, webinars, and court-based data gathering exercises. This feedback loop is well-regarded by magistrates, who value the Council’s transparency and its judiciary-centred governance.
20. The Council provides magistrates with opportunities to help road-test guidelines, ensuring they work effectively in practice. The Sentencing Council’s clear work plans and advance timelines make their processes accessible and predictable to all. However, more granular, real-time data on sentencing impacts and offender outcomes could enhance the Council’s role further.
21. Collaboration between probation services and magistrates is generally positive but remains informal and localised. Local probation liaison committees – where they are established – function well but lack standardised guidance on roles/duties and information-sharing. These relationships are largely dependent on individual magistrates or bench chairs, which leads to inconsistencies.
22. These are particularly pronounced in larger geographically rural areas. Nationally, the MA meets probation at their regular sentencers meetings, where we find HMPPS to be open and transparent. We recommend that these arrangements are better formalised at the national level, with guidance on the information that sentencers can expect from probation. This would enhance coordination and consistency across regions.
23. Furthermore, magistrates have highlighted the need for better information about probation outcomes. Currently, they do not receive comprehensive data on unpaid work, including delays to starting, other community sentences (for example, the specific content of Rehabilitation Activity Requirement (RAR) sessions), completion rates, reasons for non-completion, or feedback from offenders. Additionally, there is limited insight into successful community sentencing outcomes, particularly for cases that do not return to court, which contributes to a lack of understanding when breaches are not activated.
24. Sentencers also expressed interest in knowing what types of unpaid work are available in their local areas, as well as the benefits and outcomes of completed projects. Regular updates on programme effectiveness would build confidence in community sentencing and foster greater reliance on these options. (This is available in some areas, as are visits to unpaid work activities, but not in all.) Sentencer knowledge of available placements may allay fears that unpaid work is not accessible to some, for example, those living in rural areas.

25. Strengthening the relationship between probation and magistrates is key to ensuring the aims of the review are met and would greatly enhance confidence in community sentences and their delivery. To that end, this must be taken forward as a priority.
26. As mentioned earlier, magistrates have raised valid concerns about police-issued cautions that resemble community orders. These often bypass the expertise of probation services and the judiciary. Questions remain about the accreditation of programmes, handling of breaches, offender assessments, and the lack of specialist input in these cases. Such inconsistencies undermine the sentencing framework and need to be addressed.
27. Conditional cautions that include rehabilitative programmes are clearly helpful, but we are concerned that they undermine the hierarchy of sentences. For example, a woman offender given a programme at a woman's centre may receive the same sort of programme (and support) as a woman who has been sent there by the courts as part of a community order. This contrasts with the situation in which a woman charged with the same offence as the woman given a conditional caution (for example, a low-level shoplifting offence) may receive only a fine in court. The fine is pure punishment and offers no rehabilitation opportunity.
28. Magistrates tell us that they do not know or see what happens on an OOCR, nor how many an offender has received before appearing in court. This is clearly an element of their sentencing journey (it would clearly assist the appropriateness of a court sentence), and the review's boundary of stakeholders involved in sentencing must be expanded to involve police, who also undertake sentencing.
29. Another key element of strengthening structures to ensure its accordance with the purposes of sentencing and the will of Parliament, is data and feedback. Judges and magistrates consistently call for more comprehensive data on probation outcomes, particularly for unpaid work.
30. Current gaps include data on completion rates, reasons for non-completion, offenders' experiences, and local project outcomes. Furthermore, there is no feedback loop for cases that do not return to court, leaving magistrates unaware of long-term outcomes. Establishing mechanisms to collect and share this data would help magistrates make informed decisions and foster greater confidence in community sentencing.

THEME 3: TECHNOLOGY

How can we use technology to be innovative in our sentencing options, including considering how we administer sentences and manage offenders in the community?

