BREAKING THE CYCLE CONSULTATION

RESPONSE ON BEHALF OF THE CRIMINAL BAR ASSOCIATION

Introduction

The Criminal Bar Association represents about 3,600 employed and self-employed members of the Bar who prosecute and defend in the most serious criminal cases across England and Wales. It is the largest specialist Bar association. The high international reputation enjoyed by our criminal justice system owes a great deal to the professionalism, commitment and ethical standards of our practitioners. Their technical knowledge, skill and quality of advocacy guarantee the delivery of justice in our courts, ensuring on our part that all persons enjoy a fair trial and that the adversarial system, which is at the heart of criminal justice, is maintained.

In a climate of prison overcrowding, high rates of recidivism and dwindling public confidence in the punitive and rehabilitative effect of the current sentencing regime, the CBA recognises the urgent need for reform to break the cycle of offending. This does not simply involve transforming the way in which punishment is administered, but also ensuring that the ultimate goal of reintegrating offenders into society is achieved within a realistic, workable and properly funded framework.

The CBA has always advocated transparency and consistency in sentencing practice in order to maintain public confidence in the criminal justice system. Clearly, any community penalty must be rigorous and properly enforced if it is to be seen as a credible alternative to custody.

The CBA also supports the implementation of measures designed to achieve reparation for the victim, whether financially (in the form of the Prisoners Earnings Act) or through community-focussed work.

The CBA welcomes realistic proposals to tackle the root causes of reoffending, namely drug and alcohol addiction, lack of education, training and employment, housing problems and mental illness, and agrees that the continuity of care between custody and the community is crucial to the long-term rehabilitation of the offender.

The CBA supports proposals for the establishment of mutually beneficial partnerships between the Prison Service, the Probation Service, industry experts and local businesses and services, thereby drawing on the skills of the private sector in particular to achieve the punishment and rehabilitation of the offender (such as engaging prisoners in meaningful employment whilst in prison and providing them with links to potential employers once released). The providers will, of course, need to be heavily incentivised to involve themselves in such projects, but initial monetary outlay, in the form of direct payments or tax breaks, for example, is likely to be off-set and, ultimately, out-weighed, by the overall reduction in the economic costs of reoffending.

RESPONSE TO QUESTIONS IN CHAPTER 1: PUNISHMENT AND PAYBACK

Question 1: How should we achieve our aims for making prisons places of hard work and discipline?

1.1 It is difficult to disagree with the objective of ensuring that prisoners spend their time engaged in challenging and meaningful work. Not only will such a regime serve to underline the retributive aspect of the custodial sentence, but it will also provide prisoners with important skills which will assist their re-integration into society upon their release. This in turn should help to reduce the rate at which former prisoners reoffend.

1.2 Achieving this aim is likely to be difficult, first because it will be necessary to enlist the assistance of private sector experts who will have to be heavily incentivised, and second because there is likely to be considerable resistance to the new regime amongst the prison population, not all of whom will embrace the idea working at all, let alone for up to 40 hours a week.

1.3 However, given the prospective overall savings to the criminal justice system which should result from this scheme, it should be possible financially to incentivise industry experts to work together with prisons, the Parole Board and other relevant stakeholders to devise and implement workable schemes to achieve the objective of making prisons places of meaningful employment. We deal with this in more detail in response to Q2 below.

1.4 As to the incentivisation of the prisoners themselves, it seems to the CBA that this will be crucial in ensuring that those who may not be inclined to work do so. Inmates cannot be forced to work, but we consider it to be entirely commensurate with the aims of the scheme to offer tangible rewards to those who do. These could take the form of enhanced regimes including special privileges, increased visitation, day or weekend release, and ultimately, early release on licence.

Question 2: How should we best use the expertise and innovation of the private and voluntary sectors to help develop the working prison?

2.1 The CBA believes that the involvement of experts from both the private and voluntary sectors is imperative to the success of this scheme. Not only can they provide the expertise necessary to devise and implement workable schemes for work in prisons, but engagement with potential employers will be of immense benefit to prisoners when they come to be released.

2.2 Paragraphs 56 and 57 of the Paper refer to some of the potential problems which involvement with prisons might hold for external employers. These can perhaps be summarised as cost, inherent mistrust and unfair competition for jobs.

2.3 It seems to us that, to begin with, industry experts and voluntary sector leaders should be consulted about the viability of their involvement in this scheme. Following this, working groups involving such experts, prison governors and staff, members of the Parole Board and others, possibly including former or serving prisoners, should be established to discuss the architecture of the scheme and its implementation.

2.4 It is likely that the government will have to consider the establishment of significant tax incentives if not direct payments for industry experts both for their involvement in planning the scheme and later for their involvement the provision of gainful employment for prisoners.

Question 3: How can we make it possible for more prisoners to make reparation, including to victims and communities?

3.1 The CBA agrees that an important aspect of the sentencing process is that offenders make such reparation. Such reparation is usually confined to those who have been sentenced to community penalties with the result that those who commit the most serious crimes are deprived of their liberty but do not often get the opportunity to make reparation to victims and communities.

