

**Breaking the Cycle: Effective punishment,
rehabilitation and sentencing of offenders**
Nacro's response



March 2011

About Nacro

Nacro is the largest charity in England and Wales dedicated to reducing crime, helping over 83,000 people each year. Our team of over 2,000 staff and volunteers work with a network of partners through projects in 300 communities. Our experience on the ground gives us unrivalled insight into reducing crime, which informs our positive and pragmatic voice in policy and media debates.

We exist because we want to do something about the destructive impact of crime on individuals and communities. It creates victims, stifles opportunity, generates fear and hostility, and blights lives. We know that by reducing crime we change many lives for the better.

Nacro's work focuses on three areas: before, during and after people are in trouble:

- **Prevention** – stopping young people getting into trouble by running services to steer them away from crime, teaching them new skills and creating new opportunities.
- **Offender management** – working with people in prison, on post-release licences and on community sentences. We challenge them to stop offending, provide positive skills and create chances for people to move on from crime and to give something positive back to their communities.
- **Resettlement** – helping offenders cope after serving a prison sentence, so they can settle back into the community, find a place to live and access education, training and a job.

Nacro believes that *Breaking the Cycle* offers a real opportunity for positive reform.

Our response is based on Nacro's extensive experience of delivering preventive, offender management and resettlement services across England and Wales. In particular we welcome the focus on the victim, putting them at the heart of the reform process and the associated emphasis on outcomes, including payment by results. Much of what is proposed is new and untested. Therefore it is vital that proper investment is made in delivering new approaches and testing their impact on reoffending outcomes. In view of this, it is crucial that any savings made from these reforms are invested properly and appropriately in re-engineered offender management services. We welcome the commitment to using community sentences and diverting offenders with mental health problems from the criminal justice system.

For further information, please contact:

Graham Beech
Strategic Development Director

Tel 020 7840 7209

Email graham.beech@nacro.org.uk

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Section 1

Punishment in prisons and the community

Q1 How should we achieve our aims for making prisons places of hard work and discipline?

There can be no doubt that for those people who need to go to prison because of the seriousness and/or persistence of their offending, prisons should, where possible, become a place where the prisoner is able to give something back to the victim, gain relevant skills and maximise her or his chances of gaining employment on release. To make this work, Nacro would want to see the roll-out of 'resettlement prisons'. The concept of resettlement prisons would capture the importance of narrowing the gap between the offender and the wider community and ensure that the resettlement goals included in the government's notion of a 'working prison' are sustained long term. This has obvious benefits for victims, the wider public, the cost to the economy and the offender.

Under the concept of the resettlement prison, the emphasis is placed, from the outset, on the successful long-term resettlement of the offender. It requires not only a focus on getting prisoners to undertake meaningful work while in prison, but an increase in prisons' in-reach and out-reach potential. It would offer much greater opportunity for public, private and voluntary sector consortia to develop innovative ways of jointly bidding for and running prisons under payment by results and to join up outcomes on a local level for reducing crime, the fear of crime and reoffending.

In this way, the prison, and its inhabitants – prisoners and staff – start to build a much greater stake in the community and vice versa. This would include maximising opportunities to enrol employers, faith and community groups, and local people in participation inside, outside and through the gate; and for prisoners and ex-prisoners to take part and make an active contribution to the community while serving both parts of their sentence – in custody and in the community. It would also pave the way for restorative approaches to be incorporated in the regime.

Making this work in practice involves ensuring the prison is designed and operated in such a way that resettlement comes to the fore. This is extremely challenging in much of the existing estate, given that many of our older prisons were in no way designed or built as resettlement prisons. They do not lend themselves to vocational training, productive work or restorative practices. They are not inviting places to which to bring former victims, and regimes are geared towards containment as opposed to education or training.

We are aware that some prisons have taken imaginative steps to engage local employers, and some employers, such as Travelodge, have started engaging prisoners on day release. But this is a by-product of imprisonment. What we envisage is re-engineering the entire prison experience so that resettlement is at its core.

Nacro's experience of working with offenders inside and outside prison confirms that one approach will not fit all offenders. Some prisoners – by virtue of their physical and/or mental health, level of basic skills, attitudes or behaviour, or the length of their sentence – are limited in the extent to which they could realistically take part in any 'working' or 'resettlement' prison.

Therefore, any move towards resettlement prisons must be achieved incrementally. But Nacro believes there is huge potential for this to start happening as the government looks to determine the precise nature of the payment-by-results pilots and as cross-sector bidding consortia start to emerge. Nacro and its partners are excited by the prospect of being more involved in the design and operation of services which set out to resettle prisoners, because this is central to our mission of reducing crime and changing lives.

Q2 How should we best use the expertise and innovation of the private and voluntary sectors to help develop the working prison?

Nacro firmly believes that there is now a window of opportunity for the government to shape the market for the roll-out of resettlement prisons using payment by results. This will pave the way for charities to collaborate with the private sector to design comprehensive and coherent approaches to narrow the gap between prisoners and communities and achieve large-scale sustainable reductions in reoffending. This would require the following:

- A dialogue between government, service providers and sentencers about the purpose and definition of a resettlement prison.
- A wider-scale discussion to engage employers, colleges, and community and faith groups.
- A collaborative effort with providers to raise public awareness and understanding of the wholesale benefits of resettlement prisons.
- An announcement of implementation and commissioning timelines to remove the current uncertainties about the nature and pace of development of the future market.

There is also a window of opportunity for much needed clarification of the unique strengths the different sectors offer. For too long this debate has been dominated by a 'heroes and villains' mentality and a misunderstanding of each other's purpose and culture. The voluntary sector is often confused with volunteering. It is all too often seen as a small player which can provide complementary wrap-around support to offenders. In reality, the voluntary sector brings years of experience of providing value-for-money, highly specialist, highly skilled services with some of the hardest-to-help offenders in the hardest-to-reach communities. It is innovative and adept at working across government and joining up a centrally controlled criminal justice system with locally governed health and social service systems. Increasingly, the voluntary sector is leading the way in forming joint ventures and delivery partnerships, engaging employers and drawing in new sources of revenue which other sectors cannot access. All of this means that the voluntary sector is uniquely capable of covering off more than one social outcome and ensuring due regard is given to reducing crime, the fear of crime and reoffending.

Q3 How can we make it possible for more prisoners to make reparation, including to victims and communities?

The notion of a resettlement prison would bring victim reparation to the fore. Regimes could be designed to:

- ensure that the prison becomes central to reducing crime, the fear of crime and reoffending in any given locality
- enable the prisoner to carry out real work for which s/he is paid a minimum wage
- make it possible for financial compensation to be paid to victims while the prisoner is serving the sentence
- develop reparative placements for prisoners and ex-prisoners
- maximise opportunities for restorative conferencing as part of the sentence.

None of this could be universally applied across the prison estate but could be developed incrementally as part of a long-term strategy to reduce reoffending by those who need to be incarcerated. Reparation could be built into the tendering specifications of resettlement prisons. But, given the government's propensity for minimal prescription, this may not be either desirable or necessary. A clear and explicit enough orientation towards payment by results, predicated on reoffending outcomes, would inevitably lead providers to develop imaginative ways of delivering restorative and reparative approaches because victims should be central to any concept of resettlement prisons.

Q4 How do we target tough curfew orders to maximise their effectiveness?

In order to be effective and increase public confidence in them, curfew orders must:

- deliver the punitive element of the sentence by restricting the offender's liberty
- ensure the offender's whereabouts are known at all times
- engage the offender, maximising compliance
- tackle the causes of offending eg, substance misuse, homelessness, lack of skills/employability etc
- get the offender into work and encourage them to give something back to the community.

The problem with many current offender interventions is that they take place behind closed doors either inside a prison, a probation office or a treatment service: it is all too easy for these programmes to become disconnected from the community.

The problem with many current community sentences is that it is difficult to know where the offender is at any one time – even where an electronic tag is fitted, when the offender leaves the curfew address s/he disappears from view. In these cases, the monitoring officer knows where the offender is not but has no way of knowing where s/he actually is. Nacro wishes to

see more emphasis placed on services which adopt the latest GPS tracking technology to keep track of the offender's whereabouts the whole time. This technology is sufficiently robust to deliver reliable tracking data and is used routinely in a number of other jurisdictions, most notably the USA.

However, it must not stop there. As currently configured, electronically monitored curfews do not provide offenders with the interventions and support many of them need to stop offending. Therefore, just like prison, the curfew order restricts the offender's movement and liberty but does not provide a platform for resettlement and rehabilitation. To address this, the curfew order needs to be combined with measures to tackle the offender's attitude and behaviour and provide practical help in holding down a suitable place to live and/or a job. This would lend itself to cross-sector collaboration based around payment by results and could lead to a cost-effective method of reducing reoffending with large volumes of offenders.

Q5 What are the best ways of making community payback rigorous and demanding?

Nacro believes that community payback could be turned into a more demanding and productive experience for the offender, but we must also ensure that it has the public's confidence. Community payback has the potential to be a powerful sentence which satisfies the public need to punish the offender, offer reparation to the victim and the wider community, and reduce reoffending. This has to be balanced against maximising the likelihood that the offender will comply.

Despite the media portrayals of visible community service, characterised by offenders dressed in orange jackets, Nacro does not consider this to be necessary in fulfilling the potential to engage the interest or involvement of ordinary people and reduce attrition on the part of the offender. We need to see new types of placement being developed and promoted which strengthen community links, reduce attrition, improve employability and develop a new image which wins the respect and confidence of the public. These could be used as a platform for enabling offenders to build a stake in their local community and for the community to have a real say in the sentence which is being delivered.

Q6 How can communities be more involved in influencing the type of work completed by offenders on community payback?

To date, key messaging around community payback has centred around persuading people that it is rigorous and robust. Nacro understands the political imperative behind this but the stark reality is that neither the public (nor offenders for that matter) will easily be persuaded that unpaid work is on a par with custody when it comes to punishment. Set against this, there are some compelling messages (leading to powerful campaigns) which could move the debate on to looking at how unpaid work can be used to narrow the gap between the offender and the community and thereby reduce crime, the fear of crime and reoffending.

