



Response to Breaking the Cycle

Effective punishment, rehabilitation
and sentencing of offenders

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Contents

Introduction	4
1. Punishment and payback	5
2. Rehabilitating offenders to reduce crime	11
3. Payment by results	11
4. Sentencing reform	17
5. Youth justice	26
6. Working with communities to reduce crime	36
Conclusion	41
References	42

Introduction

The Howard League for Penal Reform welcomes the opportunity to respond to the Ministry of Justice green paper on sentencing and rehabilitation. This report deals with each section of the green paper in turn, with commentary and key recommendations for reform.

The Howard League for Penal Reform campaigns for less crime, safer communities, fewer people in prison. Our response to the green paper is founded on the principle that criminal justice, and imprisonment in particular, is a blunt tool which cannot in itself provide lasting solutions to the problem of crime.

The use of prison should be administered only in strict proportion to the harm done and with the aim of reducing the likelihood of exacerbating that harm. It should focus on those that commit serious and violent offences and who present a danger to the public. A properly limited penal system can then offer those who offend the chance to make some amends and commence the process of changing their lives. The underlying causes of local crime are best tackled through investment in public services beyond the criminal justice system, be it health, education or welfare.

1. Punishment and payback

Overview

The Howard League pioneered the concept of real work in prison and hopes government proposals on prison work will develop in line with the model we developed during the Barbed graphic design studio enterprise we ran inside Coldingley prison. We are clear that real work in prison should not lead to the building of new specific work prisons.

Community sentences and programmes that are outcome focused are the most successful penal intervention at preventing reoffending and have the support of victims. We stress that the penal system is a blunt instrument that can only ever be effective in guiding people to lead crime free lives when linked closely to other services.

Key recommendations on real work in prison:

- We support real work in prison and the creation of a full working week
- We believe prisoners should work to support their own families and to compensate victims of crime
- We believe they should be paid fairly for the work undertaken and should be subject to taxation in the normal way
- Businesses should be encouraged to set up in prisons holding long-term prisoners.

Key recommendations on community sentences:

- Individuals in the criminal justice system often have complex needs that need to be met with a tailored package. The current options for community sentencing offer this
- Community sentences should focus on cutting crime long-term not on punishment of the individual
- Probation must be renewed to support those who undertake community sentences and programmes
- Community sentences must be made more immediate, more efficient and more intensive over a reduced period of time.

Real work in prison

- 1.1 The Howard League for Penal Reform welcomes the government's proposal to implement a regime of real work in prison. We welcome the prospect of long-term prisoners being engaged in real paid work. We pioneered this approach when we set up the world's first business based inside a prison, Barbed, where prisoners were engaged in a social enterprise as employees. We intend to publish a further policy document about the implementation of this policy in practice.

- 1.2 We welcome the government's aspiration to create a 40 hour working week for people in prison and would argue there is only scope for this as regards long sentenced prisoners. We concur with the sentiment that for real work in prison to be feasible in the public domain it must be clear that work in prison is not a cheap option for private industry but should compete fairly in the market place. Work in prison could, for example, repatriate enterprises that are currently placed by UK companies in other countries, where there have been questions about the rates of pay and employment practices or where the business environment is potentially unstable. Much of the manufacturing industry that is currently shipped out of Britain could potentially thrive in British prisons. A wide range of enterprises could be based inside prisons, from retail to food production, from call centres to packing.
- 1.3 We are convinced that this would receive popular support across the political divide given the taxpayer currently pays around £1 million to keep a prisoner lying on his bunk for a decade whilst his wife and children in the community are supported on benefits. The status quo merely contributes to intergenerational unemployment and state dependency.
- 1.4 In follow up reports written about Barbed (Howard League 2010a, Howard League 2008), the Howard League has established that for real work in prison to be effective the following three tenets must be satisfied:
- The employment relationship between an external employer and the prisoner must be normalised
 - Work could be anything suitable for a prison
 - Remuneration should be the rate for the job and taxed.
- 1.5 Prisoner's pay must be fairly taxed for the work undertaken. It is essential that prisoners are treated in the same manner as any other employee on the outside. Once inside the work place, prisoners would be employees. The relevant prison rules currently state that:
- 2.8.1 Prisoners earning over the normal thresholds for Income Tax and National Insurance contributions are not exempted from these payments.
- 2.8.2 Governors, Directors of contracted-out prisons and outside employers are legally required to deduct National Insurance contributions and income tax from the earnings of prisoners whose wages exceed the thresholds. They are also legally required to make employer's National Insurance contributions.
- (Prison Service 2000)
- 1.6 The prison would gain from improved security and safety, as work creates a wider panoply of sanctions, for example, prisons could fine prisoners for infractions of codes of behaviour. Further, prisons could make budget savings by providing only basic services. Working prisoners could then be expected to pay for any enhanced services except bed and board. Employees pay the economic cost of

gym membership or higher education classes, so too would prisoners pay for the same services as people on the outside do.

- 1.7 We are concerned about the government's indication that it intends to implement the Prisoners' Earnings Act 1996 and consider it to be a largely unnecessary step. It is not necessary to implement legislation in order to elicit donations from prisoners for victims' charities. During the Barbed project such donations were elicited through a compact between the prisoner and the prison itself. Further, victims' charities will be more willing to accept donations from prisoners if they are given voluntarily. We have experienced some reluctance from such groups to receive forced donations in the past.
- 1.8 A greater emphasis must also be placed on prisoners using the wages they have earned to support their dependants outside prison. Once the conceit that prisoners are exempt from family responsibility is removed, their wages will be part of the family income for benefits purposes, thus the individual will keep their role providing for their family and the taxpayer gains from not having to support the family. This could be achieved without legislative change and would be popular.
- 1.9 The Howard League remains confident that a wide-ranging scheme of real paid work in prison does not require the introduction of specialist workshop prisons. We believe real work can be implemented using much of the dormant space existing within the current prison estate.
- 1.10 In terms of real work in prison the private sector's involvement is far more important than that of the voluntary sector. A normal working relationship with a private employer is essential for prisoners to establish a sense of the value of paid employment. A few successful examples of businesses flourishing in prisons will encourage other private companies to follow suit.
- 1.11 Further, the involvement of the private sector should modernise the ethos of the prison service. If private companies have a contractual right to a forty hour week from their workforce, then this would radically reform the way in which the prison service operates. For example, prisoners could not be transferred without consideration for their employer. A strengthened industrial lead within the prison service would provide contractual support and business links although governors must be allowed to develop entrepreneurial skills and encourage local businesses.
- 1.12 The role of the prison service would remain to ensure safety and security but to do so within the framework of a daily work routine. At the current time purposeful activity is treated as a box-ticking exercise by prison service officials and, given the pressures of overcrowding and under-resourcing, largely as an afterthought.
- 1.13 With a regime of real work in prison in place, work would come first; this would create an atmosphere more conducive to rehabilitation, giving prisoners genuine meaning and purpose to their day would likely help reduce the number of violent incidents from bored and frustrated prisoners with little to do except express themselves through violence and disaffection.
- 1.14 At least initially, the Ministry of Justice should seek to ring fence two or three Category C training prisons to be the test beds for real work in prison. Prisoners throughout the secure estate would be incentivised to gain entry into these ring fenced prisons, in order to access the opportunity to do real work and earn a living wage.

1.15 The introduction of real work for long term prisoners could arguably be the single most important prison reform of the last hundred years, changing the lives of prisoners and their families, keeping family links and thereby offering the best hope for prisoners to lead a crime free life on release, and giving prisoners a work ethic. The saving to the taxpayer would be considerable. Prisons would be safer places and could invest in staff skills. Victims would gain financially and a more mature discourse would take place with the public about the purpose of imprisonment for those who have committed serious and violent offences.

Community interventions

1.16 The Howard League welcomes the government's intention to tackle more categories of crime within the community. A large amount of crime is a community problem and therefore can best be tackled within the community. The high reoffending rates for those sentenced to under a year in prison (often those who have committed a non-violent crime) demonstrate prison is ineffective at dealing with this type of crime.

1.17 Community payback and community intervention have a vital role to play in reducing crime, however it is important that such programmes focus not on retribution but on community outcomes. Genuine restorative justice is an effective weapon against recidivism, however striking the correct balance between punishment and outcome efficiency is vital. The goal of a government at a time of economic stringency should be value for money; taxpayers should pay for schemes that best reduce reoffending.

1.18 Community payback's strength lies in working with community organisations such as charities to support local society. The government's desire to make community payback more punitive might endanger the restorative work that represents the best of community payback.

1.19 A good example of a scenario where community sentencing becomes too punitive is the use of curfew orders. Replacing prison with imprisonment in one's home is not a solution to the underlying community causes of crime. A 2011 parliamentary question showed that the one year reconviction rates for curfew orders were high, at 43.8 per cent (Hansard 2011a) (compared with 49 per cent for those serving custodial sentences). A community order that does not get to the bottom of an individual's actions can be just as ineffective as a punitive prison sentence.

1.20 Community options will reduce government expenditure. A year in prison costs approximately £45,000 (Hansard 2010a). Most community orders enforcing unpaid work or directly tackling problems such as accommodation or alcohol cost about £3,000 a year. Those involving intensive drug treatment in the community cost an average of £8,600 a year (Matrix 2008).