31. Technology is already widely used in sentencing. As mentioned in the following section on community sentences, curfew and the use of GPS tagging allow offenders to be monitored in the community but are rarely able to be used.
32. [Latest available statistics](#) on community sentences show that electronic monitoring was the only community order requirement to have seen a percentage drop in use compared to April-June 2023.
33. Recent changes to the requirements before a curfew can be issued has seen a significant reduction in their use by sentencers. The challenges preventing the widespread use of curfews and GPS tagging must be fully identified and addressed, ensuring these tools are applied effectively in community sentences.
34. While the court process is outside the scope of the review, we would like to note technology's untapped potential at making the sentencing process more efficient. A conversation about technology is not complete without efficiency; this is a key element of swift and effective sentencing and increases the perception of procedural justice.
35. In addition to our repeated calls for robust and proper resourcing of probation, the probation service must consider whether they can further improve the use of their existing resources. This can unlock key advantages for probation too, and can help them be more effective, therefore maximising their resources. For example, do probation officers need to be in court to give oral reports?
36. The review is interested in the potential of artificial intelligence (AI). We call for any expansion of its use to fully align with existing judicial principles and guidelines to ensure fairness and consistency. This includes [official guidance](#) for Judicial Office Holders from the Courts and Tribunals Judiciary released in December 2023.
37. The review can consider reform to enhance offender management through technology in a constructive and safe way. Creative use of video links, such as allowing defendants to appear from local establishments like youth justice services or police stations, can reduce delays, improve accessibility, and still meet justice outcomes. If there is no realistic prospect of custody, could the offender and probation officer appear from the probation office by video link?

38. Addressing the problem of defendants and prisoners being held far from their local areas would support family ties and improve rehabilitation outcomes. Innovative uses of technology, such as remote hearings or virtual visits, could partially mitigate these issues.
39. We note good practice in the youth court, where a defendant can appear by video link in their local youth justice service instead. The use of a video-link, in a creative and secure way, is doable and productive, and still meets justice outcomes in a way that reduces delays. In addition, it safeguards the young person and their family if the court is in the area of a rival gang and reduces the not-insignificant cost of travel for the young person and their parent/guardian to court.
40. Further simple technological solutions, such as using defendant's email addresses or text messaging (which are collected during court proceedings yet seldom used), can improve engagement with offenders and streamline communication. An automatic reminder system could reduce the number of 'non-reports'. In addition, the use of remote video probation appointments could enhance outcomes, especially for those with difficulties leaving home.

THEME 4: COMMUNITY SENTENCES

How should we reform the use of community sentences and other alternatives to custody to deliver justice and improve outcomes for offenders, victims and communities?

41. We are supportive of the review's commitment to "toughening up community orders as an alternative to jail." Magistrates are committed to using community sentences as an effective alternative to custody.
42. Community sentences combine probation supervision with a variety of tailored requirements. Community sentences offer a structured, rehabilitative alternative to custody, combining supervision with requirements like unpaid work, addiction or mental health treatment, and skills development. These sentences address the root causes of offending, reduce reoffending, and alleviate pressure on prisons.
43. Despite their potential, systemic issues – such as resource shortages, delays in programme delivery, and lack of transparency – undermine their effectiveness and magistrates' confidence in their use:
 - In a survey of magistrates conducted in May 2023, just over half (54 per cent) **agreed or strongly agreed** that they had confidence that the 'community sentence options in my area present realistic alternatives to custody' (**54 per cent**).