3.2 The benefit to the victims of crime of a scheme whereby more prisoners can make reparation is manifest; it is also worth pointing out the important positive rehabilitative effect such reparation can have on the offender herself.

3.3 In those circumstances we would welcome in principle the implementation of the Prisoners Earnings Act. It may also be that tax incentives could be given to those employers who become involved in the general scheme of work in prisons, where proportions of profits made from prison work are donated to victims and communities affected by crime.

3.4 It is possible to make reparation which is otherwise than financial. To this end consideration should be given to including community-focussed work within the general scheme of work in prisons. That is to say work which results in tangible benefits for victims and communities affected by crime carried out either within the confines of the prison or, with appropriate security measures, outside it.

Question 4: How do we target tough curfew orders to maximise their effectiveness?

4.1 The CBA would endorse any principled approach to sentencing which has the effect of reducing the number of offenders sent to prison. We are particularly in favour of a system which places more reliance upon credible, rigorous and effective community penalties and recognise that, in order to achieve this, steps must now be taken to ensure such sentences are more robust than ever. If community penalties are to be used increasingly as a direct alternative to custodial sentences then they must comprise not only hard work and active rehabilitation on the part of the offender, but an element of restriction of liberty.

4.2 For these reasons, we agree with the stated objective of developing "tougher, more innovative and more effective curfews". It seems to us that if curfew orders were more effective, and seen as such, that this would have a direct effect upon reducing prison numbers. The CBA agrees with the ideas summarised in paragraphs 64 and 65 of the Paper.

Question 5: What are the best ways of making Community Payback rigorous and demanding?

5.1 The CBA agrees that there is a need "to do much more to ensure that Community Payback is rigorous and properly enforced" if such sentences are to be seen as a proper alternative to custody. Our experience of the efficacy of Community Payback as a sentence is that it is often seen as a soft option by offenders and that orders are often breached before they have even begun to take effect. It seems to us that the matters set out below should be taken into account in seeking to make such sentences rigorous, demanding and, consequently, more effective.

5.2 First, insufficient funding and staffing of the Probation Service and Youth Offending Teams is a factor which contributes significantly to the comparative inefficacy of these sentences. This problem needs to be addressed before any other if these organisations are to continue to play any part in the operation of these sentences.

5.3 Next, the CBA agrees that unpaid work should commence as soon as possible after the sentencing hearing before the offender's motivation to comply with such a sentence begins to wane.

5.4 Furthermore, there is no reason why the work itself should not be as demanding and time consuming as a full-time occupation for those offenders who are not in paid employment. This would have the added benefit of making it more transparent and accountable. We agree with the general aim of making the work more project-driven with projects devised by the communities which should be the main beneficiaries of it.

5.5 Importantly, the CBA considers that breaches must be dealt with swiftly, consistently and fairly. An offender who is "breached" for conduct which is in fact not his fault is less likely to co-operate. Conversely, failing properly to punish offenders who routinely breach the terms of the Community Payback order undermines the integrity and efficacy of the entire system. Judges must be alert to this and respond accordingly, otherwise the sentence will continue to be seen both by offenders and sentencers as a soft option and not a proper alternative to immediate custody.

Question 6: How can communities be more involved in influencing the type of work completed by offenders on Community Payback?

6.1 The CBA commends the measures set out in paragraph 70 of the Paper. It may additionally be possible to involve large organisations which have strong public exposure such as supermarkets to encourage their customers to suggest and/or vote for projects in the locality which might be suitable for Community Payback.

Question 7: How should we seek to deliver Community Payback in partnership with organisations outside government?

7.1 It may be that private organisations, which already manage some prisons, court custody areas and indeed electronic tagging in the community, could be deployed to deliver Community Payback. The advantage of contracting out this work is that such organisations would have clear financial incentives to ensure that offenders comply with the orders given. This in turn will increase the effectiveness of such sentences, making them a viable alternative to custody in many cases.

7.2 The CBA does not offer any further comment upon the mechanics of such an arrangement, since this involves commercial and economic considerations which are not necessarily directly referable to the criminal justice system itself.

RESPONSE TO QUESTIONS IN CHAPTER 2: REHABILITATING OFFENDERS TO REDUCE CRIME

Question 8: What can central government do to help remove local barriers to implementing an integrated approach to managing offenders?

8.1 The CBA supports the proposals for an integrated approach to sentencing and the roll out of schemes such as "Impact". The key to the success of such an approach is effective and reliable lines of communication between the relevant agencies. This infrastructure is essential to ensuring that offenders are dealt with appropriately and efficiently. This will initially require additional resources; both in terms of setting up databases or other user friendly ways of sharing information efficiently, and also in terms of time, as those within the various agencies will need training and greater time spent liaising with others. However, in the long term, by addressing the behaviour of the most prolific offenders and reducing crime, the cost of that crime will reduce overall. Central government can assist in raising the funds for putting in place such an infrastructure.

8.2 Furthermore, whilst much of this work will be done at a local level, crime and offenders often straddle more than one local authority or police district. Ideally, the same system (database, forms, procedure) needs to be rolled out throughout the jurisdiction. This will help ensure consistency in sentencing but also facilitate those cases or offenders who come into contact with more than one area. Central government can assist with creating a template which can then be adapted to suit the local environment.