1.21 The government has a wide array of options to deal with someone's criminal behaviour. The Criminal Justice Act 2003 brought into force the 'generic community sentence', also known as the community order. This allows judges and magistrates to combine what previously would have been different orders and tailor the sentence to fit the needs of the individual. The requirements that can be placed on an individual are:

- Supervision - by the probation service
- Compulsory unpaid work - up to a maximum of 300 hours (increased from 240). This would involve constructive community work, such as conservation or cleaning up graffiti
- Participation in specified activities - This may include improving basic skills (such as literacy) or making reparation to the people affected by the crime
- Prohibition from undertaking specific activities
- Undertaking accredited programmes - aim to change individuals' behaviour
- Curfew - where an individual can be ordered to stay at a particular location for certain hours of the day
- Exclusion - where an individual can be excluded from specified areas
- Residence requirement - where an individual may be required to live in a specified place, such as an approved hostel
- Mental health treatment - which can only be required with the consent of the individual
- Drug rehabilitation - which includes both testing and treatment, and can last for between six months and three years; again this can only be imposed with the consent of the individual
- Alcohol treatment - the individual must agree to this treatment and it must last for at least six months
- Attendance centre - individuals under the age of 25 may be required to attend a particular centre at a specified time for between 12 and 36 hours, over the course of their sentence.

1.22 In order to respond to crime within the community there must be a focus upon what works; upon solving the long-term problems that provoke criminality. These are usually outside the purview of the criminal justice system which is why links with health, employment training, education, housing, debt counseling, domestic violence services and family support are ultimately the best crime prevention measures available.

1.23 Specific community regimens tend to work best, such as targeted alcohol and drug treatment. For example, in 2008, the rate of reconviction within one year for adults convicted of offences related to shoplifting and sentenced to custody was 78.3 per cent (Hansard 2011b). In many of these cases the individual responsible had a drug problem and could have benefitted from drug treatment. Individuals who received residential drug treatment have been shown to be 45 per cent less likely to reoffend after release than comparable individuals receiving prison sentences (Matrix 2007).

1.24 The Howard League does recognise that public faith in community sentences is currently low. However, we do not think the answer lies in making community sentences more like prison, as public faith in the effectiveness of prisons is equally low. Instead we believe the government should invest more time in winning the broader argument. We must convince the public that community sentences cut crime and it is in this effectiveness that the legitimacy of community sentences is found.

- 1.25 Making community sentences both more immediate, more intensive and more outcome focused would be an effective way of raising public confidence in community sentences. At the current time there is too great a gap between a court issuing a sentence and the community sentence taking place. This shakes confidence in community sentences and the individual's willingness to participate. A recent report by Policy Exchange showed that the average length of a community sentence was 13 months in 2009 (Policy Exchange 2010). This is too long and will place too great a burden on individuals, who are likely to struggle with minor matters such as keeping appointments. The result is repeated breaches that undermine public confidence in community sentences.
- 1.26 Howard League research about to be published shows that a significant number of prisoners serving short sentences had selected a custodial option in preference to an elongated community sentence that sets them up to fail. They are aware that when they breach the extensive community order they will end up receiving a prison sentence anyway. The financial cost of this is huge, the likelihood that it merely interrupts offending is great, and the failure of the system to protect future victims is criminal. For community sentencing to work it must be intensive, short and effective.
- 1.27 Use of community sentences must be proportionate and appropriate. While a short and focused community sentence is preferable to prison; the experience of the last government demonstrated that proliferating 'alternatives to custody' simply widened the net of the criminal justice system, and did nothing to reduce the custodial population. Community sentences must not be used to widen the ambit of the criminal justice system beyond what is appropriate. Some problems and community disorder do not belong in the criminal justice system at all and community sentences, while they can be helpful, are not the ideal solution to every problem.
- 1.28 There is an inherent danger in making community sentences 'tougher' and more like custody. Custody has a track record of failure for those sentenced to short periods in prison. A shift towards community sentences is a positive step but we must not shift community sentences too much towards punitive objectives for risk of repeating mistakes of the past. Instead the proportionate use of community sentences must be made more immediate, more intensive and undertaken for a shorter period of time to enable compliance. This will help restore public confidence in community sentencing.

2. Rehabilitating offenders to reduce crime

Overview

The Howard League welcomes the government's proposal to create prisons that are more purposeful and rehabilitative for the long term prisoner.

The Howard League welcomes the government's commitment to probation and voluntary sector support for women in the community. We have been pleased to see investment in the provision of additional services for women offenders and women at risk of offending in the community, who are not a danger to the public. However, much remains to be done. We renew our position that for almost all women custody is the wrong option.

We are concerned at plans to increase the treatment capacity for prisoners suffering from severe personality disorders. It is our view that prison is inappropriate for those suffering from mental health problems and personality disorder; indeed, it can often have an exacerbating effect, resulting in increased levels of distress, self-injury and suicide.

Key recommendations:

- We advocate a shift away from offender management and a shift towards a localised "resolution service" that the public can both see and understand. Such a service would use the relationship between probation officers and individuals as central to reducing reoffending
- We renew our position that for almost all women, custody is the wrong option. Custody should be reserved for serious and violent individuals who pose a threat to the public. Existing women's prisons should be closed and replaced with suitable, geographically dispersed, small, multi-functional custodial centres for the few women who require custody
- The core achievement in response to the 2007 Corston report was the funding of one-stop shops across England and Wales for vulnerable women at risk of custody. While the achievement of funding for 2009-11 is significant, if we are to rely on the one-stop-shop women's centres to play a key role in the diversion of women from custody, then these centres will need funding to continue. The fact that they currently have no dedicated funding from the Ministry of Justice past March 2011 for criminal justice services is a challenge that must be faced in the coming months and weeks
- The Howard League recommends that the Sentencing Council issue new guidelines, emphasising the importance of article 8 of the Human Rights Act 1998 upon sentencing a lone parent. Children have a fundamental right to be cared for and courts must bear this in mind upon sentencing.

Rehabilitation

2.1 The Howard League welcomes the government's proposal to create prisons that are more purposeful and rehabilitative. That said, we have concerns about the overuse of the word 'rehabilitation' as an umbrella term for its various component parts. Prison can be a damaging experience to people who have often been victims themselves and imprisonment is itself more often than not a barrier to rehabilitation. However, prisons can also have a limited rehabilitative effect on people, by focusing successfully on:

- re-entry and resettlement in the community
- reducing reoffending
- substance misuse treatment.

Resettlement and reducing reoffending

2.2 We welcome the government's emphasis on fostering positive relationships between people in prison or under supervision in the community and probation officers. However, we would emphasise the need for this to be a consistent, regular relationship, with the individual being assigned one probation officer with whom they can build up a level of trust and confidence. With so many prisoners coming from chaotic backgrounds, having a consistent and stable relationship with a probation officer can have a huge and positive impact.

2.3 In order to facilitate safer communities with fewer people in prison we need a probation service capable of co-coordinating community programmes and making them effective for reducing recidivism. It is for this reason that the Howard League has proposed restructuring probation as a resolution service with enhanced powers to intervene in community conflict and anti-social behaviour. The newly constructed service would be the lead agency, taking over from the police for dealing with anti-social behaviour, and would have a statutory responsibility to reduce community conflict.

2.4 At the current time probation has been reduced to the assessment of risk. Instead of being allowed to engage with vulnerable men and women in the community, the probation service and its functions have been warped by a framework of mechanistic targets. A bureaucratic managerial model averse to risk and devoid of ambition has replaced the frontline services a professional and skilled probation service formerly provided to the multi-faceted problems faced by individuals in the community.

2.5 A national resolution service geared to be problem solving rather than problem containing would restructure probation, whereby local probation/resolution officers would serve as an individualised gateway to offer at risk individuals' access to support for problems such as housing and health care. These are key indicators that lead to crime. The probation service, which is located in almost every community in England and Wales, should be the body to coordinate services and deliver them alongside the private and voluntary sectors. A resolution service would solve problems, not merely contain them. It is only with a re-energised resolution service, whose goal is to support and not to detain individuals at risk of offending that the government's rehabilitation revolution can become a reality.

- 2.6 Probation must exist to support at risk individuals, rather than further to sanction someone whose liberty has already been curtailed by the state. With proper community assistance and support, probation could work as an effective localised network that would support greater community intervention and help to prevent crime long-term, saving taxpayers millions and reducing their exposure to criminality.
- 2.7 We welcome the government's proposal to create a more integrated way of working with at-risk individuals in the community. However, we would argue that the probation service in its current state needs complete transformation in order to do this effectively, with a shift from a risk assessment to a needs assessment, with a more proactive model of resolution addressing those needs.
- 2.8 We believe that a criminal justice system that aspires to cut crime long-term must rely on probation, not prison, as its frontline. For a new resolution service to be effective, the supportive element of the job must be incorporated. People at risk of committing crime must feel they can turn to their probation officer for support and the probation officer should feel able to help the individual without being pressured to comply with meaningless targets and without risk of censure or vilification in the media.
- 2.9 This resolution service would allow probation officers to be a point of contact for the former prisoner or person serving a community sentence, whilst serving as a gateway to encourage the person to use services within the local community that will assist them in a time of difficulty. We believe the proliferation of 'offender services' has separated and isolated the most vulnerable in society. Probation officers should spend time with people to understand their needs and should then refer them on to mainstream local services. This helps integrate the person back into the community and also makes the resolution service visible to the public in a way that probation has failed to be.
- 2.10 The Howard League welcomes the review of the Rehabilitation of Offenders Act. Getting employment in the community upon release from prison is essential for cutting reoffending. We particularly welcome the proposal to wipe the slate clean for all but the most serious offences upon young people becoming adults.