- 51 per cent of magistrates reported cases where custody was unavoidable due to insufficient community sentence options.
 - This points to a clear lack of confidence in the rehabilitative offer among sentencers, and to gaps in provision in this offer. In particular, there is virtually no scope for sentencers to sentence constructively and creatively to a sentence that meets the 5 purposes of sentencing.
44. Trends in the quality and availability of alternatives to custody can be explained against a backdrop of a struggling probation service, still recovering from COVID-19 and resultant backlogs. Probation services face chronic staffing shortages, with a 34.9 per cent vacancy rate in London alone. This hinders their ability to deliver effective programmes and provide sufficient pre-sentence reports (PSRs).
45. Probation has undergone much change in the past five years, with reunification and the challenges of the pandemic stretching it yet further. We are pleased, therefore, that the review recognises the significant pressures on the probation service, which will only be increased by any further use of community alternatives to custody. However, the review must back this further by calling for a robust and durable resourcing of probation to deliver this aim over the long term.
46. Furthermore, significant delays in starting accredited programmes, unpaid work orders, and curfews undermine the timely and effective implementation of community sentences. For example, safeguarding checks for curfews often take too long to complete or are not completed by the day of sentence. Magistrates tell us this renders this option effectively unavailable, and leading to missed opportunities for rehabilitation and public safety concerns.
47. The impact of delays on offender outcomes is clear. One magistrate told us an offender was given a Mental Health Treatment Requirement (MHTR) as part of a suspended sentence, yet their first appointment didn't occur until nearly six months after it was imposed. The offender was not able to access treatment in time and subsequently reoffended. This may not have happened had he been given support earlier.
48. These delays mean that there is a clear gap between provision in theory and in practice. Other options are so rigid that they are unworkable in the individual case; for example, members tell us some programmes, such as Building Better Relationships (BBR), have waiting lists of over 12 months, while weekend unpaid work placements – vital for those in full-time employment – are almost non-existent in some areas, especially for those from rural areas.
49. These other options – which could provide constructive yet punitive options for an offender – exist, yet are so unworkable that they cannot be used. The gap between what is theoretically available and what is deliverable exacerbates reliance on fines and custodial sentences, even when more suitable community-based options exist.

50. Fines are often ineffective, particularly for low-income and prolific offenders (see paragraphs 52 and 53). As of Q4 2023, outstanding financial impositions totalled £1.59 billion, with nearly half of fines unpaid within 12 months. With the addition of the court surcharge almost everyone sentenced is also required to pay money to the state.
51. The amount of outstanding financial impositions is now nearly 3 times the amount in Q1 2015. This reflects a punitive measure that is saddling offenders with unpayable debt and may not meet the rehabilitative needs of the offender or the long-term interests of society (conversely, those with higher incomes may seek to buy their way out of trouble by claiming to be unable to do other sentences and seeking a fine instead).

Inadequacy for prolific low-level offenders

52. Low-level but prolific offenders often fall into a gap within the sentencing framework. Their offences often do not meet the threshold for a community order or custody, yet they often require interventions to address the underlying causes of their offending. For this group, we are concerned that there is not enough in the sentencer's toolkit to sentence constructively.
53. We are aware of good practice for this cohort contained in the interventions available on police-ordered conditional cautions, but these are not available for sentencers to use. This would be particularly useful in court, for low-level but prolific offenders whose offences do not meet the threshold for a community order.

The need for constructive community sentencing

54. There is a legal requirement to include a punitive element in every community sentence but, currently available punitive options are shrinking. Magistrates tell us that, as a result, they are increasingly limited in their ability to deliver creative, constructive sentences that balance the five purposes of sentencing.
55. This review presents a valuable opportunity to expand the sentencing toolkit, empowering sentencers with innovative, practical alternatives to fines and custody that are tailored to the needs of offenders while maintaining public confidence.
56. Magistrates report that it is virtually impossible to sentence creatively and constructively within the existing sentencing framework. A significant proportion of 611 magistrates surveyed in May 2023 indicated that they have resorted to custody in cases where no viable community-based alternatives were available.
57. We note there is a systemic tendency to prioritise punitive measures over constructive solutions, limiting magistrates to fines or custody when

community options fall short. A system-wide shift is needed to empower courts with flexible, creative tools that address offending at its roots.