Question 9: How can we incentivise and support the growth of Integrated Offender Management approaches?

9.1 Whilst it is important to incentivise and support this approach, it is also important to ensure that agencies deal with all offenders, including the most prolific, rather than concentrate on those they see as "easy to fix". If incentives rely purely on levels of

reoffending, with quasi league tables of reoffending rates, there is a real risk that this will happen as those with more entrenched behaviour will require additional resources and effort for little gain in such terms. Incentives therefore need to be carefully structured to ensure this does not occur.

Question 10: How can we ensure that providers from the voluntary and community sector can be equal partners in the delivery of this integrated approach?

10.1 Again, the way to ensure all partners are equal is to create a structure, supported by resources, that enables all parties to be fully involved in such an approach. Whilst it is important that all sectors work together, the CBA are of the view that an individual or individual agency should have overall control and responsibility. Otherwise there is a risk that there is no particular driving force coordinating the approach.

Question 11: How can we use the pilot drug recovery wings to develop a better continuity of care between custody and the community?

11.1 The CBA supports the Ministry of Justice's acknowledgment that addressing alcohol and drug dependency is the key to the effective rehabilitation of many offenders and welcomes the introduction of the pilot recovery wings. At present, treatment for such dependencies is not sufficiently available and those courses of treatment that are available often are not long enough to properly provide a realistic chance of success long term. The CBA agrees that continuity of care between custody and community is critical in the success of such schemes. "Twinning" between such wings and a local provider of services where staff could overlap would help in ensuring continuity of care. As always, good lines of communications and access to resources through the use of shared databases will be essential.

Question 12: What potential opportunities would a payment by results approach bring to supporting drug recovery for offenders?

12.1 The CBA are not opposed to payments by results in principle but, as mentioned above, care must be taken to ensure that those with entrenched offending and addiction are not sidelined whilst offenders who are more likely to produce results quickly are prioritised.

Until the details are available of exactly how this scheme will operate, the CBA is not is a position to comment further.

Question 13: How best can we support those in the community with a drug treatment need, using a graduated approach to the level of residential support, including a specific approach for women?

13.1 The CBA agrees that a graduated approach is sensible. However, it is essential that offenders are placed appropriately to ensure the maximum chance of success. Too often at present, a Pre-Sentence Report will recommend a certain number of weeks for treatment, yet funding can only be found for a proportion of that time. This leaves the offender embarking on a difficult road to recovery with only part of the support in place, significantly lowering his chances of success. This is a waste of resources as it is better to fund one individual for, say, six months, leading to him successfully remaining clean, than to fund two individuals for three months each and them both to fail. As mentioned above, care must be taken that those with entrenched problems are not sidelined in a bid to enhance statistics on recovery rates.

Question 14: In what ways do female offenders differ from male offenders and how can we ensure that our services reflect these gender differences?

14.1 As the consultation points out, women's pattern of offending differs from men, with a concentration of less serious offences. The offending often forms part of a destructive pattern of addiction, domestic abuse and mental health problems. Often these women have young families and are single parents. A coordinated approach needs to take place to address all these issues and to provide realistic and practical alternatives to their current lifestyle.

14.2 As with all offenders, male and female, education forms a key part, both in preventing offending in the first place and in rehabilitating offenders. The CBA supports work in diverting vulnerable women away from custody and the courts, as criminalisation provides simply another bar to them escaping their pattern of behaviour by reducing their chances of employment.

14.3 The CBA supports the Ministry of Justice's commitment to tackling domestic violence. Domestic violence is often very difficult to prosecute as the complainant (who can be male or female) is reluctant to give evidence. Whilst work needs to be done to catch and punish offenders, resources should also be directed towards empowering the complainants not only to testify but more importantly to leave such relationships and make clear from the outset that they will not accept such behaviour. Sadly, one frequently sees repeat victims who go from one violent relationship to another. There are many reasons for this behaviour and work needs to be done both on an individual level to assist these women (and men) but also culturally to reinforce that domestic violence will not be tolerated.

Question 15: How could we support the Department of Work and Pensions payment by results approach to get more offenders into work?

15.1 As the consultation paper acknowledges, work and the availability of work is central to addressing offending behaviour. Work, however, must go hand in hand with education. At present, whilst there are requirements available as part of a community order to attend courses directly related to offending behaviour (for example, the Think First programme), there are no education or training requirements, whereby an offender would attend a course or college. The addition of such requirements would help provide the tools needed by offenders to change their behaviour and lifestyle. For those with a limited education, such a requirement would be very challenging and therefore would not be perceived as a soft option.

15.2 In-depth monitoring would then be required, not only to ensure that offenders receive training/education appropriate to their current level, but also that the training/education has a practical impact on their ability to obtain work. Apprenticeships and/or sandwich courses help provide both the training and on-the-job skills required for future employment. The Department of Work and Pensions' assistance in this would be central to its success by incentivising providers and employers to support the scheme. Assistance from other branches of government, such as the Department of Trade and Industry and Her Majesty's Revenue and Customs, could also help by giving businesses incentives to train and employ offenders.