Women in the criminal justice system

- 2.11 The Howard League welcomes the government's commitment to probation and voluntary sector support for women in the community. We have been pleased to see investment in the provision of additional services for women and women at risk of offending in the community. This money was aimed at investing in existing women's centres that provided a one-stop-shop of support services, and further developing bail support services to better meet the needs of women. The one-stop-shop services delivered through women's centres provide the beginning of a radical new women-centred approach that the Corston report called for (Corston 2007). They provide the courts with strengthened community sentences as an alternative to custody.
- 2.12 However, much remains to be done. We renew our position that for almost all women custody is the wrong option. This is evidenced by the fact that women serve shorter prison sentences than men and for less serious offences. While prisoners serving sentences of six months or under make up nine per cent of

the total prison population, women serving these short sentences make up 16 per cent of the female prison population. 38 per cent of women entering prison under sentence serve sentences of up to and including three months, compared to 28 per cent of men (Ministry of Justice 2010c). Of all women sentenced to immediate custody in 2009, 42 per cent were for theft and handling stolen goods. We argue that many of the women in the prison estate are vulnerable and victims themselves of domestic or sexual abuse. Prison is not the right option for such women, and with such a high prevalence of non-violent offences and short sentences, it is our view that for the vast majority of women, custody should be replaced with a community sentence.

2.13 In January 2011, the Howard League published Baroness Corston's second report on women with particular vulnerabilities in the criminal justice system (All Party Parliamentary Group on Women in the Penal System 2011). This report outlined the work that still needs to be done in order to implement the recommendations of Baroness Corston's first report in 2007:

- The 2007 report's most significant recommendation in relation to women in prison was that existing women's prisons should be closed and a few suitable, geographically dispersed, small, multi-functional custodial centres developed
- The report expressly laid out the requirement that custodial sentences for women should be reserved for serious and violent individuals who pose a threat to the public. However, three years on, 63 per cent of women are received into prison for non-violent offences, compared with 45 per cent of men (Ministry of Justice 2010f).

2.14 The Corston report also recommended that women unlikely to receive a custodial sentence should not be remanded to custody. Despite this recommendation the number of women entering prison on remand has seen an increase since 1997, rising by 12 per cent from 5,124 female remands in 1997, to 5,724 in 2009 (Ministry of Justice 2010c). Women on remand spend an average of four to six weeks in prison and nearly 60 per cent do not go on to receive a custodial sentence (Bradley 2009). We welcome the fact that the government is now seeking to remove the option for remand unless the offence is likely to receive a custodial sentence. This proposal is particularly pressing for women in the penal system and should it be implemented there would be a noticeable diminution of women entering custody.

2.15 The core achievement in response to the 2007 Corston report was the investment in one-stop shops across England and Wales for vulnerable women at risk of custody. While the achievement of funding for 2009-11 is significant, if we are to rely on the one-stop-shop women's centres to play a key role in the diversion of women from crime and custody these centres will need funding. The fact that they currently have no dedicated funding from the Ministry of Justice past March 2011 for criminal justice services is a challenge that must be faced in the coming months and weeks.

2.16 The Howard League urges that the Ministry of Justice provides funding for sentences. For example, the Together Women project centres provide support to vulnerable women to tackle multiple and complex issues which trigger offending. Since April this year Together Women projects have already supported 806 women in Yorkshire and Humberside and 83 per cent of those women have achieved positive outcomes. The re-offending rate of women using Together Women support is just 7 per cent compared to a national average that is a good deal higher.

- 2.17 When a primary carer of children is being sentenced, the child's best interests should be represented in court and balanced against the sentencing of the mother. The child is facing forced separation from its primary carer, a decision that in any other circumstance would only be ordered by a court when it was in the child's best interests. Sentences need to be balanced against the best interests of the child.
- 2.18 In the case of R (on the application of P and Q) v Secretary of State for the Home Department [2001] EWCA Civ 1151, Lord Phillips stated that sentencing a parent to custody constituted a prima facie breach of article 8 of the Human Rights Act 1998. Such a breach should therefore need to be justified by the seriousness of the crime to be valid. However, in unpublished research undertaken by an academic at the University of Coventry (Epstein 2011), it was found that very few judges were even mentioning article 8 of the Human Rights Act 1998 before sentencing mothers to custody.
- 2.19 The Howard League recommends that the Sentencing Council issues new guidelines, emphasising the importance of article 8 of the Human Rights Act 1998 upon sentencing a lone parent.

Substance misuse treatment

- 2.20 We welcome the recognition that there is a drug problem in prisons in England and Wales. It is our view that drugs are a health and community issue more than a question for justice services. Substance misuse treatment is better provided in the community for the practical reason that it is much more likely to be effective in the long term than prison.
- 2.21 Most people who commit acquisitive crime could be more effectively worked with in the community. While drug-free prisons are a positive aspiration, the focus should be on culture, mindset and support for individuals.

Mental health

- 2.22 We welcome the government's commitment to roll out diversion services for people suffering from mental health problems. However, we are concerned that dwindling resources will make this difficult to achieve, and that the department of health will struggle to engage fully with this agenda, particularly given the scale of NHS reform being proposed. We are convinced that the loss of primary care trusts will lead to a reduction in the necessary strategic oversight to coordinate diversion across the health and justice systems.
- 2.23 Any diversion programme from custody needs to rely on a broader range of services than health and criminal justice agencies. It is our view that there needs to be greater involvement with social and welfare services, providing support for those with mental health problems, not punishment, monitoring and control.
- 2.24 The Howard League is concerned at plans to increase the treatment capacity for prisoners suffering from severe personality disorders. It is our view that prison is largely inappropriate for those suffering from mental health problems and personality disorder; indeed, it can often have an exacerbating effect, resulting in increased levels of distress, self-injury and suicide.

- 2.25 While not strictly an issue of mental health, the Howard League is also of the view that there needs to be increased screening for traumatic brain injury (TBI) in prison. Recent research by the Howard League has highlighted good practice in America (Howard League 2010b), where TBI is recognised as a contributing factor to offending. Psychiatrists link it to increased aggression and impaired social judgement – which are key risk factors for offending. The Howard League recommends screening at prison level for TBI to explore the extent of this problem in custody.
- 2.26 The Howard League has called for the Ministry of Justice to publish its evaluations of prison Dangerous and Severe Personality Disorder (DSPD) units. Only with this evidence can policy be developed on how best to hold and support people with personality disorder in prison. Policy has, for too long, been based on risk management, rather than on sound evidence.
- 2.27 Our legal team regularly represents children and young adults in custody who suffer from personality disorder. It is our view that prison is almost always inappropriate for anyone suffering from a personality disorder, with the exception of those who need to be held for reasons of public protection. Sufferers of personality disorder should, where possible, be treated in a health and welfare setting, not in the custodial environment. For those who are kept in prison, the Howard League would advocate personality disorder being viewed not simply as a mental health problem, but as a disability. Personality disorder may not be treatable in the same way that other mental health conditions are, but is a long-term impairment. Viewing personality disorder as a disability in the prison context would allow reasonable adjustments to be made for sufferers under the Disability Discrimination Act. This would provide the flexibility that many personality disorder sufferers need in order to do well in the prison setting.

3. Payment by results

Overview

The Howard League for Penal Reform supports the government's aim of increasing local accountability and partnership working in the justice system, and in introducing local incentives that can see savings to criminal justice services achieved through reductions in reoffending reinvested into further crime prevention activity at the local level. See the final report by the Commission on English Prisons Today (2009) for a discussion of how the principles of justice reinvestment could be effectively introduced in England and Wales.

The government is proposing that a new method of public service delivery, payment by results, will be the key to unlocking these local approaches. While we agree with the broad direction of travel to a more localised justice system, the Howard League has serious reservations about the payment by results proposals.

- **Payment by results has no track record of success**

- 3.1 Payment by results in criminal justice is largely untried and untested. While a form of payment by results has been in operation in relation to hospitals in the National Health Service (NHS) for many years that model focuses on the services of an institution and payment to that institution by a nationally set tariff. There is also a simple relationship between the illness and the cure, which is not the case with criminality. Applying payment by results to services in the community and on a more local basis, and to different types of offender (where payment may need to vary to reflect this), will require a different model from that used thus far in the NHS.
- 3.2 The only fully piloted effort at a similar payment by results model in the community was introduced by the last government in the 'pathways to work' programme in welfare. A recent report by the Public Accounts Committee found that the private providers involved in the programme had "seriously underperformed against their contracts and their success rates [were] worse than Jobcentre Plus even though private contractors work in easier areas with fewer incapacity claimants and higher demand for labour". Indeed, the Committee goes on to say that contractors on this payment by results programme had "universally failed by considerable margins to meet their contractual targets" (Public Accounts Committee 2010, p.3). Given payment by results is presumably about securing actual results, the Committee's findings are not encouraging.
 - **Payment by results will be complex and could lead to inefficiencies**
- 3.3 Far from securing "greater efficiency overall" (Ministry of Justice 2010d, p.42), payment by results could lead to major inefficiencies due to the complexity of its delivery. This would be particularly true if payment by results models are rolled out across other areas of public service delivery, as would appear to be the government's intention.