Nacro would welcome a debate which results in constructive ways of embedding community payback within local crime and reoffending reduction strategies in the advent of the election of police and crime commissioners. This should coincide with a more explicit link between the type of offence committed and the type of payback undertaken by the offender, leading to greater public understanding and involvement. Tangible opportunities should be found in the forthcoming community payback tenders to make links between unpaid work and future paid work by enrolling employers and social enterprises in the delivery of community payback.

Q7 How should we seek to deliver community payback in partnership with organisations outside government?

Nacro supports the decision to outsource community payback delivery to the private and voluntary sector and sees this as yet another area for collaboration between the public, private and voluntary sectors. But this should not simply be a question of who delivers the service. While involving the private and voluntary sector makes sense from the point of view of price and quality, we should not miss the opportunity that this presents to reconfigure community payback by:

- involving employers so that unpaid work placements can lead to future paid work opportunities
- developing a wider portfolio of placements hosted by community and faith groups, particularly in harder-to-reach sections of the community
- testing inter-generational and restorative approaches
- developing new promotional campaigns which push the wider benefits of community payback to victims and neighbourhoods more generally.

Section 2

Offender management

Q8 What can central government do to help remove local barriers to implementing an integrated approach to managing offenders?

Nacro believes that the key to an integrated approach to managing offenders lies in developing locality-based commissioning. This draws on the Total Place approach initiated by the last administration in terms of jointly conceived strategic aims for reducing crime, the fear of crime and reoffending. Offenders often have multiple needs and present multiple risks. It follows, therefore, that services must be cross-cutting. Equally, individual communities in which offenders and victims live have distinct needs in relation to crime, the fear of crime and reducing reoffending, and should be empowered to be properly involved in the design and implementation of community safety strategies and activities in developing their own solutions to addressing these problems.

How services are commissioned is critical to reducing barriers to integrated provision. There is an urgent need to bring multiple funding streams together and for local areas to adopt intelligent commissioning methods. Central government should provide the necessary leadership and joined-up thinking between departments and between national and local commissioning frameworks. It is well documented that many of the solutions to addressing crime lie outside the criminal justice system. Police, courts, probation and prisons can tackle some of the risks and needs, but local services that address housing, finance, health, children and families, and education, training and employment are vital components in reducing reoffending. Currently, these services are all commissioned separately. Unless and until joined-up outcomes are commissioned, we will continue to face barriers to adopting truly integrated approaches.

Payment by results and outcomes-based commissioning should be used to encourage service providers to focus on delivering services that work and that can be demonstrated to bring about positive change. We know that voluntary and community sector organisations can provide services which maximise engagement and active participation. They are shown to be effective in working with marginalised groups such as women and people from black, Asian and other minority groups and with specific faith or cultural needs. The government must ensure that bureaucratic tendering processes do not stand in the way of local providers and that the innovation, expertise and reach they offer is not lost.

There is much to be learned from existing local integrated offender management (IOM) and multi-agency public protection panel arrangements (MAPPPA) schemes. We must test these arrangements against reductions in reoffending and ensure that lessons learned are taken forward in any new delivery arrangements. But if we are to achieve truly transformative approaches at local level we need to benefit from *all* potential providers being able to participate. This

necessitates a widening of the market so that new players and new cross-sector collaborations have an opportunity to show what can be done to reduce crime, the fear of crime and reoffending in local communities.

Q9 How can we incentivise and support the growth of integrated offender management (IOM) approaches?

Nacro supports the principles encapsulated by IOM and believes that lessons learned from these approaches should be taken forward in new approaches to offender management, irrespective of who provides these services. These approaches must be supported by:

- joined-up information systems using the latest technological advances
- a clear articulation of what can be achieved through IOM in a way that the public will understand.

Success is also highly dependent on the willingness of communities to engage, and the extent to which voluntary organisations are embedded as service delivery partners. Participation by voluntary organisations requires a coherent commissioning framework and greater opportunities for participation. Whilst there are other factors which affect the rate of reoffending (eg, changes in the macro economy and changes in the age of the local population) the centrality of integrated systems of offender management is a critical component.

Some practical measures that could be taken forward include the following:

- Targeting early intervention approaches to address the needs of those most at risk of offending, using integrated multi-agency approaches to prevent crime and antisocial behaviour to coincide with better enforcement measures.
- Providing financial rewards (by way of savings produced through a reduction in the use of custody being made available for reinvestment in local services) for local authorities that successfully use early intervention to achieve reductions in demand on the criminal justice system.
- Increased use of pilots – predicated on locality-based commissioning and payment by results – where their objectives join up the reduction of crime, fear of crime and reoffending.
- Providing holistic services for vulnerable women which bring together provision in relation to domestic and sexual violence with support to address mental health, drug and alcohol misuse issues to bring about positive benefits for children (which in turn reduces their risk of offending).
- Targeting groups currently under-served by specialist support, particularly young adult offenders (aged 18 to 24) and enabling approaches currently reserved for those under 18 to be trialled, with payment-by-results incentives built in.

Q10 How can we ensure that providers from the voluntary and community sector can be equal partners in the delivery of this integrated approach?

Over the last decade there have been numerous government initiatives to encourage greater participation by the voluntary sector in the delivery of services to reduce reoffending. Many

of these have failed and, in this context, the aim of voluntary and community sector (VCS) organisations being equal partners is somewhat ambitious.

The Treasury's *Cross-Cutting Review on The Role of the Voluntary and Community Sector in Public Service Delivery* (September 2002) made recommendations to increase the provision of public services by the VCS. A National Audit Office report in June 2005 showed that, despite government commitment, there had been only a modest increase in the level of services delivered by the VCS, although most of the recommendations from the review had been implemented and the problems preventing progress were well known.

In order to address this, the then government agreed in January 2006 to adopt measures that would ensure a step-change in VCS engagement in the delivery of public services. Key departments – including Health, Education and Skills, Trade and Industry and Work and Pensions were required to participate in a cross-departmental initiative. The Home Office had a key role to play, as set out in the NOMS' *Action Plan for Working with the Voluntary Sector*. These steps included:

- issuing guidance to probation areas on key areas of service for delivery by the VCS
- setting a target of 10% outsourcing by probation areas to the VCS and private sector
- assisting probation areas to prepare for operation in a mixed market in preparation for the introduction of full contestability
- identifying exemplar projects which could be applied at a national level
- the funding of pilot programmes through the Change Up initiative, exploring ways of utilising mainstream voluntary sector infrastructure to support VCS organisations working with offenders.

As the new commissioning landscape develops, government and VCS organisations must make a compelling case which fully outlines the unique contribution the charity sector makes (and could make even better if given more opportunity to take part) in the delivery of offender management. Only some local and community groups currently have the resources to compete in a world of competitive tenders and payment by results but without these groups, it is impossible to reach the harder to help and help the harder to reach.

It is crucial that, particularly in the transition to payment by results, government works closely with the charity sector to secure the type of leadership required to ensure that charities do not drown in the maelstrom created by local public sector spending cuts, and that they can find the investment they need for growth as they gear up to take part in managing larger volumes of offenders. This includes helping to identify and enrol investors who may be attracted to invest in programmes which reduce reoffending and make communities safer and feel safer.

Amidst all the debate around the need for all service specifications to require partnership bids which include VCS agencies as key delivery partners, the most important point to recognise is that it will not be possible to reduce reoffending without involving the VCS. It therefore makes good business sense to support the sector during this period of transition and to invest in building the sector's capacity where it embraces the notion of payment by results.

Some organisations are better placed than others to weather the financial storm. Some may consider mergers and acquisitions with like-minded bodies or create joint ventures with private companies in order to compete effectively for large-scale government contracts. Small or medium-size organisations may seek to develop commercial activities through social enterprises. However, access to the necessary start-up finance and working capital will remain challenging. The Big Society Bank is proposed as a source of finance. But loans have not been attractive to the VCS, and this calls for very strong leadership, advice, guidance and a cultural shift. The Future Builders initiative (a government programme launched in 2004 to enable charities to access loans) did well in some areas of provision but was not successful in attracting participation from organisations working with offenders. One of the reasons for this was the lack of mainstream commissioning opportunities, which negated the return on investment that was essential for repayment of the loan.

In 2009 Nacro published a report of the findings of a study, commissioned by NOMS, exploring the level of VCS involvement across four pioneer integrated offender management (IOM) sites in England.¹ The study found that there was VCS activity at three out of the four pioneer sites but that the nature of engagement varied. The most effective model was where the VCS organisations were full delivery partners, acting as an integral part of the IOM scheme and co-located and co-working with statutory and private sector agencies. The least effective model was where the VCS organisations acted simply as referral agencies – receiving referrals for services for IOM participants.

The report identified several barriers to engagement. Some of these are unremarkable: funding and resource shortages, short-term contracts and a lack of capacity to respond to commissioning opportunities. However, there were more specific barriers, such as:

- the structure and governance arrangements in some sites being unclear or inaccessible to the VCS
- the sharing of information between statutory and VCS agencies
- cultural differences between agencies
- vetting processes – individuals from VCS agencies who seek posts have to undergo full police vetting, which may exclude some otherwise qualified individuals from taking up positions
- 'ownership' of statutory prolific and other priority offenders by the probation service which restricted the ability of VCS agencies to become involved in work with these offenders.

The report concluded that for VCS organisations to be most effectively engaged in IOM models, there need to be formalised arrangements through the use of service level agreements and information-sharing protocols. The report recommends a model of engagement that would allow for VCS organisations to become equal providers in the delivery of IOM.

¹ Nacro (2009) *Integrated Offender Management and Third Sector Engagement: Case studies of four pioneer sites* London: Nacro

Q11 How can we use the pilot drug recovery wings to develop a better continuity of care between custody and the community?

Nacro supports the recommendations contained in the Patel Report.² We must strive for a joined-up approach which removes the bottlenecks created by dependent drug users being held in treatment for longer than is necessary as opposed to becoming drug/crime-free. This inevitably calls for the following:

- The development of approaches which enable more drug-related offenders to be diverted from custody and dealt with in the community and/or through residential rehabilitation.
- Wider resettlement support to be available following drug treatment so that offenders are encouraged to live drug/crime-free, including help with housing, debt, training and employment.
- A commissioning framework which encourages better provision for generic 'move-on' services, predicated on payment by results.
- Investment in provision for adult offenders who are currently sentenced to less than 12 months.

