

SCOTTISH GOVERNMENT CONSULTATION ON A NATIONAL CARE SERVICE FOR SCOTLAND

SCOTTISH SENTENCING COUNCIL RESPONSE

The Scottish Sentencing Council is grateful for the opportunity to respond to the Scottish Government's consultation on its proposals for the creation of a National Care Service (NCS).

About the Council

The Council was established in October 2015 as an independent, advisory body under the Criminal Justice and Licensing (Scotland) Act 2010. It carries out a range of work concerning sentencing in Scotland; its responsibilities include:

- preparing sentencing guidelines for the courts;
- publishing guideline judgments issued by the courts; and
- publishing information about sentences handed down by the courts.

The Council can also conduct research and provide general advice or guidance. The Council must, in carrying out its functions, seek to — (a) promote consistency in sentencing practice, (b) assist the development of policy in relation to sentencing, (c) promote greater awareness and understanding of sentencing policy and practice.

Response to the matters being consulted on

The Council does not offer any comment on the merits or otherwise of the creation of a NCS or whether it should include services which interact with the criminal justice system (such as social work, including justice social work, alcohol and drug services, mental health services, and provision of care in custodial settings). The Council is, however, generally supportive of efforts to improve provision of, and access to, services which support reduced reoffending and public protection.

While the Council has not taken any position on whether the creation of a NCS would be appropriate, it does, however, wish to highlight some of the issues present in relation to the current provision of community justice services across Scotland, which it believes should be borne in mind when giving consideration to any revisions to the current model.

In early 2021, the Council carried out a consultative exercise with sentencers across Scotland, with a view to identifying any gaps or barriers to provision of community-based disposals and to ascertain what might improve judicial confidence in community-based interventions. The Council has published an issues paper,

“Judicial perspectives of community-based disposals”,¹ drawing on that exercise and other work carried out under its auspices. The paper discusses the matters in more detail but this consultation response highlights some particular issues and areas where the Council believes there are opportunities for improvement. We believe these may be of assistance to the government and others in further consideration of the proposals being consulted on.

Appropriate community-based disposals are generally viewed by sentencers as providing a greater chance of rehabilitation and as a more cost-effective alternative to imprisonment.² However, in a number of areas, resources are not seen to be sufficient to support effective community disposals. In particular, urban and more central areas are regarded as having greater provision for a wider category of person or offending than rural areas.

There is a perceived need among sentencers for greater consistency in the provision of community-based programmes and services. These should be made available for a wider range of offending and to address a wider range of issues. Sentencers have, for example, observed gaps in unpaid work opportunities for specific categories of person (for example those with mental health difficulties, women and young people) or offending (for example domestic abuse).

The engagement we have carried out suggests that one of the greatest challenges to judicial confidence in community-based disposals concerns limitations of resources to support their management and delivery.

The success of community-based disposals is perceived to be largely dependent on robust delivery, effective monitoring and prompt reporting of non-compliance – all of which are hindered by what are, in some areas, seen to be overwhelmed local services. In a number of areas, resources available to criminal justice social work and NHS services (to support mental health treatment and addiction for example) are seen by some sentencers as insufficient to provide adequate monitoring for criminal justice social work to support effective disposals.

The Council considers that there is a need for greater consistency in the provision of community-based disposals and that a more consistent approach to the development, delivery and funding of community interventions on a national basis merits consideration. Consistency of provision is necessary to fairness, both to those who have offended and need assistance and access to treatment to move away from their offending behaviour, and to the communities affected by their offending behaviour. Consistency does not, however, equate to uniformity and there is a balance to be struck between ensuring local approaches can continue to be developed and maintained in accordance with local need, and ensuring equality of access to non-custodial disposals.

¹ [Judicial perspectives of community-based disposals](#), Scottish Sentencing Council (October 2021)

² This is not to suggest that sentencing decisions are made with any regard to resource implications: the decision as to whether to impose a community sentence as an alternative to imprisonment is made with regard to the specific circumstances of the particular case before the court and in accordance with applicable law.

However, it must be stressed that while the Council supports a more consistent national approach to the development and funding of services to support community disposals it is not in a position to comment on whether or not that would best be achieved by the creation of a national service, with accountability resting with the Scottish Ministers.

The Council intends to hold a stakeholder discussion event on community sentencing in 2022, which will include detailed exploration of the issues raised during its consultative exercise.

It is the Council's view that any changes to justice social work or other proposals relating to criminal justice should ensure that improvements can be realised and, at a minimum, should ensure the maintenance of the existing level of service delivery and access to services; any new arrangements must not result in any deterioration in the level, quality or availability of service provision. This is equally important during any transition to new arrangements as it is in the longer term. Furthermore, this also applies whether or not a service is included in a new nationally managed service; it can be expected that the creation of a NCS will have implications for various services which remain under the remit of local authorities and these should be given consideration prior to any implementation of the proposals.

The Council would also draw attention to the particular nature of justice social work services in comparison with many of the other care and support services which the proposed NCS might provide. As well as providing support and arranging access to services for persons accused of offences throughout court proceedings, criminal justice social workers play an important role in assisting the courts in identifying an appropriate sentence and in the management and delivery of community-based sentences.

Justice social work is responsible for the provision, by way of the preparation of Criminal Justice Social Work Reports (CJSWRs), of information necessary to support sentencing decisions in many cases. This will include (except on rare occasions), among other things, the carrying out of risk assessments and/or making recommendations as to whether someone who has committed an offence is suitable for a community-based sentence or would more suitably be remanded in custody.

Justice social workers also have responsibility for the delivery and management of community-based sentences, such as unpaid work. This includes notifying the court when an order has been allegedly breached, which could potentially lead to an individual being given a custodial sentence. The Council understands that should the NCS be established, it may not include at the outset all those services which may eventually be included within its scope. The Council suggests that it would be prudent to consider in these early stages how best a new NCS can be set up to accommodate the incorporation of new functions and services at a later stage and that consideration of the particular nature of justice social work services should be taken into account in any new structural arrangements.

The Council is grateful for the opportunity to comment on these proposals and hopes its response is of use in considering the consultation proposals and in further policy development in the area of community justice.

Scottish Sentencing Council

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