- 3.4 For all the labelling in the terminology of ‘offender management’, we cannot – indeed should not – forget that people going through the criminal justice system are just that: people. People are complicated. Those people going through the criminal justice system, often presenting multiple and complex needs, are particularly complicated. The route to desistance from offending (McNeill and Weaver 2010) may defy the simple pathways that a payment by results model would seek to impose.
- 3.5 For example, an individual may serve a community sentence, potentially involving a number of providers on a payment by results scheme overseen by the Ministry of Justice. That individual goes on to desist from reoffending because they have found employment. The same individual, however, has been helped into employment because they are also participating in a payment by results scheme run by the Department for Work and Pensions. Or it may be that the individual has desisted from offending because an underlying health or mental health problem has been alleviated, to which NHS treatment under payment by results has been key. Furthermore, it is possible that the individual serving the community sentence goes on to desist for reasons that have nothing to do with public services, such as entering into a relationship or simply moving to another area. Questions arise on how the government can avoid problems such as double payment, or paying for a result that providers are not themselves responsible for. The cross-departmental working required in designing an effective and efficient payment by results model which tackles complex needs such as poor mental health or drug addiction will be unprecedented, and made only more difficult at a time when government ministries are facing substantial budget cuts and defending their interests in competition with other departments.
- **Payment by results may lead to cherry-picking by providers**
- 3.6 The Howard League for Penal Reform is concerned that payment by results will result in cherry-picking by providers, as those in the criminal justice system who present the most need are ignored in favour of those who are more likely to help deliver the desired outcome. While this is briefly acknowledged by the government in the passage on perverse incentives in the green paper (Ministry of Justice 2010d), it remains of considerable concern.
- 3.7 For example, Project Daedalus is a London-based initiative which has been described by the Mayor of London and the Minister for Policing and Criminal Justice during a visit to the Heron Unit in Feltham Young Offenders Institution as “the first ‘payment by results’ programme to address resettlement and reduce reoffending” (Greater London Authority 2010). The Heron Unit differs from other parts of the youth justice secure estate in that young people are placed there based on their willingness and motivation to change, rather than on the extent of their vulnerability and needs.
- 3.8 In other words, the Heron Unit effectively cherry-picks those most likely to deliver a positive result at the expense of those children who present the highest risk of reoffending, but who consequently are the most difficult to engage with. This is clearly demonstrated in the interim evaluation of Project Daedalus by Ipsos MORI, which reveals that eight out of eighteen young people in Heron scored ‘0’ in the Asset score for education, training and employment needs. A score of ‘0’ means that the young person does not present any significant needs in this area, and that it is not associated at all with the likelihood of further offending. Looking across the Asset scores for young people at Heron, Ipsos MORI conclude that they “indicate low levels of need in relation to areas of education, employment and accommodation which run contrary to the aims of the programme” (Ipsos MORI

2010, p.13). A sign of the difficulty with such cherry-picking is that at the time of the interim evaluation the Heron Unit held 22 young people, and was therefore running at only 73 per cent of capacity. The Howard League is aware that the Heron Unit has been running under-capacity for much of the time since it opened, while vulnerable children with complex needs and at significant risk of reoffending remain excluded from the additional provision that the Unit offers.

- **Payment by results may not be able to measure meaningful success**

- 3.9 Private providers will only take on limited risks under payment by results, which is one reason we are concerned as to the likelihood of cherry-picking. Voluntary sector providers, on the other hand, will require a relatively narrow gap between performance and payment, given their limited cash reserves. This may lead to measurements which fail to measure meaningful success.
- 3.10 For example, for the reasons above it is quite possible that the lion's share of any payment will need to be paid out on a limited definition of a 'result', such as successfully delivering a sentence to completion. While an additional bonus payment may be delivered if reoffending is proven to be reduced, this may not end up being the primary result being sought. Limited measures of success may help the providers engaged in payment by results, but they cast doubt on the overall benefits to the reform in the first place.
- 3.11 Similarly, cherry-picking could extend to the measures of reoffending being used. The Peterborough pilot, for example, uses a reduction in reoffending over one year as its method of measuring results. While measuring reoffending over one year – rather than the traditional two years used in statistical bulletins – may help narrow the gap between payment and performance, it also ensures that a great deal of reoffending will not figure as much of it will not be dealt with by the system within the one year period. It is precisely because reoffending rates are based on reconvictions that statisticians use the two year measure as a more accurate reflection of adult reoffending. Using a one year measure to determine results will become even less meaningful as extensive court closures see the capacity for cases to be processed to conviction further reduced.

- **Payment by results is unlikely to involve social impact bonds**

- 3.12 The Peterborough pilot is regularly cited by ministers as an example of payment by results in action. But this pilot funded by social impact bonds is doing two things which are unlikely to feature in any rolling out of payment by results. Firstly, the pilot focuses on working in an area where there is currently no statutory provision, i.e. supervision and support in the community for short sentenced prisoners on release. The government, on the other hand, is interested in using payment by results for the delivery of existing statutory services such as the management of community sentences. Secondly, short sentenced prisoners are some of the most vulnerable in the criminal justice system, with the highest reoffending rates among adult prisoners. The Howard League for Penal Reform has not seen any evidence to suggest that there is enough social finance available in the UK to see social impact bonds replacing statutory services, while it is highly unlikely that private finance would be attracted to the risks presented by vulnerable groups with high recidivism rates such as short sentenced prisoners.

- **Payment by results will not provide immediate solutions for services facing cuts**

- 3.13 The sentencing green paper makes it clear that the four rehabilitation payment by results projects will not get underway any sooner than August 2011, possibly later than this. It will take these pilots at least eighteen months to prove whether they are achieving success or not. Even if payment by results is successfully piloted, it could not be rolled out on any meaningful scale until 2014 by the earliest.
- 3.14 By then the Ministry of Justice will have seen year on year cuts of six per cent to its departmental budget, regardless of progress with the payment by results pilots. In other words, while ministers are placing a great deal of faith in payments by results, the proposed reforms provide no immediate solutions to squaring a reduction in the prison population with significant reductions in probation budgets. Without investment in community provision, any programme of reform seeking to reduce the prison population will face significant challenges.

4. Sentencing reform

Overview

Sentencing can be made simpler and less punitive. At the current time we have a sentencing system that is too preoccupied with prison. Prison fails people in jail for short periods of time and the result is that prison does little to reduce reoffending.

The Howard League works for a society with less crime, safer communities and fewer people in prison. These three objectives are neither exclusive nor contradictory. We would like to see greater awareness of what works amongst judicial circles and a greater focus on community interventions, reserving custody for those who have committed serious and violent offences.

Key recommendations:

- Fewer pieces of criminal justice legislation that add incrementally to the justice landscape
- Maintenance of the statutory custody threshold
- Magistrates wishing to use a custodial sentence should be required to remand an individual to the Crown Court for a custodial sentence
- We welcome proposals to remove the option of remand in custody for defendants who would be unlikely to receive a custodial sentence
- Sentencers should be made more accountable for their decisions and be aware of what works in their local area
- We support the limiting of the indeterminate sentence for public protection and recommend a review of those already in custody on an IPP
- Review of the use of mandatory life sentences
- A reduction in general sentence length
- Consideration of the use of day fines.

Sentencing made simpler

- 4.1 The Howard League welcomes the government's attempt to simplify not just sentencing but the entire criminal justice system. Due to the publication of 27 criminal justice acts in the past decade, the current system lacks both coherence and consistency. This is particularly true in relation to sentencing frameworks where crucial considerations for the judiciary are split between the Criminal Justice Act 2003, the Powers of the Criminal Courts (Sentencing) Act 2000, the Sentencing Guidelines Council and the Magistrates Court Sentencing Guidelines. A more coherent unitary approach would be welcome to avoid judicial confusion and assure the consistency of judgments in the future.

- 4.2 Furthermore, politicians of the day must take their share of responsibility for a sentencing structure that has shifted, at times wildly, depending on the mood of the media. Since 1999 the average sentence length has been increasing, and is now 2.2 months higher than in 1999 (Ministry of Justice 2010e). Indeed the sentencing guidelines working group, when looking at sentences given for four different offences in the crown court, discovered that 71 out of the 222 sentences were above the guideline ranges for the relevant level of seriousness (Hansard 2009a). This suggests that the political and cultural rhetoric about being tough on crime that dominated the past decade is influencing the judiciary to hand down excessive sentences. Justice cannot be seen to be so when it is driven by populist outrage. Ensuring a level of insulation for the judiciary from the media and politics, that they can remain independent, is the best way to guarantee a more consistent and appropriate sentencing structure.
- 4.3 The Howard League supports a simplification of the structures by which judges will sentence. A judge sentencing an individual might currently have recourse to offence specific guidance, the overarching sentencing principles, as well the statutory custody threshold (s.152 Criminal Justice Act 2003) and overarching objectives of sentences contained in s.142 Criminal Justice Act 2003. However, we are also aware that the specific mitigating and aggravating factors serve to structure a judge's decision. We would be wary of any new scheme that handed blanket discretion to the judiciary on how to weigh up a sentence. Individual offences are exactly that; individual, and judges must concentrate their minds on all aspects of the individual's background that have led them to offend. A list of factors that may or may not be relevant does help to provide some structure to this process.
- 4.4 We note the importance of the statutory custody threshold that places firmly in judges' minds the severity required for the use of custody. Prison is not an option that should be used lightly.

Short sentences and remand

- 4.5 The Howard League repeats its objection to the use of short prison sentences, which are ineffective and damaging.
- 4.6 In 2008, magistrates' courts accounted for 48,389 sentences of immediate custody, the average sentence length in the magistrates' courts was 2.7 months (Ministry of Justice 2010e). Such a sentence length is often ineffective. Magistrates' over-use of custody could be prevented if they were required to remand an individual to the Crown Court for a custodial sentence. This would reduce short-term sentences and compel magistrates to work more closely with community projects and programmes.
- 4.7 Such a recommendation would increase take up of community programmes and reduce the 63 per cent of women and the 45 per cent of men that enter prison for non-violent offences (Ministry of Justice 2010e). It might also diminish the 50,442 prisoners under sentence who were received into custody for a period of less than six months in 2009 (Ministry of Justice 2010c). Sentences of six months or less are largely ineffective, with high levels of recidivism and changing the sentencing guidelines in this way should serve to limit their use. The ineffectiveness of these sentences has been highlighted by research conducted by the Howard League with the Prison Governors' Association. A survey (Howard League 2010d) found

that 81 per cent of prison governors disagreed or strongly disagreed with the statement ‘short prison sentences serve to reform and rehabilitate the offender’, with only six per cent of governors agreeing or strongly agreeing. It also showed that 59 per cent of all respondents disagreed or strongly disagreed when asked if short prison sentences served to reduce crime (including by deterrence).