Question 16: What can we do to secure greater commitment from employers in working with us to achieve the outcomes we seek?

16.1 As mentioned above, there is no reason why other branches of government such as the DTI and HMRC should not be involved in providing incentives to employers. Tax breaks given to employers will pay for themselves by the reduction of crime and by creating additional income tax payers.

Question 17: What changes to the Rehabilitation of Offenders Act 1974 would best deliver the balance of rehabilitation and public protection?

17.1 At present, the period of rehabilitation under the Act depends on the sentence imposed rather than the crime. Whilst the seriousness of the offence is reflected by the sentence, this does not accurately reflect the risk of an offender reoffending or the risk to a future employer. The CBA supports in theory the proposals set down in the consultation but would need further details in order to comment further.

Question 18: How can we better work with the private rented sector to prevent offenders from becoming homeless?

18.1 Short term sentences are often poor tools at preventing reoffending, not only because offenders are unable to use their time in prison effectively on educational and practical courses, but also because they lose their houses, leading to significant difficulties when they are released.

18.2 Where such terms are imposed, close liaison with the landlord (be it local authority or private) should be attempted to keep the housing available when the defendant is released. Again, further incentives by way of tax breaks should be given to those housing offenders upon release.

18.3 Finally, partnerships could be formed between those organising unpaid work in the community and landlords. Offenders carrying out unpaid work could assist landlords with painting and building maintenance at a beneficial rate to the landlord who would in turn guarantee housing to those released from prison.

Question 19: 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?

19.1 The CBA supports a move to divert offenders with mental health problems away from the court system. As always, communication between the different agencies is the key towards ascertaining the best possible outcome. Greater awareness of mental health

issues across the criminal justice system generally would greatly assist in this area, as current levels of awareness by the police, the advocates and the judiciary are often poor.

Question 20: How can we best meet our ambition for a national roll-out of the mental health liaison and diversion service?

20.1 Without further details of the specific projects, it is difficult to comment further. However, the general principle of piloting ideas first provides the best chance of rolling out a system nationally which is fit for purpose.

Question 21: How can we reshape services to provide more effective treatment for those offenders with severe forms of personality disorder?

21.1 The difficulties in dealing with those with severe personality disorders are well known and the CBA supports the Ministry of Justice's attempts to review this area. Once the results of the pilot schemes are available for analysis, the CBA will be able to comment further.

RESPONSE TO QUESTIONS IN CHAPTER 3: PAYMENT BY RESULTS

Question 22: 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?

22.1 We do agree. But the CBA also suggests that in dealing with the more difficult to rehabilitate category of offender, the payment structure should be softer and even more attractive to service providers.

Question 23: What is the best way of reflecting the contribution of different providers within a payment by results approach for those offenders sentenced to custodial sentences and released on licence?

23.1 By ensuring that the payment model encourages a collaborative relationship between the community provider and the prison provider. In particular, in order to benefit financially

(whether for sentences of over or less that 12 months) prisons should be required to demonstrate that have provided a rehabilitation programme or made a positive contribution to that devised by the community provider.

Question 24: What is the best way of developing the market to ensure a diverse base of providers?

24.1 This is not a matter upon which the CBA can offer a useful view.

Question 25: Do you agree that high risk offenders and those who are less likely to reoffend should be excluded from the payment by results approach?

25.1 The CBA recognises the good sense in excluding a payment by results regime to all offenders, particularly the management of offenders who pose the highest risk to the public. The CBA make the obvious point that the rehabilitation of this category of offender is nonetheless extremely important. No doubt the Government will want to ensure that the pursuit by providers of payments by results opportunities would not put the rehabilitation programmes for high risk offenders in jeopardy.

Question 26: What measurement method provides the best fit with the principles we have set out for payment by results?

26.1 We believe that the best measurement method is the second. The option of proven convictions, which excludes more minor transgressions resulting in no more that cautions etc, strikes the right balance.

Question 27: What is the best option for measuring reoffending and success to support a payment by results option?

27.1 The CBA favours a measurement for a particular group of offenders against an agreed level compared to the previous years. This is likely, we believe, to be the most attractive to the public who will be interested to see a true test of the proposal.

Question 28: Is there a case for taking a tailored approach with any specific type of offender?

28.1 If the measurement option adopted (see question 27 above) is that the CBA supports we see no reason to distinguish between different types of offender. There are obvious reasons to seek to ensure a parity of approach across the board.

Question 29: What are the key reforms to standards and performance management arrangements that will ensure that prisons and probation have more freedom and professional discretion and are able to focus on the delivery of outcomes?

29.1 The CBA is unable to assist in respect of this matter.

Question 30: What are the key reforms to financial arrangements that wil support prisons and probation in delivering outcomes at less cost?

30.1 The CBA is unable to offer any useful contribution on this topic.

Question 31: How do we involve smaller voluntary organisations as well as the larger national ones?

22.1 Again, the CBA is unable to offer any useful contribution on this topic.

RESPONSE TO QUESTIONS IN CHAPTER 4: SENTENCING REFORM

Question 32: What are the best ways to simplify the sentencing framework?