Q12 What potential opportunities would a payment-by-results approach bring to supporting drug recovery for offenders?

Nacro would support a payment-by-results system which increases the effectiveness of services in assisting people with drug problems to recover. We sense an appetite for using these changes as an opportunity to encourage innovation and achieve better outcomes. There is recognition that in the current fiscal climate this will need to be achieved without increasing costs and, where possible, while capturing savings elsewhere in the system.

Recovery involves improvements in multiple areas including substance use, health, relationships, education, employment and housing – as well as reducing reoffending. We are acutely aware that, while the ultimate aim has to be one of abstinence, progress is often more of a zigzag than a straight line, interrupted by lapses and relapses along the way. That said, recovery brings long-term benefits to the victim, the community, the offender and all those around him or her. The key to success therefore includes:

- rewarding achievement of more than one social outcome
- recognition of 'distance travelled' across a wide range of domains, with due regard to avoidance of 'creaming' and 'parking'
- rewards for sustained recovery over time to avoid an emphasis on acute provision as opposed to aftercare and 'move-on' provision.

² A report by Professor Lord Patel of Bradford, OBE, chair of the independent Prison Drug Treatment Strategy Review Group, was produced last year on drug treatment and interventions in prison and has been submitted to ministers in the Home Office, the Ministry of Justice and the Department of Health in response to the drug strategy consultation. The report focuses on drug treatment and interventions for people in prison, people moving between prisons and the continuity of care for people on release from prison. The report outlines the evidence gathered and work carried out by the Review Group and summarises their conclusions and recommendations.

The payment-by-results systems in operation elsewhere in the NHS have been applied to surgical procedures such as hip replacements where we understand it is relatively straightforward to apply a 'price-for-the-job' mechanism. This is far less simple in the world of recovery from substance misuse where so many variables come into play. Against this background there are a number of issues which need to be considered, and solutions for many of these are not well advanced in the criminal justice system:

- The notion of personalisation, building on evidence which suggests that the more service users are involved in setting their own targets and outcomes, the more successful the intervention. This is challenging but needs to be built into relevant commissioning arrangements nonetheless.
- Sufficient timeframes for recovery need to be applied and this may include rewarding the non-linear nature of progress, thus requiring the right balance between payment for activity against payment for outcomes.
- Deciding whether outcomes should be measured at the individual or cohort level, given the potential for variation in progress between individuals.
- Ensuring the right reliable tools are in place to measure progress for different offender cohorts, and that these can track progress over the long term and build a body of knowledge about which interventions work with which offenders in which circumstances.
- Organising implementation to get the balance right between piloting new arrangements and the need to move to scale as quickly as possible.
- Incentivising cross-sector collaboration, but getting the balance right between consistency of good practice with local variation.
- Shifting the culture and focus on skill building away from maintenance and activity and towards hard outcomes, without alienating the client base and increasing levels of attrition.
- The need for reliable trials and independent evaluation which test new approaches and demonstrate what works.

Q13 How best can we support those in the community with a drug-dependent need, using a graduated approach to the level of residential support, including a specific approach for women?

With regard to the provision of drug treatment in the community, the proposals are sensible. The aim of providing a range of treatment interventions that vary in intensity depending on need is one that Nacro supports. Nacro has been calling for more involvement in partnerships which move offenders through specialist drug treatment with 'move-on' interventions, such as learning and skills advice and guidance, employment training, housing, money management skills and support with family and other relationships. For women offenders, services should be gender specific and embedded within the existing women's community project network. The Diverting Women from Custody programme should be continued and models of service delivery based on women's specific needs must be applied to drug treatment.

Q14 In what ways do female offenders differ from male offenders and how can we ensure that our services reflect these gender differences?

There has been recognition for many years that the risks and needs of women offenders differ from those of men. An increasing number of reports have highlighted the specific vulnerabilities experienced by women, the gender differences contributing to women's offending behaviour and the disproportionate impact of custody on women and their families. 95% of the children of women offenders have to leave their home upon their mother's sentence.³

Much is known about the high incidence of domestic abuse among women offenders. Over half of all women in prison have experienced domestic violence and a third have been sexually abused at some point in their lives. Levels of need in relation to drug and mental health treatment are higher than for men.⁴ We need a differential approach to achieve better results in reducing reoffending by women.

The following reforms should be considered:

- Reserving custody for only the most serious female offenders.
- Implementing gender-specific community penalties.
- Incentivising the development of innovations to reduce women's attrition from community sentences, thus maximising compliance. This goes hand in hand with gender-specific sentences.
- Diverting women with mental health and/or substance misuse/alcohol needs away from the criminal justice system and into appropriate health and social care services.
- Encouraging local commissioners to ensure that service provision for women and girls is gender specific and to commission third sector-led partnerships to deliver holistic, women's centre-based services that offer the courts an alternative to remanding women in custody or imposing short prison sentences. The developing network of women's community projects which form part of the government's Diverting Women from Custody programme should be sustained.
- Where women must be given custodial sentences due to the seriousness of the crime, small specialist units with appropriate facilities to offer care, support and rehabilitation should be developed.
- Directing resources into preventive schemes that alert women in major drug trafficking centres to the risks of importing drugs into the UK, and offering foreign national women in prison education and resettlement support appropriate to their needs.

The current situation and what needs to change

The pattern of women's offending is different to that of men, and women generally pose a lower level of risk to the public. The risk factors associated with women's offending have been well documented, yet the current system does little to effectively address these factors and often

³ Prison Reform Trust (2009) *Bromley Briefings* London: Prison Reform Trust

⁴ *ibid*

exacerbates them. Women offenders suffer a more severe range of social exclusion problems than men, particularly high levels of abuse and domestic violence and mental health problems. Prison is known to have more serious psychological implications for women and self-injury is very common throughout women's prisons. In its 2003 report, *Troubled Inside*, the Prison Reform Trust highlighted the fact that two thirds of women in prison are suffering from a mental disorder, with record numbers being driven to suicide or self-harm by lack of appropriate care.

There is a vast array of studies providing a considerable body of analysis and recommendations for change in the way that the state responds to women offenders. In addition to independent studies, there is a long list of government-commissioned reviews which provide in-depth analysis and a critique of the way the criminal justice system has failed to address the challenges presented by women's offending.

In 1997 the then Chief Inspector of Prisons, Sir David Ramsbotham, published his wide-ranging *Thematic Review of Women's Imprisonment* and in 1998 the Scottish Office published *Women Offenders – A Safer Way: A review of community disposals and the use of custody for women offenders in Scotland*. In 2000, the Prison Reform Trust published a substantial report, *Justice For Women: The need for reform*, by the Committee on the Imprisonment of Women, chaired by Dorothy Wedderburn. The Fawcett Society then published the results from their Commission on Women and the Criminal Justice System and has published several reviews on progress since then.

In October 2000 the Home Office published its own document on women, *The Government's Strategy for Women Offenders*. This was followed by the Women's Offending Reduction Programme 2002-2005. The *Corston Report* was published in March 2007 and the government's response followed in December 2007.

Progress

The government's own publications have set out plans for change and some progress has been made. Following a series of six deaths at HMP Styal, the *Corston Report* was commissioned with the aim of examining how women were treated throughout the criminal justice process and exploring ways in which the services and interventions at each stage of this process could be improved. Baroness Corston published her report on 13 March 2007. It contained 43 recommendations aimed at improving services for women offenders and those at risk of offending, with a strong emphasis on the need for a co-ordinated, cross-departmental response from government. Corston made the case for a completely new approach to women's offending: one which is 'distinct, radically different, visibly-led, strategic, proportionate, holistic, woman-centred [and] integrated'.⁵

Baroness Corston's report highlighted existing good practice in women's centres which offered women access to a range of services both on-site and by referral to other agencies. The then government responded to Corston's call for a larger network of women's centres to be

⁵ Corston J (2007) *The Corston Report* London: Home Office

developed by investing substantially in the provision of women's community projects. The government's strategy for diverting women away from crime has included the creation of more than 40 'one-stop-shop' services across England and Wales. These services have been funded partly through central grants from the Ministry of Justice, partly through grants from the Corston Coalition of Independent Funders (a group of grant giving trusts) and partly through local commissioning or local grant funding arrangements. The central funding for these services is due to cease at the end of March 2011, although some limited transitional funding for a further 12 months has been agreed. However, the expectation that local commissioning will provide a route for sustainability and mainstreaming during 2011-12 is unlikely to be met. Some services are already planning for reduced levels of activity or service closure.

The government has said it supports the Corston report recommendations. Many of these apply to government departments and agencies outside the criminal justice system. The multiple and complex needs of women were highlighted, and services in a wide range of areas – including health, housing, drugs, alcohol, victim support, childcare, education, training and employment – were seen as central to improvement. Nacro welcomes proposals for the expansion of integrated offender management at local level, so long as the gender-specific needs of women are addressed and appropriate provision is embedded in local schemes.

The need for further progress

The coalition government is clearly creating a policy environment which offers the prospect of further positive change in the way that the justice system responds to women offenders. However, the problem remains that some of Corston's most important recommendations were not accepted by the government and many of them were only partially accepted or accepted in principle. A further difficulty is the need to drive forward change on the ground and to get nationally driven policy to bring about meaningful, practical and sustainable improvements at regional and local level.

Some of the key problems that inhibit progress at local level are set out below:

- Police and crown prosecutors do not have sufficient expertise in relation to gender issues and little knowledge about options for diverting women (where appropriate) out of the criminal justice system.
- Probation staff who make proposals to court are not always trained to assess women. Many have no knowledge about the kind of interventions that would meet their needs. Currently, there is insufficient expertise among probation staff and a lack of confidence among sentencers about the effectiveness of community penalties.
- Conditions attached to bail, community orders and end of custody licences do not currently take account of women's needs and there is little in place to assist women with compliance. There is also no flexibility in breaching rules which often results in a custodial outcome.
- Local court criminal justice liaison and diversion schemes that are intended to divert people with mental health problems out of the criminal justice system are not universally available and where they are available, they do not necessarily meet women's specific needs.
- Effective commissioning for women requires robust local data to ensure that commissioners

can effectively specify services that meet local needs. However, local authority level data about women offenders is seriously deficient and inhibits effective commissioning.