- 4.8 A further area of reform concerns remand. We continue to welcome the presumption of bail found in s.4 Bail Act 1976. However there are still a great deal of unnecessary remands to custody taking place in England and Wales. We therefore welcome the government’s proposals to limit the option of remand in custody for defendants who would be unlikely to receive a custodial sentence.

Making sentencers more accountable

- 4.9 The Howard League also recommends that there should be a greater assessment of policy knowledge amongst the judiciary who are responsible for deciding what sentence should be used in each individual case. For example, in Missouri, judges will now be told how much each sentence they have is likely to cost prior to sentencing. This makes them less likely to use an expensive and ineffective short-term prison sentence and more likely to use community options more likely to fix the problem long-term.

- 4.10 There is potential for similar schemes in England and Wales. In particular, judges could be told about the recidivism rates of various custodial and community options in their area prior to sentence, or be provided information so that they can track the outcomes of individuals that they sentence. At the very least magistrates and judges should have an up to date list of community programmes and community sentence options in front of them so that they are aware of exactly what is available within their area. The Howard League has frequently heard policy makers complain that community schemes have been created but left underused by the judiciary; we have also heard magistrates express reservations about visiting a community programme for fear of prejudicing their objectivity.

Case study: The challenge in engaging sentencers and bringing accountability to decision making

The Howard League has direct experience of the challenge faced when attempting to engage sentencers with the consequences of their decisions. In 2008, the Howard League and the Local Government Association helped to set up a pilot youth custody panel in Wessex, where every case of a child being sent to custody in North Hampshire was reviewed by representatives of the youth offending team, children’s services and from the voluntary sector, in order to see if action might have been taken to avoid custody and to give feedback to those working on the case. As a result, North Hampshire saw a striking 42 per cent reduction in the numbers of children sentenced to custody in the panel’s first year of operation (Howard League 2009).

Despite this success, the organisers were unable to persuade sentencers to take part in the panel – ostensibly because sentencers claimed it would compromise their independence. As the cases reviewed had already been concluded it was difficult to see how such a panel could interfere with judicial independence. But the custody panel experience does highlight how a reluctance to engage on the part of sentencers with professionals can lead to significant barriers to improving good practice and consistent decision making.

IPPs and mandatory life sentences

- 4.11 The Howard League welcomes the government's proposals to reform the indeterminate sentence for public protection (IPP), limiting its use to those who would otherwise have merited a determinate sentence of at least ten years. To date the effect of the IPP has been intensely damaging on the criminal justice system and the prison system. On 5 July 2010, there were 6,130 prisoners serving IPP sentences in England and Wales. Of that number, since 2005, just 94 people serving IPP sentences have been released from custody (Hansard 2010c).
- 4.12 Furthermore, fundamental review of the licence length must be undertaken. Those released from IPPs are automatically given a licence of at least 10 years. Judicial discretion would be a better fit and allow licences to be tailored to the risk of the individual.
- 4.13 The policies of the last government have left a backlog of over 6,000 individuals sentenced to an IPP. In order to stabilise the overcrowded prison population, it is our recommendation that ring fenced resources be allocated to reviewing the risk of every individual in prison on an IPP. This would speed up the process of clearing the backlog of those on IPPs.
- 4.14 In addition to a debate over the future of IPPs, there must also be a review of the use of mandatory life sentences. Similarly to IPPs, mandatory life sentences remove judicial discretion and sentence an individual for an extensive and potentially indefinite period of time.
- 4.15 Further, again similarly to IPPs, the amount of time served by those given a mandatory life sentence is increasing. The average time served by lifers has increased from 13 years in 1999 to 17.5 years in 2009; the tariff given to such individuals has risen to 17.5 years (Hansard 2010d). Any review of indeterminate sentences undertaken by government should include the use of mandatory life sentences, given there has been no action since the last review ten years ago made similar recommendations (Halliday 2001).
- 4.16 Mandatory sentences of all stripes are putting great pressure on our penal system. As of 17 November 2010, 14,680 prisoners were serving an indeterminate sentence of imprisonment for public protection, or a life sentence in prisons or secure hospitals, more than the total of all 46 other countries in the Council of Europe combined. Of those, 6,320 are held beyond their tariff expiry date, excluding offenders who have been recalled to custody following release (Hansard 2010e). Any fundamental review of mandatory sentencing undertaken by the government should be fully inclusive of all mandatory sentences currently in operation.

An appropriate use of custody

- 4.17 We welcome the green paper's overriding ethos that custody should be used more appropriately and sparingly. The paper explores a range of sentencing options, from suspended sentences to fines. However, one mechanism that is not mentioned is day/unit fines. Day fines are used widely across Europe and were briefly used in the UK following the Criminal Justice Act 1991.

4.18 Under this approach sentencers would decide fines for offences dependent on the individual's income. In effect the fine is a progressive reprimand. It focuses on an individual's ability to pay, providing a sanction accordingly (Raine and Dunstan 2009).

4.19 The restoration of day fines was called for by Lord Carter, in his 2003 report (Carter 2003, p.27):

"In the German Länder of Bavaria and Nordrhein Westphalia, 80 per cent of criminal sentences are day fines. The fine is set as a number of days (between 5 and 360). This is then multiplied by an amount based on the offender's ability to pay."

4.20 Day fines would have an important place in the ladder of sentencing. A decline in the use of fines has resulted in sentencing inflation, and exerted an upward pressure towards custody. Day fines would exert downward pressure. The money such fines raise could go towards a victims fund, as they do in Germany. They are proportionate and appropriate and while debate would be required regarding their logistics, it is important they are part of the debate when the government takes forward its proposals.

5. Youth justice

Overview

The current youth justice system is failing. With reoffending rates as high as 75 per cent for children released from custody (Ministry of Justice, 2010a), it is clear that this system focused upon criminalisation and punishment fails children, victims and communities at extraordinary cost to society and the public purse.

The Howard League welcomes the government's commitment to do better and implement systemic change. The most important change should be one of values: children are children first and offenders second. Addressing the underlying reasons why children commit crime should be the priority rather than how to punish them when these needs have not been addressed.

In addition, the Howard League would also urge the government to consider the distinct needs of young adults aged between 18 and 24.

Key recommendations for children:

- The most important change is one of values: children are children first and offenders second. Addressing the underlying reasons why children commit crime should be the priority rather than how to punish them when these needs have not been addressed
- The principal aim of the youth justice system is 'to prevent offending by children and young persons'. Although we support the government's commitment for the Department for Education's Early Intervention Grant approach, much more work needs to be done and the investment needs to be made to support further work. It is nonsensical that less than seven per cent of the Youth Justice Board's (YJB's) budget is spent on prevention and over 61 per cent is spent on custody
- The holistic approach of youth offending teams (YOTs) to meet children's multiple needs should be replicated at both national and government level, with a renewed commitment to 'foundation and early years' to support prevention. The lead should be taken by the Department for Education and Department of Health in terms of identification, planning and directing resources where there is the greatest need
- The age of criminal responsibility should be raised. The United Nations recommends that 16 is the most appropriate age at which children can be held to account in the justice system
- A reduction, leading to the abolition, of prison custody for children should be a key outcome of the reform of the youth justice system.

Key recommendations for young adults:

- Young adults (18-24 year olds) should be treated as a distinct group in the criminal justice system, as children are. This should be reflected in diversion, services, guidance, approach and custody

- Young adult offending teams (YAOTs) should be established, which would replicate the holistic approach of youth offending teams (YOTs), to address young adults' distinct and complex needs and their transition to adulthood
- Many young adults in the criminal justice system are vulnerable. In light of these vulnerabilities, their welfare should continue to be a primary concern, just as it is for children
- Communicating the needs of young adults, and the distinct approach required, to key individuals and stakeholders should be a priority
- Custody should only be considered as a last resort for young adults, just as it is for children.

Prevention

- 5.1 As set out under s37 of the Crime and Disorder Act 1998, the principal aim of the youth justice system is 'to prevent offending by children and young persons'. This implies proportionality; that the youth justice system is not expected to deal with the multifarious problems children face but rather link with children's services to intervene and offer appropriate support.
- 5.2 The Howard League welcomes the government's commitment to prioritising prevention and its acknowledgment that early intervention provides an enduring solution to diverting children away from a life of crime. This approach is both socially just and economically wise: the Audit Commission (2004) estimated that preventing just one in 10 children from ending up in custody would save over £100 million a year.
- 5.3 Although we support the government's commitment for the Department for Education's early intervention grant approach, much more needs to be done and the investment needs to be made to support further work. It is nonsensical that less than seven per cent of the YJB's budget is spent on prevention and over 61 per cent is spent on custody – the money is spent once the system has failed.
- 5.4 The holistic approach and many successes of YOTs are to be congratulated, but children should not only start to receive services once they are drawn into the youth justice system. The evidence shows that children who end up in the justice system come in the main from the most disadvantaged families and communities, whose lives are frequently characterised by social deprivation, neglect and abuse:
- 50 per cent have experienced time in care or substantial social services involvement (Nacro, 2003), compared to just three per cent of the general population (Office for National Statistics, 2001)
 - Two out of five girls and one out of four boys report suffering violence at home (YJB, 2007)
 - One in three girls and one in 20 boys report sexual abuse (YJB, 2007)
 - 31 per cent have a recognised mental health disorder (YJB, 2005)
 - 88 per cent have been excluded from school (Tye, 2009)
 - 25 per cent have a statement of special education needs and 29 per cent have difficulties with literacy and numeracy (YJB, 2006).