32.1 The current sentencing regime has evolved over years several years through numerous statutes, each adding to and unnecessarily complicating the existing framework. For practitioners and the judiciary, confronted with this myriad of legislation, the potential for inconsistency and error is rendered a real possibility. Sentencing exercises, which by necessity require a cross-over, and thus a cross-referencing of sentencing legislation, involve difficult and complex considerations.

32.2 The CBA believes that the codification of sentencing practice into options for each offence and age group is required. In addition, existing regimes for certain offences should be subjected to review. An example is the current legislation which deals with 'serious offences'. Is it really necessary to include as specified serious offences Actual Bodily Harm and Affray, thus rendering them offences which require some special consideration? Such offences, and no doubt others, should fall into the general sentencing regime and be left to common law and the discretion of the judiciary. In order to simplify the sentencing framework there is clearly a need for parliament to recognise a limited number of serious offences. However, the number and nature of such offences needs to be more focused.

Question 33: What should be the requirements on the courts to explain the sentence?

33.1 It remains of great importance that those sentenced by the Court understand with clarity the reasoning for the sentence passed. Therefore it should remain incumbent upon a Judge or Magistrate to explain in simple form the features considered to be aggravating or mitigating, the starting point of the sentence and what credit a defendant has received for any plea of guilty. The sentenced individual should always leave court clear as to why the sentence was passed.

Question 34: How can we better explain sentencing to the public?

34.1 With the changes proposed and an announcement of them, the CBA would encourage the Government to be clear with the public: to acknowledge that prison does not rehabilitate, that it does not keep people safe and secure in the long-term and that there is to be a radical change. We would encourage clarity in respect of what that change would involve: fewer prison sentences will be passed. We favour transparency and an undertaking to report the successes and/or failures of the new approach. In respect of individual sentences we would encourage publicity of sentencing remarks as an extension of the court level data which is already available.

Question 35: How best can we increase understanding of prison sentences?

35.1 By simplifying sentencing in the ways proposed and by ensuring there is better access to information about sentences passed. In part this is achieved by ensuring (as judges are already required to do) set out the sentence actually to be served and that a record of the sentencing remarks is available for the public to consult.

Question 36: 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?

36.1 The CBA is of the view that the suspended sentence has become a constructive sentencing option available to the court. In our experience, these sentences are used effectively as an alternative to immediate custody, providing the courts with a means of marking the gravity of an offence and providing the public with certainty as to the consequence of non compliance or re-offending.

36.2 The use of suspended sentences is unnecessarily restricted to custodial sentences of 12 months or less. Sometimes, a custodial sentence of more than 12 months is commensurate with the seriousness of the offence, but for an employed person of positive good character, being made subject to onerous requirements in the community is more beneficial to society than requiring him or her to serve the sentence in prison.

36.3 There should always be an element of discretion open to the court. Therefore, if in the particular circumstances of a case the most appropriate sentence is a suspended sentence, but it is either not possible for some reason to impose requirements, or the court feels it is inappropriate to do so, the court ought to have a discretion to impose the suspended sentence alone. Examples of such circumstances might be the health of the defendant or his/her dependents or the extent of the defendant's need for rehabilitation.

36.4 The ability to defer sentence has also fallen out of use in recent years, but this was often a useful tool to allow an individual to demonstrate his good faith and ability to keep out

of trouble to the court and, in return, to receive a more lenient sentence than he otherwise might have done.

Question 37: How can we make community sentencing most effective in preventing persistent offending?

37.1 Sentences should be targeted to identifiable causes of criminality in the case of a particular individual. The sentence should be properly structured and funded to tackle those underlying causes whilst providing an element of punishment. Long-term strategy should be an important aspect of sentencing practice, thereby structuring the offender's lifestyle to properly enable him or her to lead a productive and law-abiding life.

Question 38: Would a generic health treatment community order requirement add value in increasing the numbers of offenders being successfully treated?

38.1 Mental Health sentencing is currently complicated and time consuming. There is a gap in the availability of sentences below the imposition of hospital orders for those suffering with more minor mental illness or personality disorders. The proper supervision of the mentally ill in the community, particularly in relation to the regulation of self-medication or imposed medication, and the regular monitoring of the offender's condition by registered medical staff, could be just some of the benefits of such scheme.

Question 39: How important is the ability to breach offenders for not attending treatment in tackling their drug, alcohol or mental health needs?

39.1 Public confidence in community penalties is dependent on rigorous supervision and enforcement. That confidence is undermined when offenders subject to community orders fail to comply or re-offend.

39.2 It is, however, important that incidents of non-compliance are filtered appropriately and that the courts are not burdened by technical or minor breaches, which ought to be easily managed by those charged with providing the programmes.

39.3 In cases involving drug and alcohol addiction, great vigilance is required. Proceedings should be swiftly brought where the breach is or may be related to the offender's addiction, thereby increasing the likelihood of further offending.

Question 40: What steps can we take to allow professionals greater discretion in managing offenders in the community, while enforcing compliance more effectively?