58. Sentencers must be supported to craft sentences that fulfil all five purposes of sentencing by focusing not only on the availability of community options but on their practical utility and ability to deliver tailored, impactful outcomes.
59. For example, more use of ancillary orders could be encouraged, such as driving disqualifications, restrictions on travel, and Football Banning Orders, as alternatives to traditional punitive measures where it would be truly punitive in the individual case. Relaxing restrictions on existing orders, for example reducing the three-year minimum for certain ancillary measures, could increase their applicability in these cases.
60. Moreover, specific cohorts, such as low-level prolific offenders and those with complex needs, require tailored interventions:
 - a. Reinstating Attendance Centres as a punitive and rehabilitative measure for young adults could be particularly effective, but our magistrate members say that their use has fallen away in recent years.
 - b. Magistrates would welcome educational elements, covering at least basic literacy and numeracy as part of any order, as we know that a lack of these skills can lead to reoffending.
61. Whilst Attendance Centres were originally designed to deal with young people committing offences around football matches, a replacement could be more tailored to the needs of 18–24-year-old offenders. Excluded from the youth courts by statute they lose access to support. A form of new attendance centre with education as well as the punishment of giving up their time, could also assist with job skills, health and drugs issues. Properly measured outcomes would show whether they deliver better for wider society and the young person.
62. Magistrates need better transparency, data, and feedback on the implementation and effectiveness of community sentences to ensure they can deliver informed and effective decisions. This includes enhanced feedback loops, reinstated court reviews, and timely evaluations of pilot programmes. We list our recommendations below:
 - Feedback loops: sentencers require improved feedback loops to understand how their sentences are being implemented. In our May 2023 survey of 611 magistrates, 58 per cent indicated that better information on the availability and outcomes of community sentences would increase their confidence in using them.
 - Providing an indication of sentence: magistrates have called for better record-keeping of sentencing rationales by the first bench hearing the case. The bench should be asked to document the reasons for considering a specific type of sentence based on the information

available at the first hearing. These records would not constrain the discretion of future benches but would serve as a valuable reference point, ensuring consistency and helping subsequent benches understand the context of earlier decisions.

- Macro-trend data: data on the broader effectiveness of programmes is often unavailable until years later, typically through Ministry of Justice evaluations. This delay hampers magistrates' ability to make informed decisions. We call for more granular and real-time data to be made available to sentencers.
- Visibility into programme implementation: magistrates have concerns about certain approved programmes due to the lack of visibility into what occurs during interventions like RAR days. Without this information, magistrates cannot be confident that their sentences are effective. RAR days are often, we understand, a one-hour telephone call; this is not enough time to be truly rehabilitative. When asked what would increase the use of community sentences, the top response from 611 magistrates (58 per cent) was a request for better information on the availability and suitability of community sentences.
- Data on community sentences: we call for better and more robust data being made available on concordance data (how often recommendations in PSRs align with the sentences delivered), details on all available community sentences, including reasons for unsuitability, data on metrics like acceptable absence rates for RARs, insights into gaps in availability, both in theory and practice, local provision mapping (comprehensive mapping of available programmes within local areas to better inform magistrates and probation services).
- Reinstating court reviews: court reviews for orders like Drug Rehabilitation Requirements (DRRs) should be routinely available and properly supported by probation and HMCTS and expanded. These reviews provide magistrates with confidence that their sentences are being effectively implemented. Regular court reviews ensure compliance with orders and allow magistrates to see that offenders are engaging positively with rehabilitation opportunities. This fosters confidence in DRRs as a tool for reducing reoffending (we would note that the use of reviews for other orders could be equally beneficial as demonstrated by the ISC pilots.) The exact arrangements for these would need to be considered as the last time this was tried there were issues with, for example, consistency of approach.
- Timely evaluations: evaluations of pilot programmes and new initiatives must be conducted promptly after their completion. These evaluations should specifically address how the measures could be effectively implemented in magistrates' courts.
- Programme evaluations: data on the effectiveness of programmes offered as part of community orders is limited, with MOJ evaluations often infrequent. HMI Probation inspections of programmes, while

valuable, are not frequent enough and are not written with magistrates as the intended audience.

THEME 5: CUSTODIAL SENTENCES

How should custodial sentences be reformed to deliver justice and improve outcomes for offenders, victims and communities?