- While the number of women in prison remains small compared to men, the locations and conditions in which they are held are not conducive to rehabilitation.
- In countries where drug trafficking occurs, not enough resources are being directed towards helping to deter potential women 'drug mules' through education and awareness raising. Currently, many such women have no understanding of the risks they face in carrying drugs to the UK, so long prison sentences do not act as a deterrent. Once in prison, the consequences for them and their children are grave and little is done to support them.

The solutions

Local criminal justice boards should provide guidance to police, courts, probation and prison services with regard to their responsibilities under the Gender Equality Duty. Comprehensive information about all women who are charged with and/or convicted of offences at regional and local level should be collected, analysed and shared as a basis for the planning of appropriate provision and interventions. At present, where organisations collect data, it is not routinely shared with others and available data is inadequate for effective service planning. This risks non-compliance with the requirements of the Gender Equality Duty.

Conditional cautioning for women should be rolled out nationally. The condition attached to a caution requires women to attend a women's community project for assessment. This usually results in the woman engaging with services, and in this way addresses needs and risks which, if left unaddressed, may lead to offending.

Gender-specific enhanced bail support for women must be provided through the national Bail Accommodation and Support Service (BASS). At a conference on 9 February 2011, it was announced that the current enhanced level of bail support for women was being withdrawn as a result of low take-up. This suggests that the offer was not sufficiently tailored to meet women's specific needs. In 2009 Nacro was commissioned by NOMS to produce a gender-specific model of bail support for women. This was watered down and not properly reflected in the specification for BASS. Nacro believes full implementation of this model could result in a significant reduction in unnecessary custodial remands of women.

The government should give further consideration to how a reduction in the use of custody for non-serious offenders can be achieved. For women it is essential that probation staff responsible for report writing and making proposals in standard delivery reports are trained in gender issues and properly informed about the options available for gender specific support in the local area.

Other agencies, such as the police and the Crown Prosecution Service, should also be offered training in gender issues and the Attorney General's office should be required to promote the positive role that prosecutors can play in identifying opportunities for women to be diverted wherever possible from the criminal justice process, or to be dealt with using community sentences.

Where women are at serious risk of custody due to the nature of their offences, further implementation of the intensive alternative to custody sentence for women should be encouraged.

Rules governing breach procedures in relation to conditions attached to bail, community orders and end of custody licences should be reviewed, and where equality impact assessments reveal the potential for a negative impact on women, the rules must be changed to allow for more flexibility. Properly trained probation staff must be encouraged to use their own judgement and, equipped with knowledge about appropriate support services, must put in place compliance plans that address women's specific needs.

Nacro supports the government's intention to roll out a national network of criminal justice liaison and diversion schemes with the aim of diverting people with mental health problems into appropriate treatment. In developing this policy, special attention should be paid to ensuring schemes meet the gender-specific needs of women. Policy makers should refer to Nacro's briefing paper on the effectiveness of criminal justice liaison and diversion schemes for women⁶ and its contents should be taken into account to improve the availability and responsiveness of such schemes for women in custody suites, at courts and in prisons. In particular, schemes intended to divert women and girls from the criminal justice system and into health provision, where appropriate, should be linked to the women's community projects previously referred to.

For women in custody, resettlement programmes such as the ones at HMP Send and HMP Askham Grange should be sustained and more widely implemented. Programmes aimed at increasing employability should operate alongside specialist services such as the independent domestic and sexual violence adviser (IDSVA) at HMP New Hall. This is the only prison-based IDSVA scheme and an evaluation by Nacro revealed the importance of having such specialist advice and support available to women during custody to enable effective release planning.⁷

The Sex Workers in Prisons project (SWIP) provides training and awareness raising to prison staff to help them appropriately meet the needs of sex workers. This is a national initiative which developed from an initial research paper⁸ and a pilot project delivering training in five women's prisons between 2007 and 2009. The project aimed to ensure that if women prisoners disclosed their involvement in sex work, an appropriate response and appropriate advice would be available, enhanced by the project linking prisons with local sex worker support services. Women engaged in sex work are some of the most vulnerable, and the initial research for SWIP revealed the severe violence and intimidation – rape, assault, kidnap and stabbing – experienced by some women. It is vital that staff in prison are equipped to work effectively with these women and that access to specialist support is available.

⁶ Nacro and King's College (2008) *Criminal Justice Liaison and Diversion Schemes: A focus on women offenders* London: Nacro

⁷ Nacro (2011) *Evaluation of Athena Project: HMP New Hall* London: Nacro

⁸ Clark L (2006) *Provision of Support for Imprisoned Adult Female Street-based Sex Workers*, available at www.thegriffinsociety.org/Research_Paper_2006_01.pdf.

Finally, women from other countries imprisoned in England must receive appropriate support, and prevention should be a priority. Government resources should be directed towards the award-winning international prevention and public education programme, conceived and delivered by Hibiscus, which targets vulnerable groups in the Caribbean and West Africa to warn them of the dangers and consequences of importing illegal drugs into the UK. Positive education, training and awareness raising will reduce the numbers of women who run the risks of bringing drugs into the UK. Women foreign nationals currently in custody should receive tailored resettlement support and Hibiscus should be supported to continue to build on their other excellent programmes providing advocacy, welfare and practical as well as emotional support to foreign national and black and minority ethnic women in prison and in the community. Services, such as the advocacy and welfare service, the resettlement programme and the volunteer befriending programme could be further expanded and used to reduce reoffending.

Section 3

Offenders into work

Q15 How could we support the Department for Work and Pensions' payment-by-results approach to get more offenders into work?

Nacro supports the principle of payment by results. It will create financial incentives for organisations that are able to prove they can reduce reoffending and offers the following:

- Growth in the number of effective programmes which support offenders back to work.
- A commitment to outcomes-based commissioning.
- An opportunity for outcome-focused organisations to grow their work and their impact.

The real benefits of payment by results come about when more than one social outcome is achieved and different government departments are able to realise the savings made from the interventions in which they have jointly invested. This requires unprecedented levels of cross-government working and a complicated set of calculations to get the metrics right.

Employment opportunities for offenders are central to their rehabilitation, so it is crucial that the Ministry of Justice keeps at the forefront of government minds the need for a commitment to provide opportunities for offenders, some of whom have complex needs and are not instantly job ready.

As Lipsey argues, employment is the biggest single most important factor in reducing offending in young men,⁹ and is, in addition, a significant factor in helping reduce offending for all sectors of the population. In addition, the costs of reoffending are alarmingly high. In 2002, the Social Exclusion Unit calculated the annual cost at £11 billion.¹⁰ Other studies show that employment offers 'an increase in structured time; an income which enables home leaving [for young people] and the establishment of significant relationships; a legitimate identity; an increase in self-esteem; ...financial security; daily interaction with non-offenders...and ambitions and goals such as promotion at work.'¹¹ One of Nacro's partners has commented that finding and keeping work is dependent on having appropriate systems of support in place. These include positive relationships, appropriate housing, help to overcome debt, and services to deal with health problems and to move away from drug and alcohol misuse.¹²

⁹ Lipsey M (1995) 'What do we learn from 400 research studies on the effectiveness of treatment with juvenile delinquents?' In J. McGuire (Ed.) *What Works: Reducing reoffending* Chichester: John Wiley & Sons, pp. 63-78

¹⁰ Social Exclusion Unit (2002) *Reducing Reoffending by Ex-prisoners* London: Social Exclusion Unit

¹¹ Farrall S (2002) *Rethinking What Works With Offenders: Probation, social context and desistance from crime* Devon: Willan Publishing, p.146

¹² Working Links (2010) *Prejudged – Tagged For Life: A research report into employer attitudes towards ex-offenders* London: Working Links

It is an inescapable fact that offenders who face inevitable barriers in the labour market by virtue of their criminal past will need a lot more support and assistance through the initial engagement process than the general population of unemployed people. If the commissioning environment is such that organisations like Nacro are in a position to do what is necessary to get offenders into a job-ready state, the outcomes will pay dividends in terms of turning former prisoners into taxpayers, giving them real opportunities to make a positive contribution and make tangible steps towards a life free from crime. It will also pay dividends in terms of relieving the burden on the public purse.

This is likely to be achieved by way of cross-sector partnerships. We believe that government has an important role to play in preparing the ground for positive partnerships to emerge and to prosper on the basis of a clear understanding of what the different sectors offer. For example, the voluntary sector is uniquely placed to reach sections of the community other providers cannot reach so well and this is a pivotal factor in providing opportunities for the hardest-to-reach individuals living in communities which are blighted by crime. The voluntary sector's sophisticated understanding of what works should make an important contribution to a more outcomes-focused system, in that we are better able than ever before to predict the results of our intervention. A commissioning process predicated on payment by results should open up the market and offer a wide range of opportunities for cross-sector collaboration, as has been the case with the Department for Work and Pensions' Work Programme. That said, it is still the case that some of this provision is prone to 'creaming', leaving the voluntary sector to work with the most costly and the hardest-to-help ex-offenders.

Until such time as joint ventures are properly formed, the shift towards payment by results will inevitably lead to a proliferation of prime/sub-contractual relationships. Many voluntary sector organisations will not be able to carry the business risks associated with acting as a prime contractor, especially in cases where the contract is large volume and of high monetary value. Going forward, it is important that the commissioning arrangements do not lead to a situation whereby prime contractors have disproportionate control over the process, thus creating an imbalanced relationship between them and voluntary and community sector sub-contractors. This can be avoided by enabling providers – and voluntary sector providers in particular – to be involved with commissioners in the discussion about which outcomes should be applied to which cohort of offenders. Outcomes with the hard to reach must be realistic and timed sufficiently to allow recognition (and financial rewards) for a positive direction of travel as opposed to hard, unrealistic outcomes.

As with any system of payment by results, the financial arrangements and the balance between core payments for work done and bonus payments for outcomes achieved must be carefully worked out. We are encouraged by the government's incremental approach to this and the use of pilots to test different models. This allows time for voluntary sector providers to gear up for these new commissioning arrangements. With some of the groups we work with, the balance of payments must always favour core work, given the intensity of the interventions they require and the limited progress they will make in a short space of time. This does not negate the value of such work, which has to start from an extremely low base line.