5.5 Children exposed to the most acute combination of risk factors are up to 20 times more likely to offend than those who are not. Such information should provide the evidence base for targeting a renewed cross-governmental commitment to 'foundation and early years'. The holistic approach of YOTs should be replicated at both national and local government level, with the lead taken by the Department for Education and Department of Health. Identification, planning and directing resources where there is the greatest need is the only way enduring solutions can be found and for the principal aim of 'prevention' within the youth justice system to be truly fulfilled.

Diversions

5.6 The majority of European countries see a child misbehaving not as a crime but a family matter, and a welfare matter if the misbehaviour is particularly serious. By comparison, our system is engineered to respond primarily through punishment. Even at the very early stages of misbehaviour by a child the full force of policing and courts comes into force.

5.7 The proposals to remove the 'youth escalator' and allow discretion if a child commits an offence, rather than automatically drawing them into the criminal justice system, are welcome steps in the right direction. To support such changes, guidance should be put in place, multi-agency local structures should be established and supported, and national counter indicators which hinder local partnerships must be removed.

5.8 We also welcome the proposal to divert children who require this level of action to services such as mental health and family support. However, there needs to be an investment, in terms of both will and resources, to ensure that this commitment can be met.

5.9 Given that a child encountering the criminal justice system is often indicative of problems and issues at home, these children should have their needs automatically assessed under section 17 of the Children Act 1989.

5.10 It is of concern that the government is suggesting the increased use of parenting orders – the focus should be on helping rather than criminalising parents; on effective engagement rather than effective enforcement. In practice, enforcing parenting orders has proved to be unworkable. Families should be encouraged, not compelled, to take responsibility and it should be the role of children's services rather than the criminal justice system to support this.

5.11 The focus on parenting is welcome, but rather highlights the lack of any mention of looked after children throughout the proposals. Although we would all wish that no children would have to be removed from their families, the reality is that whilst human nature and society exist, so will the care system. Given that children who experience time in care are more likely to be drawn into the criminal justice system, the government needs to prioritise resources to meet their needs.

5.12 However, the simple and just solution to divert children from the criminal justice system is to raise the age of criminal responsibility. At age 10, England and Wales has one of the lowest ages of criminal responsibility in the world and has been subject to repeated criticism from the United Nations Committee on the Rights of the Child (UNCRC) for not complying with international obligations under the UNCRC.

5.13 The two key arguments for maintaining the current age of criminal responsibility are flawed and perverse:

- Children know the difference between right and wrong at the age of 10 and can

be held criminally accountable for their actions: this viewpoint overlooks the complexities of child development. Children may well know right from wrong but this does not mean that they understand the full consequences of their actions. Children's ability to comprehend and reason the full extent of the implications of their actions is reflected elsewhere in laws which state that they must be 16 before engaging in sexual activity, 18 before voting and 18 before drinking or smoking. The current age of criminal responsibility flies in the face of all current evidence and international norms

- The justice system provides the most appropriate solutions for addressing children's underlying needs: evidence shows that children who commit crimes have complex underlying welfare needs. To allow them to fall through the gaps of a failing and under resourced welfare system and provide services and assistance only when they have been criminalised is counter-productive, given that a longitudinal study of 4,100 children found that the further enmeshed into the formal criminal justice system that children become, the more harm is done and the more likely that they are to reoffend (MaAra and McVie, 2007).

- 5.14 Furthermore, the current age of criminal responsibility transfers responsibility away from families and communities to statutory services. When you send a child to prison responsibility is taken from the child and parents. Children's services and other health and welfare agencies should support families to take responsibility to address the underlying causes of a child's offending behaviour.
- 5.15 The government should adopt a welfare approach underpinned by the belief that what a child has done is separate to who they are, and if a child commits a criminal offence, that offence should not define them. Evidence shows that only by addressing the needs of the whole child can enduring solutions be found. Research into 'what works' needs to become a priority: the YJB currently spends the same on research as it does on travel and subsistence for its staff (YJB 2010).

Case study: Pre-Reprimand Disposal (PRD) – County Durham Youth Offending Service (YOS)

With commitment of colleagues in County Durham YOS and Durham Constabulary, a creative solution to improve outcomes for children and reduce the number of first time entrants to the youth justice system has been developed and implemented: the pre-remand disposal (PRD). PRD was developed to improve children's chances by ensuring their needs are identified and met and thus avoid being criminalised. The programme is voluntary and offered to children who commit their first offence and who otherwise would receive a police reprimand. PRD ensures interventions are based on assessment via the Common Assessment Framework (CAF) and Onset, are aimed at preventing further offences being committed by providing early intervention to address identified needs. Interventions range from addressing welfare need to offering family support.

The unique elements of PRD include; the use of CAF to assess needs; the use of police bail until PRD is completed; the integrated approach of assessment and delivery of intervention with partners; restorative justice; and robust leadership and monitoring arrangements.

The programme was awarded runner up in the Children and Young People category of the Howard League for Penal Reform's Community Programme Awards.

Effective sentencing

- 5.16 Despite a recent drop in the number of first time entrants and prison population, England and Wales still has one of the highest rates of child imprisonment in Western Europe and reoffending rates have not improved.
- 5.17 Of all the interventions for children who offend, custody is the most damaging and least effective. The Howard League proposes the following to ensure that custody is only used for the small number of children who require it, in line with Article 37 of the UNCRC:
- Research and investment is needed into viable community alternatives, such as intensive fostering and multi-systemic therapy. Good practice should be shared and promoted to ensure that effective community sentences have the confidence of practitioners and courts.
 - The custody threshold should be raised to ensure that it is only used for those children who commit the most serious offences: 45 per cent of children in prison are accused of or have committed non-violent offences; 13 per cent of children will be in prison for breach of a community order at any one time (Youth Justice Board 2011), and one report has demonstrated that 26 per cent of all detention and training orders given to children in 2007/08 were for breach (National Children's Bureau 2010).
 - Given the earlier political rhetoric from government, it is particularly disappointing that ineffective short term sentences, which are even more ineffective and damaging for children, are not being scrapped. Short term sentences, such as the detention and training order (DTO), introduced by the last government, should be abolished and a minimum custodial period of two years introduced. All sentences should be determinate and include an early release mechanism to incentivise children to engage in rehabilitative opportunities.
- 5.18 A reduction, leading to the abolition, of prison custody for children, and prisons run for profit, should be a key outcome of the reform of the youth justice system. For the very few children who do require custody, they should be cared for in small, local secure units that are health and welfare-focussed, address the needs of the whole child and help them understand the consequences of their behaviour.
- 5.19 Although the severity of offending has decreased (offences involving violence against the person have fallen by 31 per cent since 06/07), the proportion of custodial sentences against total court disposals has not improved in the same period (six per cent), whilst the largest decrease in types of disposal given to children has been in pre-court disposals, which have fallen by 34 per cent since 06/07 (Youth Justice Board 2011).
- 5.20 We welcome the government's commitment to reduce the extensive and increasing use of remands to custody. We also welcome the proposals to introduce a single remand order, which addresses the current anomaly of treating 17 year olds as adults and to amend the Bail Act to remove the option of remand for children who would be unlikely to receive a custodial sentence.
- 5.21 However, such proposals need to be supported by practical changes to overcome current barriers, including the availability of suitable accommodation in the community, improving information sharing between relevant agencies and the courts, and ensuring that children are given bail conditions that they are able to

comply with. For example, the Howard League runs a participation project which worked with a child who was remanded into custody after he consistently failed to turn up to court-ordered appointments promptly, despite the fact this would occur because he could not tell the time.

- 5.22 There are two key risks with the current proposals. Firstly, the removal of the requirement that social services remain fully involved during the remand period for children on court ordered secure remands under section 20 of the Children Act - this serves as an important protective factor in meeting the welfare needs of some of the most vulnerable children and enhancing their chances of effective rehabilitation and the possibility of a non custodial disposal. Secondly, although we concur with the proposal for local authorities to become responsible for the full cost of remands, whilst keeping placement and commissioning functions centrally, guidance and monitoring needs to be put in place. There is a real risk that local authorities, due to resource constraints, will put pressure on YOT workers to make recommendations to place children in cheaper and inappropriate young offender institutions. Placement decisions must be made to meet the best needs of each child.
- 5.23 Furthermore, the green paper does not adequately address the status of children when transferred from community to prison. Firstly, there is the question of what will happen to children who already looked after when remanded. Currently, these children lose their looked after status when remanded to a YOI. For these children, we recommend that where a child is voluntarily accommodated under section 20 of the Children Act 1989, that status would be maintained once transferred to prison on remand regardless of where the child is placed. Secondly, the government should consider what happens to those children who are not looked after prior to being remanded. For example, the government should consider ensuring that all children remanded to custody are automatically entitled to claim leaving care rights. Given that the current provisions, where a child can be remanded into the care of the local authority without a secure requirement (section 23 of the Children and Young Persons Act 1969), will be maintained, and on the basis that the use of remand would be restricted, another proposal would be to ensure those children still remanded can also be voluntarily assessed to see whether they can be accommodated by the local authority under section 20 in the remand placement.
- 5.24 As referred to above, some 13 per cent of children are in custody for breach of a community order at any one time, and over a quarter of those receiving DTOs will have been received into custody due to breach. There are two key issues that the government should consider in order to reduce the problem of breach. Firstly, children often breach because they are inappropriately handled, such as being tagged inappropriately or being put in inappropriate placements. Secondly, children do not always have the cognitive capacity to comply with licence conditions and supervision requirements and should be afforded a greater margin of appreciation than adults.
- 5.25 Finally we welcome the proposals to restrict the use of the DPP, the indeterminate sentence for public protection that a child can currently receive for the most serious offences. The government should also abolish the discretionary life sentence for children.