40.1 This question is not within the remit of the CBA.

Question 41: How might we target community sentences better so that they can help rehabilitate offenders before they reach custody?

41.1 Pre-Sentence Reports are often written with limited direction as to the best and most effective means of sentence for the individual offender. It would assist the authors of such reports to be given some indication by the courts as to the type of sentence it is considering passing and the desire of the court to have certain aspects of the defendant's background explored. Such an approach would result in more specific recommendations being made.

Question 42: 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?

42.1 Fines have become an unfashionable means of disposal. The CBA is of the view that an upward adjustment in the appropriate levels of fines would increase public acceptance of them as alternative sentences.

42.2 With regard to compensation, greater guidance ought to be available to the courts as to the appropriate levels of compensation for various losses or injuries. This would encourage consistency as to when or how much compensation is imposed.

Question 43: Are there particular types of offender for whom seizing assets would be an effective punishment?

43.1 Yes – those who pose little or no threat to the community and who commit financial crime in order to improve their financial status. The removal of assets from such offenders in cases where they would be unlikely to receive a significant sentence would be effective. However, this is tantamount to passing a very significant fine on the individual. Great care would be needed to ensure consistency is maintained when offenders with very different circumstances who have committed similar crimes are dealt with. Care must also be taken to avoid the impression that the rich, regardless of whether their wealth is ill gotten, can buy their way out of prison.

Question 44: How can we better incentivise people who are guilty to enter that plea at the earliest opportunity?

44.1 A discount of more than 33% and a guarantee that such a discount would be given in all but the most exceptional cases would assist in incentivising guilty people to enter pleas at the earliest opportunity. However, we are of the view that it is unrealistic to expect a significant increase in the number of defendants who plead guilty at an earlier stage unless the evidence they are to face is always served on them in a timely fashion. This is why it is also unrealistic to gear a system towards pleas in the Magistrates' Court. But a discount of, say, 50%, for pleas entered at or before PCMH hearings, would have the desired effect.

Question 45: Should we give the police powers to authorise conditional cautions without referral to the Crown Prosecution Service, in line with their charging powers?

45.1 Yes, as long as a policy ensuring national consistency is devised.

Question 46: Should a simple caution for an indictable only offence be made subject to Crown Prosecution Service consent?

46.1 Yes. Public confidence demands that decisions in relation to serious offending are taken by trained lawyers at an appropriate level. There must be consistency, proper

consideration of the merits and a transparent decision making process in accordance with a recognised set of standards.

Question 47: Should we continue to make punitive conditional cautions available or should we get rid of them?

47.1 If used consistently and with care, such a disposal has its place in our system.

RESPONSE TO QUESTIONS IN CHAPTER 5: YOUTH JUSTICE

Question 48: How can we simplify the out of court disposal framework for young people?

48.1 Over the past years, the approach to young persons who commit offences has been to devote significant resources at the outset with the objective that this would serve as the best opportunity to divert a young person from further offending. The CBA recognises the important role that Youth Offending Teams (YOT) have in this task and specifically in providing a multi-agency approach in dealing with young offenders.

48.2 The green paper indicates that the "*young offenders are automatically escalated to a more intensive disposal, regardless of the circumstances or severity of their offence" [Para 234*]. Further "*that this rigid approach can needlessly draw young people into the criminal justice system, when an informal intervention could be more effective*" [Para 235].

48.3 It is acknowledged that there is a scaled approach to out-of-court disposals. The present system allows a situation where a young person could commit and admit two offences and still not be charged and compelled to go before the Youth Court (where a Referral Order or a Detention and Training order is imposed upon a first conviction).

48.4 The current system includes reprimands and final warnings. A "reprimand" is suitable for a first offence if it is not grave and the young person admits guilt. It is delivered by police either immediately or after a young person returns on bail. During the bail period, YOT will seek to contact and assess the young person's suitability for a prevention/intervention programme. When the young person returns at the end of the

bail period, the police can deliver the reprimand while also bearing in mind the outcome of the YOT assessment. The YOT will also be present. A reprimand can involve a brief intervention by the YOT if the young person is assessed as high risk. The intervention is voluntary for the young person.

48.5 For a second offence a young person is either given a "Final Warning" or charged. Once a young person has received a reprimand, they cannot be reprimanded again.

48.6 Care should be exercised in expanding out-of-court disposals further. Without clear and considered guidance, any relaxation of the current scheme could lead to an inconsistent approach and encourage police to dispose of cases quickly, when an out-of-court disposal may not be in the public interest and may not address the factors underpinning the offending of the young person. The application of fixed penalty notices in relation to youths is an illustration of the dangers of such a course and led to a review by the last Government.

48.7 With those concerns in mind, the CBA do recognise that Youth Conditional Cautions (YCCs) may have a role to play in bolstering the alternatives to charging a youth. The order appears to be more robust and, importantly, the rehabilitative, reparative or punitive conditions attached to it must be fulfilled or the case can be referred to court.

48.8 Section 48 of The Criminal Justice and Immigration Act 2008 extended the use of YCCs to young people aged 10-17 by amending the Crime and Disorder Act 1998. The YCC has been piloted for 16-17 year olds since 26 January 2010 for a period of at least 12 months in five areas. It appears unclear whether that pilot has finished and no report as to the progress of the piloted YCC appears to be available.