Q16 What can we do to secure greater commitment from employers in working with us to achieve the outcomes we seek?

Nacro's position on how to overcome the barriers ex-offenders face when seeking employment has been well rehearsed through our successful Change the Record campaign, which has been well received by government and the opposition.

Crime affects everyone in the population and the wider community has an important role to play in tackling it. This includes employers. On the one hand, it is crucial that charities like Nacro play an increasing role in getting offenders to change their attitudes and behaviour. On the other hand, it is crucial that opportunities are created in the wider community for offenders to give back and make a positive contribution to their community and move on to a crime-free life. Societal attitudes which result in unnecessary barriers will make crime reduction initiatives less likely to succeed.

While some offenders may be able to make the transition to employment by removing some of the barriers that currently exist, others who have more complex needs will require longer term and more intensive support. Nacro provides many of these services throughout England and Wales. The reforms outlined by the government in the *Protection of Freedoms Bill* combined with the proposals in part one of Sunita Mason's review of the criminal records regime, *A Common Sense Approach*, establish the principle of removing barriers to work. Nacro broadly supports this approach.

Nacro's own research, supported by the Chartered Institute of Personnel and Development and Working Links, shows that ex-offenders face disproportionate barriers in their search for work. We also know the following:

- One in three men has a criminal record.
- 75% of employers treat candidates with a criminal record less favourably than others.¹³
- One in seven employers would reject any applicant with a criminal record, irrespective of the nature of the offence.
- 36.6% of employers would exclude all ex-offenders from their recruitment process altogether.¹⁴

Set against this, there is evidence that half of male offenders and three quarters of female offenders have just one conviction. Moreover, 55% of men and 80% of women convicted have an offending history which lasts less than a year. By the age of 25, 43% of men who had previously offended had not offended for five years.¹⁵ These figures demonstrate that one of the reasons that ex-offenders find it difficult to get work is discrimination based on an exaggerated and uninformed perception of the risk an ex-offender poses.

¹³ Social Exclusion Unit (2002) *Reducing Reoffending by Ex-prisoners* London: The Stationery Office

¹⁴ 'Employers exclude "core jobless" groups' is at www.peoplemanagement.co.uk/pm/articles/2005/09employersexcludecorejobless.htm.

¹⁵ Prime J, White S, Lirian S, Patel K (2001) *Criminal Careers of Those Born Between 1953 and 1978* London: Home Office

Research undertaken by Working Links confirms that over 80% of employers who have employed ex-offenders say that they have 'settled into work well with colleagues', 'performed well' and have 'proved to be reliable'.¹⁶ 60% of employers said ex-offenders 'perform as well or better than those with no conviction'.¹⁷ Nacro has also collected anecdotal evidence from individuals who have called its helpline which lends weight to the view that ex-offenders struggle to find work to a disproportionate degree. Some examples of this feedback are included below:

'Having spent the last 10 years building a satellite and aerial company, I am now finding my contracts being terminated. This is affecting everything in my life. This is due to CRB checks which show my last criminal conviction when I was 21 years old. I am coming up to 38 years old.'

'I was just denied a job at a school for a community sentence I received 14 years ago, which was for fraud and had nothing to do with the protection of children.'

'My husband is a good man, well educated and has much to offer society. He made one mistake, which was a technical fraud (on paper with no financial gain) and due to the CRB checks under current rules he cannot find work and is constantly discriminated against. There must be thousands in similar positions and that cannot be right.'

'I am 56 years old, an electrician with over 30 years' experience working in banks, building societies, cash management depots, schools, housing, nursing homes, hospitals, just about every working place. Now firms are bringing in CRB checks and I have been turned down for a few jobs.' (Man who last offended in 1977.)

More could be done to unlock this situation and to make positive changes to recruitment practices.

These include:

- **Education and advice for employers:** to include guidance on employing ex-offenders; best practice guidance; background information on risk; risk management documents; and directions on where to go for further help.
- **Advice for ex-offenders:** including online and telephone support.
- **Ensuring a focus on offenders with more complex needs:** provision of intensive resettlement to move them in a positive direction of travel to get them job ready.
- **Consideration of a 'second chance' kitemark:** to promote best practice for employing ex-offenders. At present only 1% of employers have policies in place to encourage the employment of ex-offenders and 53% have no policies concerning the recruitment of ex-offenders.¹⁸ The 'kitemark' would be based along the lines of the employers index

¹⁶ Working Links (2010) *Prejudged – Tagged For Life: A research report into employer attitudes towards ex-offenders* London: Working Links

¹⁷ *ibid*

¹⁸ *ibid*

developed by Stonewall. Best practice could include:

- inclusion of helpline numbers in relevant sections of application forms for applicants to contact if they have questions about past offences
 - monitoring of applicants with spent and unspent offences
 - agreement to take part in research to highlight the benefits of belonging to the scheme
 - a commitment in larger organisations to employ ex-offenders
 - assessment and review of policies for organisations.
- **Improving employment for persistent offenders:** employers want good employees who are well trained and reliable. Some offenders have chaotic and antisocial lifestyles and complex lifestyles which make them unreliable. Nacro recommends exploring further the *Second Chance Act* which operates in some states of the US. This includes: encouraging local communities to reintegrate ex-prisoners into society by: offering mentoring; providing training; making better provision for housing; expanding prison-based family programmes and counselling services to keep prisoners' families connected during custodial sentences; encouraging community drug programmes; and encouraging the participation of trained volunteers, including faith-based volunteers, in the rehabilitation of offenders. The adoption of this Act was recommended by the Centre for Social Justice's report *Locked Up Potential: A strategy for reforming prisons and rehabilitating prisoners*.

Q17 What changes to the *Rehabilitation of Offenders Act 1974* would best deliver the balance of rehabilitation and public protection?

The *Rehabilitation of Offenders Act 1974* established the principle of rehabilitation in law by allowing offences to become spent, thereby giving ex-offenders the opportunity to wipe the slate clean after a set period of time. Despite the entirely sensible intentions behind this legislation, reform of the Act is long overdue.

Nacro supports the reductions proposed by its President, Lord Dholakia, in his *Rehabilitation of Offenders (Amendment) Bill*, which include the following reduced periods of disclosure:

Sentence	Current period of disclosure	Period of disclosure in ROA (Amendment) Bill
Fine	5 years	1 year
Community sentence	5 years	Sentence + 1 year
Custody of 6 months or less	7 years	Sentence + 2 years
Custody of 6-30 months	10 years	Sentence + 2 years
Custody over 30 months	Forever	Sentence + 2 years
Custody of 4 years plus	Forever	Sentence + 4 years

Nacro fully supports the periods of disclosures outlined in the *Rehabilitation of Offenders Act (Amendment) Bill* but would go further in advocating the reduction of the disclosure period for sentences of over four years to the length of the sentence plus two years. This would meet the original proposal set out in the 2002 review of the Act, *Breaking the Circle*, and which accurately reflects the level of risk presented by an ex-offender who has not offended for two years. It seems logical and just that a period of disclosure should relate to the time an offender spends in the community after release from prison and for the maximum period of disclosure to be consistent across all sentence lengths.

The current periods of disclosure have a serious impact on the lives of ex-offenders who have put their offending behind them. The stories below come from those who signed Nacro's petition as part of its Change the Record campaign:

'I have a string of convictions going back to when I was 16 (I'm now 38), all of which were alcohol related. My final conviction landed me a six-year prison sentence, thereby rendering 16 more convictions as 'never spent' and which must be declared when applying for work, insurance etc. Having now been sober for a number of years, obtaining a 1st class Honours degree and turning my life around in every possible way to become a respectable and contributing member of society, I continue to be penalised for a life I have now left behind. I feel reform of the Act is long overdue with a need for incentives for people to sustain a crime-free life, instead of making an uphill battle even more difficult.'

'Since leaving prison I have attended more than 1,000 interviews trying to find work...I have five convictions that I had received community orders for from 1998 to 1999. Because I received a four-year sentence in 2002 it drags these other convictions into the unspent 1974 Act. These would otherwise be spent, so I have to declare six convictions with the last one being eight years old. This is too much for an employer and they do not want to employ me. I have been told that I would have been employed if my convictions were spent...I am petrified of what the future holds and I am deeply saddened that I committed these crimes. I wish I could turn back the clock but without any employment I do not know what my future holds.'

'My son has served seven and a half months of a 15-month prison sentence. He has been unemployed for 12 months. In completing many application forms he had to disclose his sentence resulting in his application being rejected before even being given an interview. He is married and has a child and only wants to support his family. The unemployment situation is bad, so why should it be made so very much harder for those who have a record but have served their sentence and paid their dues? In my son's case he will have to disclose his record for 10 years after completing his sentence.'

We also propose, therefore, that reprimands be hidden for the purposes of standard and enhanced disclosure after a period of five years, or once young people reach 18, whichever is longer. We also recommend extending this provision to those young people who are given fines or conditional discharges (ie, sentences at the lower end of the sentencing tariff, as defined by the *Criminal Justice Act 1991*). This reflects the fact that some people commit offences in their youth that they are unlikely to repeat as they reach maturity in adulthood. Yet the impact of their offending at a young age may damage their career prospects for years to come. In recent years, Nacro has received a small but growing number of calls from young people, most commonly young women, who have been refused places or thrown off health, education and social care courses on the basis of single reprimands. These are young people who have usually made one mistake, often at the age of 14 or 15.

Nacro strongly believes that the safety and well-being of children and vulnerable adults are paramount and supports the need for systems of checking. However, Nacro also believes that the disproportionate use of CRB checks has undermined the principle of the *Rehabilitation of Offenders Act 1974*. We welcome the government's commitment to reduced checks and to further consultation on the Act. But we are concerned that the proposal to issue basic checks could simply escalate the number of checks, which will continue to build unnecessary barriers for ex-offenders in their search for employment. This will arise because some employers will continue to discriminate against people with a criminal record, irrespective of its nature or how long ago the offence was committed. It is already an offence for applicants to give false information relating to previous offences on application forms. Nacro believes that these safeguards are sufficient and preferable to a system which could herald an era of universal checking.

Section 4

Housing

Q18 How can we better work with the private rented sector to prevent offenders from becoming homeless?