63. We are pleased that the review is considering the role of short sentences. It is important, first, that any discussion clearly sets out what is meant by “short” prison sentences, and the MA believe it is unhelpful to consider sentences of only a few weeks in the same way as looking at sentences of up to six months.
64. Suspended sentences need to be included in this scope, as they themselves can be short sentences or become short sentences upon activation in part. Consideration should be given to whether crown court suspended sentences could be activated in the magistrates’ courts rather than being sent to the crown court.
65. Before any decisions are made in relation to the viability of abolishing short prison sentences, robust and effective alternatives to custody must be available in the community, and sentencers must be confident that offenders given a community alternative are supported and monitored adequately. This includes ensuring that breaches are dealt with promptly.
66. Public confidence in the justice system relies on an understanding that those who commit offences will be punished, so sentencers must have appropriate discretion to respond to those who repeatedly fail to engage with community options. If offenders refuse to engage with community alternatives, immediate custody may be the only way to ensure punishment.
67. It is critical, however, to explore specific alternatives where appropriate. Scotland’s presumption against short sentences is a useful model, but England and Wales already have a presumption in practice: the Sentencing Council’s imposition guideline is clear that custody is reserved for cases where other avenues have been exhausted.
68. Current sentencing practice is governed by the law, as set out in legislation, case law and guidelines provided by the Sentencing Council (and other appropriate bodies). The review must be minded that short sentences are mandated by law for specific offences. These include repeat offences involving weapons or domestic burglary. Any proposed changes must be captured consistently across all relevant resources, as well as being accompanied by necessary training.

69. The MA believe that it would not be practical for prison sentences of up to six months to be abolished, but do propose some suggestions that might reduce the use of the very short prison sentences:

- a. **High-level community order for custody under 8 weeks:** for any sentencing decision where the final sentence deemed appropriate is immediate custody of under 8 weeks, sentencers must take a further step back and give a high-level community order (CO) in all but the most exceptional circumstances – for example, where the offender is in the UK for a short period of time and giving an opportunity to engage with community options is not feasible, or for a deliberate failure to surrender where the offender's history shows a contempt for court orders. The reasons for imposing a sentence of less than eight weeks should be announced in open court.

This could ensure alternatives to custody which included elements of punishment, deprivation of liberty as well as rehabilitation could be used in place of short prison sentences.

- b. **Under 8 weeks' sentences reserved only for breach:** immediate custody for less than 8 weeks should only be imposed on breach of an existing order, or if an offence is committed while on an existing order (however, breach of an order that is not a suspended sentence should not automatically mean the imposition of immediate custody unless there have been multiple previous breaches of the same order).

70. Finally, the review should gather data on who is being sentenced to short custodial terms, the trends in their use, and the outcomes of these sentences. This evidence base is vital for informed recommendations on their role in the sentencing framework. This includes whether it is magistrates or DJ(MC)s or DDJ's who are imposing these short custodial sentences.

71. The impact of prolific offending and changes to local sentencing arrangements should be noted and considered. In Westminster, because of the high prevalence of professional pickpocketing and the impact it has on tourists and its effect on tourism, a first-time offender pleading guilty receives an immediate custodial sentence for theft from a person.

THEME 7: INDIVIDUAL NEEDS OF VICTIMS AND OFFENDERS

What, if any, changes are needed in sentencing to meet the individual needs of different victims and offenders and to drive better outcomes?

72. Sentencing must recognise the diverse and complex needs of both victims and offenders to deliver justice effectively and prevent future harm.

- **For victims**, this includes ensuring their voices are heard and their experiences acknowledged and outcomes from court reported back.
- **For offenders**, tailored approaches are necessary to address underlying issues and reduce reoffending. Offenders often ask for clarity as to what the court has imposed.