48.9 The YCC would effectively sit above Reprimands and Final Warnings. They can be used where the offender has either committed an offence which is not suitable to be dealt with by way of Reprimand or Final Warning, or where the offender has already used up the options available to him/her under the Reprimand and Final Warning scheme. Currently, such cases would most likely be referred to court. The CPS has to determine if a YCC is

in the public interest before using a YCC and a Code of Practice is in place to assist with this duty. The YCC differs from Reprimands and Final Warnings in that the rehabilitative, reparative or punitive conditions attached to it must be fulfilled or the case can be referred to court. It is therefore more serious than a Reprimand or Final Warning as it compels the recipient to address their offending behaviour or they will face more serious repercussions.

48.10 Looking forward, the question of whether the piloted YCC or Youth Restorative Disposal (YRD) [see answer to Q49] have roles to play in out-of-court disposals needs to be determined. Any relaxation in the approach to out-of-court disposals should be accompanied with updated composite guidance setting out the rationale, the different options and the criteria that must be considered.

Question 49: How can we best use restorative justice approaches to prevent offending by young people and ensure they make amends?

49.1 Restorative justice has been a concept available in the criminal justice system over the last ten years. There has been limited utilisation of it partly due to limited publicity, a lack of resources and an undefined impact/discount in the sentencing process. Notwithstanding this inauspicious start, it could have an important role in punishment, rehabilitation and the wider administration of justice.

49.2 The foundations for the utilisation of Restorative Justice are already in place both for out-of-court disposals and as court orders.

49.3 Restorative justice could be included as part of an out-of-court disposal in the form of the piloted Youth Conditional Caution (YCC) or the piloted Youth Restorative Disposal (YRD).

49.4 The latter is a measure that is designed to offer a quick and proportionate response to a young person's low-level offending and allows victims to have a voice in how the offence is resolved. It gives specially trained police officers and police community support officers on-the-spot discretion to hold to account young people who have committed

certain minor offences. It is only possible to use a YRD for a first offence and both the victim and youth must agree to participate. Where a YRD is issued, it is recorded locally and not on the Police National Computer. It does not give the young person a criminal record. Police forces will inform their local YOT that a YRD has been issued. This provides an earlier opportunity for YOTs to act on first signs of risk of criminal activity.

49.5 At court, a Reparation Order is currently available for any juvenile (aged 10 to 17) who has been convicted of an offence.

49.6 Restorative justice can play a greater role in Referral Orders and Youth Rehabilitation Orders. We welcome the intention to strengthen the restorative approach. However, greater utilisation must be accompanied by sufficient resources. It is a form of disposal which, due to its individualistic nature, can be time consuming in terms of organisation and supervision.

Question 50: How can we increase the effective enforcement of youth sentencing?

50.1 Efficient and effective enforcement of all court orders are important for the administration of justice and to maintain public confidence in the criminal justice system.

50.2 The CBA recognises and endorses that there must be options in the community which provide robust alternatives to custody. Intensive Supervision and Surveillance (ISSP), Youth Rehabilitation Orders and the use of monitored curfews provides such an alternative and are available and used by the courts.

50.3 Such non-custodial orders when imposed require careful supervision and enforcement. An element of discretion will always be necessary to recognise and deal with the young person who commits an isolated breach and the young offender who shows little or no intention to engage with YOT.

50.4 The Green Paper at paragraph 242 expresses concern regarding a variation in practice in how different YOT teams deal with breaches of orders. No further information is provided in the Paper setting out the foundation for such concern. The proposed

solution is the creation of compliance panels as part of the YOT. That, of course, is one option. The mischief, if there be one, lies with the interpretation and application of the guidance as to breaches by the supervising officer. Providing updated guidance to the supervising officer would appear to be a cost-effective and streamlined solution and the appropriate starting point. It is also consistent with the theme within the Paper of trusting those at the ground level to exercise their discretion appropriately.

50.5 Secondly, where a breach takes place and an offender is sent back to court, if the YOT assess the young person as unsuitable for an YRO or other non-custodial penalty, the options available to the court are very limited. Courts should be encouraged to examine closely whether a young person is actually unsuitable or whether the order can be salvaged and allowed to continue in perhaps a more onerous form.

50.6 In light of the proposed abolishment of the Youth Justice Board and the new approach towards sentencing, it would appear to be an opportune moment for the Ministry of Justice to provide updated guidance to YOT teams, practitioners and courts on this and the other matters detailed in the Paper that pertain to Youth Justice.

50.7 The Green Paper makes it clear that in relation to Detention and Training Orders (DTOs), there is no intention to make substantial changes. There is, however, a proposed change to ensure a young person can still be returned to custody even if the DTO has expired where there has been a breach of the supervision requirement of the order.