The responses to this question are informed by a report produced by Nacro for the NOMS' accommodation and finance, benefits and debt team in September 2010, *Accessing the Private Rented Sector*.¹⁹ Accordingly, the narrative will make reference to the findings of the report.

More effective liaison with landlords. Often this is poor or non-existent. There is a need to look at what existing structures (networks, forums, etc) could be used to create better links with landlords to encourage them to consider offenders as tenants. The example of HMP Winchester in the report shows how well things can work when good communication systems are set up.

Formal structures set up between local authorities and landlords have often benefited offenders, eg, where local authorities have taken on three-year lets in the private rented sector and the landlord is guaranteed a good rental income plus the property being returned in good condition but the landlord cannot dictate who does or doesn't live there.

More information about prospective tenants. Landlords have commented that when they take in an offender, it is often a leap of faith, whereas social and supported landlords would get reams of information about the individual to help them make a decision. Information-sharing protocols need to be examined.

Release on licence for serving prisoners to enable them to go out and meet prospective landlords and view properties should be allowed, accepting that various safeguards will need to be applied.

An ongoing point of contact for the landlord or a point of contact for the first critical couple of weeks, following release. Where single points of contact have been available to landlords, this seems to have worked well (see the example of Coventry in the report).

Help with getting local housing allowance (LHA) payments to go directly to landlords. A number of schemes we looked at offered help to make this happen, eg, St Giles Trust, and again this makes a positive difference. The forthcoming government reform of housing benefit may prevent this in future.

¹⁹ Nacro (2010) *Accessing the Private Rented Sector* London: Nacro

Deposits and rent in advance. Deposits are not always sought (a number of landlords find the government-backed schemes for securing them too bureaucratic and so have simply stopped asking for them) but rent in advance almost always is. There are a number of examples of getting around this – for instance, overpaying for a few months, crisis loans – but it is an area that needs to be looked into. Consistency of practice is needed.

Rent deposit schemes. Often these are of no use to offenders, as they will only take people who have been able to register for housing, ie, those who have no arrears and those who don't have a questionable housing history. Specialist deposit schemes are very good and are highlighted in the report.

LHA/rent shortfalls. These are considerable in some parts of the country and will only get worse as some of the changes to LHA come into effect. Prospective tenants need to be aware of what their contribution to the rent will be and need to feel that they can realistically meet it if the tenancy is going to succeed.

Standards. Standards in the affordable end of the sector can be low. Clustering is also an issue in some areas. There is a private rented sector landlord in Birmingham who targets offenders who has filled quite a large bed & breakfast with ex-offenders, as well as nearby rented properties that he owns. This is causing all sorts of issues in the surrounding areas as the residents tend to gather together outside the properties to socialise and pass the time. There are apparently strong campaigns from other local residents to bring about change. It is hard to see how the cycle of offending will be broken here, as these ex-offenders are known as ex-offenders by virtue of where they live, and are spending all their time with other ex-offenders who are not in work or engaged in any other constructive activity.

Support. There are a number of examples in the report about the positive difference that ongoing support makes. Private sector accommodation plus floating support will often be the best option for offenders, some of whom are known to local supported housing projects and no longer accepted. The cuts in floating support obviously mean this equation may no longer be viable, but the point needs to be made that without support, a tenancy can quickly fail and, as a result, that landlord may eventually decide to avoid offenders altogether.

Issues for the under 25s (soon under 35s). Many landlords simply refuse to take under 25s. Where projects did work to place under 25s in the private rented sector, they reported that they had to work far harder to get anywhere and carry out a lot of negotiations, brokering etc. Individuals will often leave good quality accommodation because they don't want to meet the shortfall in rent and will move into cheaper, often poor quality accommodation in areas where they are more likely to be tempted into reoffending. Whether the change of age to 35 will ultimately help (as landlords may feel they are losing too big a chunk of their prospective market if they rule out all those under 35) or hinder remains to be seen of course.

Section 5

Mental health

Managing offenders with mental health problems

Offenders are amongst the most socially excluded groups in society. Tackling the health inequalities they face can have a significant impact both on reducing their reoffending and reducing their social exclusion. But the criminal justice system as currently configured is not best placed to meet the complexity and multiplicity of their needs. Nacro welcomes the government's approach which enables more offenders with mental health problems to be diverted into appropriate forms of assessment and treatment. The anticipated investment in national mental health liaison and diversion will help to:

- facilitate the early detection of people with mental health problems where there is a link with offending
- ensure they receive a speedy and appropriate assessment
- facilitate a multi-agency approach between local agencies
- improve practice across the system
- streamline referral processes into relevant forms of treatment and support
- engage relevant agencies working with offenders with mental health problems.

Studies demonstrate that liaison and diversion offer significant benefits by reducing the need for custodial remands;²⁰ reducing reoffending;²¹ increasing take-up and engagement of services;²² cutting down on delays,²³ and meeting the needs of victims.²⁴ That said, lessons from existing schemes demonstrate the importance of: strategic planning at the local level; knowledge and sharing of best practice; adequate resources in terms of frontline delivery staff; close integration with mainstream mental health services; and due regard to the needs of women, black and minority ethnic groups, and young and older people.

In view of all this, Nacro welcomes the government's commitment to rolling out liaison and diversion services on a national basis by 2014. This chimes with our work on this subject over the past 20 years which has led to reports and good practice guides including: *Liaison and Diversion for Mentally Disordered Offenders* (2006); *Liaison and Diversion for BME Service*

20 Exworthy T and Parrott J (1993) 'Evaluation of a diversion from custody scheme at magistrates' court' *Journal of Forensic Psychiatry*, 4:3, pp.497-505

21 James D (2000) 'Police station diversion schemes: role and efficacy in central London' *Journal of Forensic Psychiatry* 11:3 pp.532-555; and Staite C (1994) 'Diversion from custody for mentally disordered offenders' *Prison Service Journal*, 95, pp.42-45

22 Purchase N, McCallum A, Kennedy H (1996) 'Evaluation of psychiatric court liaison schemes in North London' *British Medical Journal*, 313, pp.531-532

23 Joseph P and Potter M (1993) 'Diversion from custody – 1: Psychiatric assessment at the magistrates' court' *British Journal of Psychiatry*, 162, pp.325-330

24 Laing J (1999) 'Diversion of mentally disordered offenders: victim and offender perspectives' *Criminal Law Review*, pp.805-819

Users (2009); a regular survey of the schemes operating in England and Wales; and a national directory of schemes.

Nacro believes that if liaison and diversion schemes are to be effective, they need to:

- result from a clear commissioning framework
- be located, where possible, within mainstream services and supported by strategic planning
- operate at multiple points of intervention along the offender healthcare pathway
- be staffed by multi-disciplinary teams with access to a variety of services and expertise including administrative support
- identify offenders via tried and tested methods of screening and assessment
- perform a range of functions including assessments, liaison and signposting
- meet the needs of all disadvantaged groups who may be further disadvantaged through their involvement in the criminal justice system and/or mental health system
- have clear and robust governance arrangements, including input from service users and disadvantaged groups
- be underpinned by jointly agreed protocols and service level agreements
- develop links and networks with a range of service providers to ensure appropriate and effective outcomes
- involve carefully worked out protocols for recording and monitoring.

Q19 How can we ensure that existing good practice can inform the programme of mental health liaison and diversion pilot projects for adults and young people?

Nacro's work in this field demonstrates a number of examples of good practice in respect of liaison and diversion. But in order to capture and disseminate the lessons from these, we must move to a systematic process of comparison of practice and outcomes achieved. In our view, any national roll-out of diversion and liaison must include detailed local mapping of current provision including:

- the aims, purpose and operation of existing schemes
- touch points in the criminal justice system
- resourcing and staffing
- protocols and service level agreements
- governance and commissioning arrangements
- outcomes relating to offender health and reduction of reoffending.

This should lead to guidance on best practice in respect of future design and operation of liaison and diversion practice at the local level and be disseminated to commissioners and senior managers in all relevant criminal justice, health and social care agencies. Practitioners need to be supported to deliver best practice through a professional support network which could be physical or virtual. We are aware that no accredited training package for new practitioners exists currently. Developing such a vehicle would both enhance capabilities and also disseminate good practice.

Q20 How can we best meet our ambition for a national roll-out of the mental health liaison and diversion service?

Nacro has previously argued that provision of liaison and diversion services should be rolled out on a national basis and that schemes should be working to a common set of governance arrangements and commissioned in a uniform way. And, as long ago as 2002, the Reed report recommended that:

‘There should be nationwide provision of properly resourced court assessment and diversion schemes...experience increasingly suggests that, where diversion schemes became established, these come to provide a broader multi-agency focus which, of itself, can make effective disposals easier.’

Schemes can and should be performing a range of functions across the entire criminal justice spectrum including: assessment; liaison; signposting; brief interventions; and more intensive group and one-to-one forms of treatment. Where these are in operation they provide an invaluable service. An inherent weakness, however, springs from the fact that, traditionally, schemes have emerged in an ad hoc fashion with either central funding, local funding (local authority/primary care trust or NHS trust funding), or simply from the efforts, goodwill and local resourcefulness of local professionals. The lack of a consistent commissioning base has been a constant source of weakness for these arrangements.

Nacro estimates that about a third of all magistrates courts are covered by liaison and diversion provision. Provision in police stations is even more sketchy. Notwithstanding the good practice of some high functioning schemes, there is a lack of comprehensive screening, funding arrangements are far from secure, reporting structures are not joined up and many schemes are tainted by poor succession planning, insufficient leadership, under-developed practitioner training and incoherent information management systems.

The national roll-out must ensure that existing gaps are addressed so that coverage is placed on a more universal footing and that the quality of existing schemes is raised to a consistent standard.

This will inevitably involve the following:

- Mapping and gap analysis of existing coverage.
- Development of a well resourced commissioning framework.
- Knowledge share and development plans to ensure a consistent standard of provision.
- The development of pathfinder or trailblazer projects to test new innovations against pre-determined outcomes.
- Establishing consistent standards for data sharing and governance.
- Cross-sector leadership.