Improving transparency and accountability in the youth justice system

- 5.26 The Howard League welcomes the proposal that the new structure for the governance of the youth justice system within the Ministry of Justice will retain a distinct child-focus. We also agree that the key and most successful functions of the YJB that will be transferred are: overseeing and supporting YOTs; disseminating effective practice; commissioning a distinct secure estate; and placing children in custody.
- 5.27 However, there is a risk that the expertise and culture of the YJB may evaporate when its functions are transferred. The YJB has a history of employing a vast range of experts, encouraging secondments of youth justice practitioners and maintaining a child-focus. With natural staff turnover that will allow 'career civil servants' to side-step or be promoted into key roles, this expertise and culture risks being lost.
- 5.28 Prevention, which is the primary aim of the youth justice system, should be seen in the wider context of creating a safer society, and therefore is not a primary function of the Ministry of Justice. It is of concern that the YJB firstly lost its sponsorship by the Department for Children, Schools and Families and will now be entirely subsumed into the Ministry of Justice. Cross-governmental working with the Department for Education and Department of Health is vital, underpinned by a philosophy of welfare with an emphasis on children's rights, rather than descending into a punitive approach.

Working with communities to reduce crime

- 5.29 The Howard League recognises the importance of community engagement in the youth justice system. We laud the role of volunteers, particularly those who provide positive mentors to children. However, given the complex welfare needs and backgrounds of many children who become drawn into the youth justice system, the roles of trained, expert practitioners cannot be underestimated or replaced by volunteers for financial savings.
- 5.30 We also understand the government's desire to increase community confidence. However, we believe that the lack of confidence in the youth justice system has come from high reoffending rates, caused by a failing punitive approach, and the often dismal media portrayal of children.
- 5.31 A time of scant resources is not one to treat the symptom and not the cause. Now is the time for fundamental change. We believe that if government implemented the vision outlined in this response then youth offending would rapidly decrease, communities would be safer and confidence in this effective system would be a natural outcome.

Young adults

- 5.32 The Howard League would also urge the government to consider the distinct needs of young adults aged between 18 and 24.
- 5.33 Since 2002, the Howard League for Penal Reform has provided a unique legal service dedicated to representing children in custody. In 2007, the service was expanded to represent young adults in prison. It is the only legal service dedicated to children and young adults in custody in the UK. We have drawn upon our lawyers' experiences in practice and our expertise in policy in responding to this consultation.

The system is not working

- 5.34 Research undertaken by the T2A Alliance (2010) demonstrates that young adults are a distinct group with acute needs:
- Over half of young adults are unemployed on arrest and a third have a basics skills deficit compared with a quarter of those over 25 years of age
 - Young adults in the criminal justice system are more likely to abuse alcohol than both older and younger prisoners
 - At least 25 per cent of young men in prison are fathers
 - Young adults have higher rates of self-harm and suicide than adult prisoners
 - Young adults are also more likely than older prisoners to have been in the care system.
- 5.35 These needs are not being met and the system is failing. Young adult men are at the peak age of offending and have one of the highest rates of re-offending (Howard League 2006). Research by the T2A alliance (2010) found that despite making up 9.5 per cent of the population, young adults commit approximately a third of all crime, represent a third of all those sentenced to custody each year and take up a third of probation caseload. The economic cost of failing this group is vast: young adult crime costs the taxpayer between £16.8-20 billion per year.
- 5.36 A criminal conviction can have a disproportionate impact at this crucial stage in a young person's life. It can become a barrier to education and employment opportunities and have implications on their ability to become a productive member of society in the long term. Unlike adults, young people may not yet have gained qualifications or experience to mitigate the negative impact of a criminal conviction when looking for work. Similarly, a custodial sentence can have a disproportionate impact, hindering a young person's ability to lead a productive life in the future.
- 5.37 The effect of a custodial sentence on a young person who has just turned 18 can be devastating. Prisons which hold young adults have been criticised by Her Majesty's Inspectorate of Prisons (2010b) for their high rates of assault, high use of restraint, poor regimes and conditions and poor staff prisoner relationships. Our clients have told us of the difficult transition from children's to young adults' prisons.
- 5.38 When summing up in her final annual report, Dame Anne Owers concluded that since she had took up the post as Her Majesty's Chief Inspector of Prisons in 2002 there had been no discernable progress for young adults in prison:

'Overall, this is still a neglected and under-resourced age-group. Busy and overcrowded local prisons struggle to deal with their specific needs, and even specialist young offender institutions lack the resources, support and training to do so. The high rate of reoffending among young adult men is unlikely to reduce without significant changes in approach, funding and focus.'

(HMIP 2010, p. 7)

A time for change

- 5.39 The Howard League believes that more could and should be done. Only by recognising 18-24 year olds acute needs and treating them as a distinct group can enduring solutions be found.
- 5.40 The Children (Leaving Care) Act 2000 was brought in on the basis that young adults with disruptive backgrounds needed additional support from social services and assistance through the transition period from childhood to adulthood. Young adults in the criminal justice system come from similar disruptive backgrounds.
- 5.41 Where young adults are drawn into the criminal justice system appropriate services need to be in place. Our experience of working with young adults in custody has shown that they have complex needs and often need a great deal of support from statutory and other agencies to enable them to lead crime free lives.
- 5.42 Diverting young adults into mental health, alcohol and drug services are important first steps. The Howard League proposes that the government goes further: young adult offending teams (YAOTs) should be established, which would replicate the holistic approach of youth offending teams (YOTs), to address young adults distinct and complex needs.
- 5.43 People mature at different rates, and many young adults in the criminal justice system exhibit development levels more characteristic of far younger people. Brain development continues into the mid to late 20s, affecting reason, judgement and impulse control, and young people with the most troubled or traumatic childhoods often take a lot longer to mature.
- 5.44 We believe that there should be a presumption that young adults are lacking in maturity and the overarching principles for sentencing children should continue to be applied unless it is proved otherwise, through a maturity assessment. Similar approaches are adopted in other countries. For example, in Germany, young adults are assessed under the Marburg guidelines to determine whether they should, in legal terms, be considered a child and sentenced according to juvenile law.
- 5.45 Consequently, we propose two possible changes to the current sentencing framework to serve the interests of justice and the welfare needs of these individuals. The first option is to expand the overarching principles for youth sentencing to those aged 18-24. These principles detail that upon sentencing a court must have regard to:
- a) the principal aim of the youth justice system (to prevent offending and reoffending by children and young persons); and
 - b) the welfare of the young person

Further, the Howard League proposes that separate crime specific guidance be issued for 18-24 year olds. This model is already being piloted by the Sentencing Council which has taken specific consideration of 18-24 year olds in its recent consultation on assault sentencing guidelines.

- 5.46 The Howard League proposes that custody should be considered as a last resort for young people aged 18-24, just as it is for children. When young adults are sentenced to custody, they should be in secure environments separate to adults, which can provide a safe environment that offer real opportunities for rehabilitation.
- 5.47 Communicating the needs of young adults, and the distinct approach required, to key individuals and stakeholders should be a priority to support effective reform.
- 5.48 The reform of the criminal justice system provides an opportunity to recognise and address 18-24 year olds as a distinct group with acute needs to prevent the young adults of today becoming the prisoners of tomorrow.

6. Working with communities to reduce crime

Overview

The Howard League for Penal Reform welcomes the government's proposal to allow local communities more control over resources and the power to develop local solutions to crime that meet local needs. However, the focus should not just be on the most visible and most frequently committed crimes but also on those crimes which have the most impact on individuals and communities. This includes financial crime and national and international criminal actions that impact on the environment and well being of the nation.

Responding to the thrust of the green paper, the Howard League has not dealt specifically with these issues but arguably they are more damaging to the country than the local crime which is the entire focus of this consultation.

Key recommendations:

- While we have reservations on the proposals for locally elected Police and Crime Commissioners, these elected figures should play an important ambassadorial role and act as gatekeepers rather than conduits to the criminal justice system
- Democratic mechanisms for local people to work closely with the police and probation would help to tackle local issues which lead to crime and would come up with local solutions. The probation service, which works with people in the area, is perfectly placed to deliver a localised service based on individual need
- Solutions to tackling offending often lie within the wider community and are not necessarily the preserve of the criminal justice services. There has been a tendency for net-widening of the functions of the criminal justice services. This trend should be reversed and instead services should be delivered by and for the wider community
- The principles behind problem-solving justice should be applied in order to introduce more accountability into the sentencing process.

Crime and its context

- 6.1 The Howard League for Penal Reform welcomes the government's proposal to allow local communities more control over resources and the power to develop local solutions to crime that meet local needs. However, government proposals should recognise that local people are concerned about crimes that are national and supra national as these also impact on communities.
- 6.2 The green paper focuses on politically high profile crimes that are widely reported in the media such as street crime, vandalism and anti-social behaviour. It should also recognise there are other crimes that are less visible yet they still impact on people's lives, blight our communities and cost our economy billions of pounds.
- 6.3 The government proposals fail to mention financial crimes, VAT fraud, environmental crimes, corporate crime, tax evasion, e-crime and international crime, all of which cost the country billions of pounds each year. The KPMG fraud barometer (KPMG 2011), which tracks fraud cases in the Crown Court worth more than £100,000, stated that fraud hit a record level in 2010, worth £1.4 billion, with the public purse bearing the brunt of the cases. The real cost of these

crimes is undoubtedly much higher as many of these crimes are under-reported or undetected. Statistics on these crimes are not necessarily included in local crime data yet they have a significant impact on our economy, on the tax wealth and on the moral health of the nation.