Victims

73. There is insufficient data on sentencers' views, understanding, and attitudes towards Victim Personal Statements (VPS). Exploring these perspectives would help identify gaps and improve how VPS are used and valued in court proceedings.
74. Magistrates report that VPS are often not brought to the forefront in court bundles and must be actively sought out. It is crucial that these statements are prioritised, as they represent a brave effort by victims to articulate their experiences. Failing to give them due consideration risks secondary victimisation. Police may need additional resources to secure these in the time between the incident and court.
75. VPS often face practical challenges, including their content becoming outdated by the time a case reaches trial. Sentencers suggest that an updated statement could provide a more accurate reflection of the victim's current feelings and circumstances, but this must be balanced against the risk of retraumatisation.
76. We echo the Sentencing Academy's February 2024 report's recommendation that police officers' understanding of and attitudes towards VPS should be further explored to ensure all victims are offered the opportunity to submit a VPS. This is critical for upholding victims' rights and ensuring their voices are heard in the justice process.
77. The original intention of VPS was to be dynamic and regularly updated. However, this goal has been undermined by procedural issues, with a perception among magistrates that the VPS as a "tick-box exercise".
78. There needs to be consideration of the way victims' compensation is handled, and we support reform of the current court-ordered compensation scheme. We call for a central victims' fund for compensation, enabling victims to receive lump-sum payments at the conclusion of the case, funded by offenders' incremental contributions. This will still allow monitoring of payments being made by defendants.
79. The current system requires HMCTS to collect payments from offenders before forwarding them to victims. When offenders pay in instalments, victims receive small, incremental amounts that fail to restore their financial losses adequately or improve their lives meaningfully. The amount paid is fixed by the court with no interest accruing for late payments.
80. Prolonged incremental payments compel victims to maintain indirect contact with the offender, which can hinder their ability to move on. This

fragmented process serves as a constant reminder of the crime, exacerbating emotional harm and undermining trust in the justice system.

81. A centralised fund would ensure victims receive timely and substantial compensation while reducing re-traumatisation. Offenders could still make payments incrementally into the fund, but victims would benefit from a more restorative and dignified process. Funding for this could, perhaps, come from the surcharge imposed on court sentences.

Offenders

82. Sentencing is already highly tailored to individual offenders, supported by the Sentencing Council's guidelines, their associated expanded explanations, and the Equal Treatment Bench Book. These resources extensively address factors such as maturity, mental health, and other offender-specific needs.
83. Certain community orders, such as Mental Health Treatment Requirements (MHTRs), are designed to meet the needs of offenders with complex issues, addressing the root causes of offending. However, gaps in services undermine their effectiveness.
84. Many offenders have complex needs, yet magistrates report "massive gaps" in their sentencing options. This is particularly evident in areas like mental health support, where probation services often lack the capacity to assist offenders effectively. Often engagement in community based mental health programmes excludes an offender from those sentenced by court.
85. There is a shortfall in mental health treatment availability that is impacting the ability of sentencers to address related complex needs. While 38 per cent of people on probation have mental health issues, only 1,302 started mental health treatment as part of a community sentence in 2022. This discrepancy highlights the urgent need for further investment in treatment places for mental health, alcohol, and drug dependency.
86. The lack of suitable treatment options often leaves sentencers with limited choices, leading to an over-reliance on fines. This disproportionately affects low-income offenders, exacerbating financial strain without addressing underlying issues.
87. Magistrates in rural areas report fewer options for tailored services compared to urban counterparts, particularly for women offenders. This divide highlights a need for more equitable distribution of services.
88. We have identified areas of good practice and opportunities for improvement:
 - Women's centres: specialised women's centres, commissioned by the Ministry of Justice, offer a successful model of tailored, wraparound rehabilitative support. These centres provide a dignified and cost-

effective alternative to custody, demonstrating reduced reoffending rates.

- Knowledge of local services: sentencers require comprehensive knowledge of the services available in their area, including specialist services tailored to specific offender cohorts. This information is essential to deliver effective and targeted sentences.
- Quality of pre-sentence reports (PSRs): a 2020 HMI Probation report found that only 40 per cent of inspectors felt PSRs sufficiently incorporated available information, such as safeguarding and domestic abuse data. Improved PSRs are critical for informed decision-making and tailored sentencing.
- Strengthen liaison with devolved nations: promote active liaison with devolved powers and probation in Wales.
- It was suggested that for those sentenced to longer (over 3 months) community orders, and who are homeless, could be housed for the duration of their order to assist with successful completion. We know that having somewhere to live and a job are significant factors in preventing re-offending.

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☎ 020 7387 2353

✉ info@magistrates-association.org.uk

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