We have already stressed the importance of a clear and coherent commissioning framework to avoid provision by postcode. Against this backdrop, it has not yet been made clear whether

the proposed National Commissioning Board will cover liaison and diversion schemes. It is of crucial importance that, in the run-up to devolving responsibility for commissioning health services to general practitioner consortia, the needs of sometimes forgotten groups like offenders with mental health problems are fully considered. The National Commissioning Board will have to ensure that offenders are catered for and provision for liaison and diversion schemes should be a part of this.

Finally, the contribution of the voluntary and community sector is important in any roll-out of liaison and diversion services. This will ensure that due regard is given to service user involvement, community engagement and local reach, flexibility and innovation, and that help is given to hard-to-reach groups.

Q21 How can we reshape services to provide more effective treatment for those offenders with severe forms of personality disorder?

In the past those with personality disorders were largely ignored and, therefore, poorly served by both the criminal justice system and by mental health services. This was due to the widely held view that those with personality disorders were untreatable. This led to a focus on managing symptoms and minimising risks to self and others. In any event, there was a distinct lack of dedicated service provision and a paucity of trained practitioners. In recent years we have noticed a shift in thinking, brought about by policy changes and a greater emphasis on treating personality disorders. A focus on service development meant that these patients had better access to specialist support services. This culminated in 2009 with the release by the Department of Health of guidance on commissioning for personality disorder services.

Some people with severe personality disorders are undoubtedly dangerous, and are capable of committing some of the most serious sexual and violent crimes. Many of these people are housed in dangerous and severe personality disorder units which have been developed across the secure estate. This is in recognition of the fact that some prisoners are untreatable and that the best that can be offered is long-term and sometimes lifelong containment by way of incarceration. Less severe personality disorders are more common and it is estimated that 73% of the male remand population, 64% of sentenced prisoners and 50% of female prisoners will have some form of personality disorder. Approximately half of those engaged with alcohol services have a personality disorder and this also applies to about a third of those in drug treatment services.²⁵

This calls for a range of approaches to meet the needs of different offenders with different forms of personality disorder. In view of this, there is a need to:

- draw on the available research to identify the most promising approaches with different offender types

²⁵ See www.dspprogramme.gov.uk/useful_information.html.

- move away from stereotypical ideas of what constitutes a personality disorder and ensure training and awareness raising among generic practitioners (eg, psychiatrists, offender managers and prison officers)
- use specialised and focused interventions as part of a dedicated service that also considers within its treatment options dual diagnosis and/or multiple complex needs in order to maximise positive outcomes
- create practice guidance to ensure improved practice in relation to early identification, assessment and timely referral and support
- ensure access to a range of specialised criminal justice/health services
- ensure a focus on specialised resettlement services with due regard to the unique role of the voluntary and community services
- adopt a commissioning framework which recognises the complexities involved in working with this offender group and creates an adequate balance between enforcement and treatment, acknowledging that services are likely to be both labour and resource intensive.

Section 6

Payment by results

Q22 Do you agree that the best way of commissioning payment by results for community sentences is to integrate it within a wider contract which includes ensuring the delivery of the sentence?

Nacro supports the notion of payment by results. It brings simplicity to an inherently complex world and puts a clear focus on outcomes. But, it would be inappropriate to ignore these complexities as we move to the detailed implementation of payment by results on a wide scale. In reality there is the in-built complexity of a sentencing framework, embodied in statute and predicated on four distinct principles for the community sentence, namely:

- punishment
- attitudinal and behavioural change
- control
- help for the offender

Whereas it is hoped that reduced reoffending will be the ultimate outcome when the court passes a community sentence on an offender, this is not the only purpose the sentence has in mind. The court's paramount concern is that the sentence will be applied as intended and the offender will comply. Therefore 'success' in the eyes of the court is measured in terms of how punitive the sentence may be, whether or not the offender complies, as well as the impact it has on offending behaviour going forward.

In the light of this, Nacro considers that the sentence and the associated interventions have to be delivered as one fully integrated process. The rehabilitative effect of the sentence has to be born out of the offender's success in fulfilling the primary contract with the court: complying with the statutory terms of the order and stopping offending in the future. Separating these items out leads to confusion on the part of the court, the offender and the public at large:

- The court order is the hook upon which to base the intervention in the first place.
- Success in one part of the order has to be mirrored by success in the other.
- Work which focuses on removing barriers to compliance is often equally relevant to removing barriers to building a crime-free lifestyle going forward.

Q23 What is the best way of reflecting the contribution of different providers within a payment-by-results approach for those offenders sentenced to custodial sentences and released on licence?

Nacro recognises that it is going to be difficult to ascertain what specific interventions, carried out by which providers, actually made the material difference to reductions in reoffending. As payment by results is rolled out on a larger scale, this becomes all the more complex and all the more challenging. But Nacro has long been calling for a move away from a preoccupation with who delivers the service and towards a greater focus on outcomes. This is what matters to victims, to communities and, ultimately, to the offender. It follows, therefore, that cross-sector collaboration and consortia is the way forward under payment by results and that seamless service offerings are put forward. The sharing of risk and/or any profit should be left to providers to determine according to their memoranda of understanding.

Q24 What is the best way of developing the market to ensure a diverse base of providers?

Payment by results is already attracting new providers and new combinations of providers to the market. Given time, and the emergence of more large volume opportunities, this trend will continue to grow. But at the moment we are in a period of transition. Charities are facing reductions brought about by public spending cuts, particularly at the local level, at the same time as they are having to gear up for larger-scale, higher-risk opportunities involving payment by results. Even then, beyond the announcement of the six pilots – some of which are still relatively small in scale – there is little indication that the new commissioning arrangements will be in place any time soon. This is challenging when it comes to long-term strategic planning.

What is required is decisive leadership from government, based on regular dialogue with the provider side – particularly in the charity sector – to determine the precise shape, scale and roll-out of the market. Moving too quickly will mean that some voluntary sector providers (and the unique contributions they could make) will be left behind. Moving too slowly will prevent organisations realising sufficient return on the investment they will have made in the new arrangements.

In addition, we would like to see a move away from long, prescriptive tender specifications and more autonomy for provider consortia to determine the best way of achieving the required reoffending outcomes in any given tender.

Q25 Do you agree that high-risk offenders and those who are less likely to reoffend should be excluded from the payment-by-results approach?

Nacro does not agree that any cohort of offenders should be automatically excluded from payment by results. From a victim and community perspective, there is even more reason

to ensure that the right outcomes are achieved with offenders who present the highest risk. That said, it is important that any new commissioning arrangements do not detract from the successes of existing multi-agency public protection panel arrangements.

Q26 What measurement method provides the best fit with the principles we have set out for payment by results?

Nacro agrees that the best measure of success relates to future convictions, police cautions or penalty notices. We also consider a period of two years is required before sustained success can be claimed. We would like to see a move towards realising more than one social outcome with the same set of interventions and would hope that this can be tested in current or future pilot arrangements.

Q27 What is the best option for measuring reoffending and success to support a payment-by-results approach?

Nacro understands the desire for keeping the arrangements as simple and straightforward as possible and this suggests the need for a binary measure: did the offender commit further crime or not? Indeed there can be no doubt that the ultimate aim must be that offenders stop offending. That said, Nacro knows that with some offenders the reality on the ground is very different. Progress is not necessarily a straight line and lapses do not always mean that the offender has returned to a life of crime. Very serious offending can be made less frequent. Very persistent offending can be made less frequent. Both of these intermediate measures are positive indicators towards the right direction of travel. There are also reliable tools at our disposal which allow for predicted versus actual reoffending by individuals and cohorts of offenders.

Section 7

Procurement and commissioning

Q29 What are the key reforms to standards and performance management arrangements that will ensure that prisons and probation have more freedom and professional discretion and are able to focus on the delivery of outcomes?

It is implicit throughout the government's proposals for reform that a focus on outcomes is key. Both prisons and probation have been driven by prescriptive processes for too long: this stifles innovation and limits flexibility. It can also reward perverse outcomes.

The key will be balance. Some centrally prescribed standards are necessary for the purposes of ensuring public protection and to ensure public confidence: for example, there need to be clear expectations around the breach of community sentences. Government needs to be clear that the incremental accretion of additional layers of central prescription does not guarantee better outcomes. Better outcomes flow from being clear with providers about expected outcome volumes and standards and rigorously holding providers to account for their delivery, using competition as a key lever to encourage better performance.

Q30 What are the key reforms to financial arrangements that will support prisons and probation in delivering outcomes at less cost?

Nacro believes that financial systems should act as an incentive to deliver effective outcomes and that money should be targeted where it makes the most difference. In practice, this means that we agree with payment-by-result mechanisms and think that these should apply across the public and private sectors, either through the types of contract let or by exposing under-performing providers to effective competition.

Q31 How do we involve smaller voluntary organisations as well as the larger national ones?

Commissioners need to ensure two things: that they get the outcomes they require and that they secure good value for money. In the case of the former, there is considerable evidence to demonstrate that well-tailored, locally responsive services work better in delivering positive reducing reoffending outcomes. Smaller, better connected voluntary organisations are often best placed to source, provide and link up individualised services. But it is not the commissioner's responsibility to search for these providers and to commission in detail the services required for offenders in a particular locality. It will be more cost-effective for commissioners to require prime contractors to demonstrate they have appropriate and effective supply chains in place to deliver services in detail as part of their overall offer. This will require prime contractors to demonstrate the knowledge and experience necessary to engage with smaller voluntary and community providers and to develop delivery arrangements which properly build on those local strengths.

Section 8

Sentencing

Q32 What are the best ways to simplify the sentencing framework?

Nacro supports the notion that victims should be at the heart of any sentence framework and that any reforms should aim to raise public confidence. This reflects the principles enshrined in the *Criminal Justice Act 1991* and subsequent reforms which have attempted to build public confidence, protect the public and take full account of the interests of victims in a cost-effective way. In line with this, there is a clear need for national consistency and a focus on getting offenders to stop offending. And for many offenders, this is not best achieved through custodial measures.

We are very aware of the high reconviction rates for young adult offenders given short prison sentences, and by re-engineering community sentences we believe there is much potential to work with these offenders in a different way. If configured in the right way and if reducing reoffending outcomes can be achieved, this could lead, over time, to less reliance on custodial disposals. We recognise, however, that this will have to be achieved on a large scale for it to make an appreciable difference to the prison population and the costs associated with it. We are also mindful of the fact that punishment does not sit easily with reparation, nor deterrence with rehabilitation, and that more emphasis needs to be given to the relationship between the sentencer and the effectiveness of the sentence.