- 6.4 The proposals ignore the crimes which take place behind closed doors such as sexual violence and abuse. These crimes have a significant impact on people's lives. According to the 2010 British Crime survey (Flatley et al, 2010), at least one in four women in the UK will experience domestic violence and one in five women will experience sexual assault in their lifetime. These crimes are hidden from view, are often undetected and unreported. They should not be forgotten.
- 6.5 How we measure and record crime is significant. The government proposals focus on those who commit the highest quantity of crimes and ignore those whose crimes inflict the most financial or environmental damage to society or whose crimes are hidden from public view. It should not be assumed that the only crimes that matter to local residents are the ones that are recorded in the local police statistics, such as burglary, robbery, vehicle crime and anti-social behaviour.

Localism in criminal justice

- 6.6 Despite our reservations on overly focussing on high volume local crime, the Howard League for Penal Reform welcomes proposals that allow local communities more control over resources and the power to develop local solutions to crime that meet local needs.
- 6.7 We support the idea that local agencies should be free to address local crime priorities. The greatest volume of crime that comes to public attention is local and its negative effects are felt locally. It follows that effective solutions to crime should therefore be sought locally. A less centralised, more localised approach to criminal justice may well be more successful at not only reducing crime and reoffending but in creating safer and more confident communities.
- 6.8 We have reservations on the proposals for locally elected Police and Crime Commissioners. We would wish to see checks and balances in place to prevent an irresponsible 'single issue' candidate influencing policing priorities to the detriment of vulnerable groups such as children. We are also concerned elected Commissioners could undermine local partnerships and weaken the say of local councillors on these issues.
- 6.9 To that end, we welcome the steps the government is taking to ensure that local Police and Crime Panels address some of these concerns. And while we remain unconvinced elected Police and Crime Commissioners are the best way to localise the delivery of criminal justice, there are important duties that could be placed on these directly elected officials which could help to encourage local confidence and trust in the criminal justice system.
- 6.10 For example, locally elected Police and Crime Commissioners could be expected to play an important public educational role in helping to ensure local people understand that dealing with the underlying causes of crime, and diverting people away from the criminal justice system where appropriate, can be highly effective in preventing local crime. They could ensure they act as gatekeepers rather than a conduit for the criminal justice system. The Commissioners could also help to promote the good work being done in the community, in terms of both crime prevention and in community sentencing.

- 6.11 The Howard League for Penal Reform has for a number of years promoted the idea of localism and justice reinvestment in the criminal justice system. In 2007, we set up the Commission on English Prisons Today to investigate the purpose and use of prison in the 21st century and to consider how best to make use of the range of community sentences available to the courts. Our report on localism (Commission on English Prisons Today 2008), explored how the concept could be applied to criminal justice. The Commission proposed the concept of justice reinvestment, which seeks to rebalance the criminal justice spend and release funding that would otherwise be locked into prisons to community based initiatives which tackle the underlying causes of crime and benefit local people. Justice reinvestment is not about alternatives within the criminal justice process, it is about alternatives outside of it (Commission on English Prisons Today 2009).
- 6.12 We believe that local people should be empowered through democratic mechanisms to work closely with police and probation to tackle local issues which lead to crime and come up with local solutions. There needs to be a shift towards a localised 'resolution service' that the public can both see and understand. Communities should work with those who have committed crimes to prevent future offending. The probation service, which works with people in the area, is perfectly placed to deliver a focused service based on individual need. There is evidence to show that people have more confidence in a justice system that employs local and visible probation officers, that explains community sentences and that runs rehabilitation projects that produce results.
- 6.13 The government's proposal to encourage a more direct and proportionate response to minor criminality is welcomed. We support any changes which divert people who engage in nuisance behaviour to agencies more appropriate to deal with the underlying causes, rather than sending people straight down the expensive and wasteful criminal justice path. This may mean for example dealing with people who have drug or alcohol problems by referring them to health services. We also support the idea of using a restorative justice approach to tackle crime and anti-social behaviour within the community, with the focus being on repairing the harm done and stopping the behaviour.

Problem solving justice

- 6.14 We support the government's proposal that there should be more problem solving approaches aimed at tackling offending. This problem solving approach however must go beyond the boundaries of the criminal justice services. Solutions to tackling offending often lie within the wider community and are not necessarily the preserve of the criminal justice services. There has been a tendency for net-widening of the functions of the criminal justice services. This trend should be reversed and instead services should be delivered by and for the wider community.
- 6.15 The women's centres that have been funded to deliver criminal justice interventions alongside their long established services for women (All Party Parliamentary Group on Women in the Penal System 2011) have shown the value of one-stop shops in the local community that can tackle the multiple needs that those likely to offend present.

- 6.16 These community centres bring together a wide range of services for women with complex needs, under one roof. Services include:
- Debt counselling services
 - Support for people dealing with domestic violence
 - Support for those with drug and alcohol problems
 - Advice and information about housing
 - Support with education and employment.

The delivery of community orders is a recent addition to the range of services delivered by women's centres.

Case studies: Adelaide House, Liverpool and the New Skills, New Lives programme in Kent

There are good examples of community programmes which deliver a range of services to tackle the underlying causes of crime. For example, Adelaide House in Liverpool works with women sentenced to a community order. Many of the women have been victims of abuse, have mental and physical health needs, substance abuse problems or family issues. One of the conditions of their community sentence can be to live at Adelaide House for between six months and two years. During their time there, each woman is given a personal development programme to help them develop life skills, literacy and numeracy skills and to raise their self-esteem and confidence.

The New Skills, New Lives programme in Kent aims to improve the skills and employment prospects of those sentenced to community orders. Working with private and public sector employers, people on community orders are given a work placement and the opportunity to gain a nationally recognised vocational qualification. They also receive education to help them improve their literacy and numeracy skills.

Such schemes, working with those who commit crime in the local community, can offer ongoing support to the individual and tackle the problems which lead to crime, thus preventing future crime in the long term. Both schemes received recognition in the Howard League for Penal Reform Community Programme Awards in 2010.

- 6.17 The government should explore how to develop this service model for men.
- 6.18 Well-structured and well-resourced community programmes can raise public protection, bring down crime rates and repair the damage done by crime in a way which custodial sentences cannot.
- 6.19 The government proposes increasing community awareness of and involvement in a range of local actions on crime and justice issues. This would include increased opportunities for volunteering. Whilst we support the view that volunteers can and do play a valuable role in the criminal justice system, it is important to emphasise the paramount role that professionals play. The criminal justice system and the way in which it deals with people who commit crime is an issue which generates a high degree of public sensitivity. Adults and children who commit crimes tend to have complex needs. Working with children in particular requires a clear

understanding of their specific needs, confidentiality and rigorous child protection procedures to limit any potential for abuse. For these reasons it is vital that the criminal justice system is a professionally run service.

- 6.20 Voluntary organisations do play an important role and should be able to continue to do so. We are concerned that if community sentences are contracted out on a regional basis, smaller local voluntary sector groups may be unable to compete in the bidding process as they do not have the scale. This will cut out, not increase opportunities for local volunteering.
- 6.21 The government proposes to ensure that local communities have strong links with the courts that serve them. At the same time, it refers to the closure of courts which are underused in order to target resources on facilities elsewhere.
- 6.22 One way of maintaining close links between local communities and the courts that serve them might be to hold peripatetic courts, for example in local schools or pubs. While this might pose some administrative challenges it would mean that courts would really be local and at the heart of the community.
- 6.23 The government proposes that it will increase the extent to which members of the public can hold their local services to account and contribute to improving trust in criminal justice services and court outcomes. As stated in the section on sentencing, we believe that sentencers should be more accountable to the public for their actions and the principles of 'problem-solving justice' suggest ways in which this should happen. Sentencers need to be aware of the potential impact of a sentence they have passed on the local community as well as the individual.
- 6.24 As stated earlier, sentencers should be held accountable for the inappropriate use of short term prison sentences. The Howard League for Penal Reform believes that short term sentences have been used excessively by the courts, yet they are costly and fail to reduce crime. This failure not only impacts on the individual but on the local community that is expected to pick up the pieces while that person is in custody and when they are released. Sending a person to prison has negative consequences for the individual and the local community, yet sentencers rarely take this into account.
- 6.25 Overall, there needs to be a narrowing of the functions of the criminal justice service and instead investment in services for the whole community, managed and delivered locally. Investing in local solutions to tackle problems such as accommodation, education and employment will prove more successful in tackling the underlying causes of crime rather than the top-down approach where scarce resources are invested in prisons which do little to rehabilitate and do not reduce offending.

Conclusion

The Howard League for Penal Reform sees the Ministry of Justice green paper as representing an important change in direction from the policies of successive governments since the 1990s. It is a change of direction that has in part perhaps, arisen from the financial constraints now descending upon government. But the necessity for change was already apparent in the untenable prospect of an ever-ballooning prison population which failed to prevent reoffending and failed to create public confidence in the justice system.

While the broad direction of travel is to be welcomed and supported, there are nonetheless arguments of detail to be made, and this submission has questioned a number of the government's proposals. The Howard League is particularly concerned that public spending cuts elsewhere may have a detrimental impact on the government's stated aim to ensure the "safety and security of the law-abiding citizen" (Ministry of Justice 2010d, p.1). As previously stated, the underlying causes of local crime are best tackled through investment in public services beyond the criminal justice system, be it health, education or welfare.

International examples, such as Canada in the 1990s and New York City over the last two decades, have demonstrated that it is perfectly possible to achieve less crime, safer communities, and fewer people in prison. But it is key that any reduction in the prison population is achieved with a coherent strategy for reform and with investment in community provision. The Howard League for Penal Reform will welcome further opportunities to contribute to the policy making process as the proposals in the green paper move towards legislation.

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The Howard League for Penal Reform works for a safe society where fewer people are victims of crime

The Howard League for Penal Reform believes that offenders must make amends for what they have done and change their lives

The Howard League for Penal Reform believes that community sentences make a person take responsibility and live a law-abiding life in the community

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