50.8 Whilst acknowledging the need for the enforcement of court orders, this “consequential change” is a retrograde step. Any breach of the supervision element of the order should be dealt with during the currency of the DTO and not after it. It is in the public interest that breaches are identified and acted upon quickly. Relaxing this approach, by allowing a return to custody *after* the expiry of the sentence provides a disincentive to the early identification of breaches and prompt recall. Such a course may, in due course, have the unintended consequence of increasing the youth prison population and/or the length of time a young offender is in custody.

50.9 The "training" aspect of a DTO is underutilised and is an area which could be improved. As indicated above, in practice it appears to be more "supervision" rather than "training". The rate of re-offending for those who receive custodial sentences remains very high. The Green Paper may be missing an important opportunity when reviewing Youth Justice. There should be greater emphasis on *training* and obtaining and building upon vocational skills. There should be an increase in one to one mentoring during supervision and mentoring could be provided by volunteers in the community, supplemented by increased funding to charities that provide this role. If a youth is engaged, active and motivated, this will also impact on whether the latter part of the DTO is completed successfully. This may complement a number of the objectives within the Green Paper such as payback, reparation and the overarching objectives of the rehabilitation of the offender and the prevention of further offending.

Question 51: How can we succeed in reducing the need for custodial remand for young people?

51.1 The CBA endorses the comment in the Green Paper that the imposition of custody for youths "*should be used sparingly as a last resort as it separates young people from their families and communities can seriously disrupt education, training and development and is an expensive option that does not deliver good outcomes for young people*".

51.2 It is of concern that young people on remand now account for 28% of the custodial population and that 57% of young offenders on remand do not go on to receive a custodial sentence [Para 245].

51.3 The principle of "*custody as a last resort*" should have equal applicability to the treatment of youths who await trial or sentence. The CBA welcomes the proposal to amend the Bail Act to remove the option of remand for young persons who would be unlikely to receive a custodial sentence.

51.4 The reiteration of this principle is important and would reduce the need for custodial remand. This could be done in a number of ways including in the form of a guidance

note accompanying the proposed amendment to the Bail Act, case law, updated SCG or training to the judiciary.

51.5 Furthermore, in addition to training, focusing on fast tracking youth trials and the greater availability of intensive monitored bail packages for youths may assist.

51.6 The CBA welcomes the proposal of a "single remand order" for all under 18s. The law and funding in relation to the remand of youths at present is unnecessarily complex. The CBA are neutral as to the mechanism for funding these places, save that the experience of practitioners is that the availability of local authority or secure accommodation (alternatives to remand to a Young Offender Institution) is extremely limited.

51.7 Whilst considering this issue, it is prudent that the anomaly in relation to the treatment of remand time for young offenders is reviewed. At present, no time spent on remand for a young person counts towards time served on a DTO. This is contrary to the position of adults, where the CJA 2003 allows the court to take time spent on remand into account (whilst maintaining a limited discretion to discount that figure). To harmonise the adult and youth regime in relation to the treatment of time spent on remand before sentence would not only be fairer, but would simplify the law and further reduce the demands on the saturated young offender (YOI) population.

Question 52: How do you think we can best incentivise partners to prevent youth offending?

52.1 The Green Paper does not provide much detail as to how this objective is to be implemented. As a result, it is very difficult to make an informed and considered contribution.

Question 53: How can we deliver a performance management and inspection regime that achieves our aim to reduce burdens and increase local accountability?

53.1 The Green Paper does not provide much detail as to how this objective is to be implemented. As a result, it is very difficult to make an informed and considered contribution.

Question 54: What are some of the ways we might be able to further involve local communities in youth justice?

54.1 Increased mentoring roles working on a one to one basis, parental support volunteers focusing on those with recently convicted children and/or who have children who are on the training element of a DTO or serving a YRO, incentive schemes for local businesses/companies to deliver work placements and apprenticeships and other skills based workshops and inviting contributions for local areas that could benefit from community payback, are all ways in which we might be able to further involve local communities in youth justice.

Question 55: How can the functions of the Youth Justice Board best be delivered by the Ministry of Justice?

55.1 The Green Paper suggest that the YJB should be disbanded and its role adopted by the Ministry of Justice. The Paper does not invite contributions as to the merits of such a decision and the CBA does not have the requisite information to be in a position to contribute to this question.

RESPONSE TO QUESTIONS IN CHAPTER 6: WORKING WITH COMMUNITIES TO REDUCE CRIME

Question 56: What sort of offences and offenders should Neighbourhood Justice Panels deal with and how could these panels complement existing criminal justice processes?

56.1 The CBA would encourage an extension of the project in Chard but with work of Neighbourhood Justice Panels confined to low level crime and anti-social behaviour

within the local community. Such arrangements would complement the existing criminal justice proposal because it would offer an alternative to a first appearance in court. Previously imposed acceptable behaviour contracts etc could be reported to courts were there to be further offences committed.

Question 57: What are the other ways in which we can work effectively across Government to increase local flexibility to tackle offending?

57.1 The CBA cannot contribute usefully to this question.

Question 58: What more can be done to support family relationships in order to reduce reoffending and prevent intergenerational crime?

58.1 This is also a question where the CBA does not have sufficient knowledge or the required experience to offer an informed answer.

Question 59: 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?

59.1 Again, this is not a question for the CBA.

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