It is not easy to resolve the tension between individualised bespoke sentencing and the prescriptive guidelines of the Sentencing Council, and history shows that prescription has meant an increase in the use of custody. This is an unintended consequence of the functioning of the Council but real enough in terms of risk when the thresholds are carefully scrutinised. We believe that the change to the guidelines which makes it mandatory for sentencers to follow the guidelines is a step too far.

In line with the response from the Criminal Justice Alliance, Nacro fully supports in principle the proposal to limit remand to those offenders who are likely to receive a custodial sentence, but believes that this could be difficult to administer in practice, given that the court is unlikely to have sufficient information at its disposal to determine this decision.

Nacro welcomes plans to reform the imprisonment for public protection (IPP) sentence by restricting its use to those whose offence deserves a determinate sentence of at least 10 years. The IPP sentence is a flawed sentence that has been vastly overused, and many IPP prisoners have served sentences well in excess of their tariff. We are also pleased to see proposals that should provide for the timely release of those who have already served sentences in excess of this tariff. We would additionally recommend that an impartial review be commissioned in the near future, to assess the use of IPP sentences by sentencers, their place within the sentencing framework and their long-term future.

Q33 What should be the requirements on the courts to explain the sentence?

In line with the above, in explaining the sentence, the sentencer should ensure the following:

- The offender properly understands and, in the case of a community sentence, is prepared to comply.
- The victim understands the punishment that has been applied and any reparation that is envisaged.
- The public can understand what is happening to punish the offender for the offence s/he committed.

In the case of the first audience (the offender), any explanation in court should be followed up by robust and consistent induction procedures applied at the start of any sentence. Nacro knows from its own research that lack of understanding of the terms of a licence is one of the main reasons for young offenders failing to comply.²⁶

In the case of the second audience (victims) they should have the opportunity to be informed as to the facts of the sentence imposed and the intended purpose of any rehabilitative elements of sentence. This could be done by way of a short written summary provided by the court.

Q34 How can we better explain sentencing to the public?

Any attempt to raise public confidence must start at the point of sentence. The more the public understand about sentences, the more accepting they are. For example, the majority of people, when it is explained to them, understand the logic of prison sentences being served part in custody and part in the community. But we must find more compelling ways of engaging with the public and explaining what happens when an offender goes to prison or is sentenced to a community order.

There is a need for much greater understanding of community orders and to articulate information about requirements so that the public has a fuller understanding of how offenders are both punished and rehabilitated. Equally, there is a need to inform the public about how prison sentences work. The confusion around prison sentences often lies in the lack of clarity around the fact that part of the sentence is served in the community and part in custody. Some sentences entail supervision post release, and again there is a need for better understanding about how this is delivered. There is a raft of (judicial and other) opinion that says that to try and explain the intricacies of a custodial sentence to the general public is just too difficult. However, anything other than present practice would represent an improvement.

Public opinion tends to be formed more on the basis of hearsay and impressions formed on the

²⁶ Ford J Nacro *young adults on release from custody: a study of reasons for breach of licence conditions* Unpublished. 2008

basis of the media – both factual and fictional – than on the basis of dry facts and, in particular, statistics. The public is also much less likely to express an opinion on those parts of the criminal justice system with which they are less familiar or feel less likely to have any dealings with. Hence, as British Crime Survey reports have shown over time, they are far more likely to express an opinion about the police than about any other criminal justice agency.

This would suggest that investing heavily in generalised public information campaigns about sentencing may have little effect. Rather, it may be important to consider developing a strategic, proactive approach to correcting the misleading impression which is given when individual but atypical cases hit the headlines. Such a strategy would need to have a local as well as a national dimension since the local media may be particularly influential in this context. One aspect to this might be a proactive approach by the courts to publicising the explanations given for sentences in specific cases.

Q35 How best can we increase understanding of prison sentences?

Our answer to this question is addressed above under Q34.

Q37 How can we make community sentencing most effective in preventing persistent offending?

Work by King's College provides useful data on how the community order and the suspended sentence order are used but also shows that there is a need for much more detailed exploration of how community sentences operate and what is most effective in preventing reoffending.²⁷ Their analysis revealed that: 'The predicted rate of reconviction for offenders serving court orders was 37.5%, which is 1.4% higher than the actual rate of 36.1%. This means that there was a 1.4% reduction in reconviction in 2006. This is only the second time since 2000 that there has been a reduction in the reconviction rates when comparing the actual rate with the predicted rate for a one-year period.'

The same report points to the fact that: 'There is very little evidence of innovation and some requirements have been used very rarely indeed – notably alcohol treatment, mental health treatment, prohibited activity, residence, exclusion and attendance centre requirements.'

It highlights the concerns of probation staff about the non-availability or restricted availability of unpaid work, the cancellation of one-to-one programmes, major problems and delays with domestic violence programmes, and the unavailability of drink-impaired driving programmes, substance abuse treatment, and community and internet sex offender requirements.

²⁷ King's College Centre for Crime and Justice Studies (2008) *Community Sentences Digest* London: Kings College

Nacro believes that until there is an improvement in the levels of availability of appropriate interventions and treatments and until the community is truly engaged, community orders will continue to fail to deliver their full potential in reducing reoffending. Consultation with sentencers shows that it is often a lack of appropriate community provision that inhibits effective use of the requirements attached to community orders, for example, lack of timely access to mental health treatment or alcohol treatment.

This gives much scope for improvement and innovation, which could be brought about by opening up the market to cross-sector collaboration predicated on payment by results. This has to provide cost-effective ways of providing the right combination of measures which: hold offenders in programmes; challenge attitudes and behaviour in both one-to-one and group settings; address barriers to housing and employment; tackle substance misuse; and improve relationships. Those organisations best placed to deliver these forms of support should be commissioned to do so and paid for the results they achieve. Services should be designed to specifically address the needs of marginalised groups, such as offenders from black, Asian and other minority ethnic groups, women and those with particular faith or cultural needs. Voluntary organisations have a unique and vital contribution to make, particularly in addressing the needs of hard-to-reach groups and maximising compliance.

Section 9

Community sentencing

Q39 How important is the ability to breach offenders for not attending treatment in tackling their drug, alcohol or mental health needs?

In our view, enforcing orders is an important facet of ensuring a successful outcome with community orders. Unless the right boundaries are established, the platform for the most challenging work cannot be set and in the long run neither the victim, nor the community nor the offender benefits. Providers must ensure, in conjunction with sentencers and commissioners, that the right systems, working practices and resources are in place to maximise compliance with the most challenging offenders who present the most complex needs. This will inevitably mean drug/alcohol-related offenders and those suffering mental health problems. But the answer is not to relax the rules around attendance. It is illogical to put the right interventions/treatments in place and then accept a situation whereby the offender does not have to attend.

Q40 What steps can we take to allow professionals greater discretion in managing offenders in the community, while enforcing compliance more effectively?

Professionals must be held to account for the defensible decisions they make in respect of enforcement. These decisions must be made in the context of a reliable and ongoing assessment of risk, need and compliance. This is the simple framework which should be applied, within which professional discretion should be allowed. It should be underpinned by explicit escalation and risk management processes, which all providers will need to have in place, and inter-agency protocols to ensure the public is protected from harm.

Q41 How might we target community sentences better so that they can help rehabilitate offenders before they reach custody?

There is a weight of evidence which enables a sophisticated and reliable assessment of risk, need and responsibility. This already enables different models and different combinations of intervention to be applied to different cohorts of offenders. However, programmes are not sufficiently integrated with the local community, and the probation service has found it difficult across the board to make sustainable improvements to rates of compliance. There is a window of opportunity, with new commissioning arrangements under payment by results to re-engineer community sentences so that they are more accessible and engaging to ordinary members of the public and to offenders with a renewed focus on attrition prevention and community engagement. There is huge scope to use new technology, including GPS and online forms of engagement to modernise the way in which we engage with offenders in an age which is dominated by websites and communication via social media.

Section 10

Young people

Q48 How can we simplify the out-of-court disposal framework for young people?

Nacro has been calling for a diversionary set of principles to be established, based on the United Nations Charter for the Rights of the Child (UNCRC) and related international guidance and rules. These will give prominence to the principles of avoiding criminalisation, informalism, voluntarism and intervening to the minimum level necessary. The *Children Act* principle of 'no order unless better than no order' should apply when public protection considerations allow. The rationale for this is that desistance from crime can be linked to maturation, social bonds and individual narratives. Desistance is a process rather than an event²⁸ and, according to research by Maruna and Farrall can take place in phases of primary desistance (achievement of an offence-free period) and secondary desistance (an underlying change in self-identity to the ex-offender).²⁹ According to McVie there are four facts that any youth justice system should take account of:³⁰

- Persistent serious offending is associated with victimisation and social adversity.
- Early identification of at-risk children is not a watertight process and may be iatrogenic.
- Critical moments in the early teenage years are key to pathways out of offending.
- Diversionary strategies facilitate the desistance process.

In cases where public protection is not a presenting issue, no further action should be allowed, with informal actions (including restorative activities) provided for. The warning could be replaced by a caution where appropriate. The caution is still the default common language used by judges, magistrates and others and is prominent in the adult system. The caution is understood by all despite the final warning having been pressed into use by the previous government and the Youth Justice Board for over a decade.

Decision making will always be finally undertaken by the police (helped by the CPS to a lesser extent than is the case currently). But the models that make use of a multi-agency or inter-agency team to assess, make recommendations and co-ordinate any restorative or other interventions or support services should be reviewed and put in place nationally. The models to consider include current ones (Swansea etc) as well as the (researched) model that featured in Northamptonshire, which was the stated model for multi-agency youth offending teams.

²⁸ Laub J and Sampson R (1993) 'Turning points in the life course: why change matters to the study of crime' *Criminology*, 31, pp.301-25

²⁹ Farrall S and Maruna S 'Desistance-focused criminal justice policy research' *Howard Journal of Criminal Justice*, 43, pp.358-367

³⁰ McAra L and McVie S 'Youth crime and justice: key messages from the Edinburgh Study of Youth Transitions and Crime' *Criminology and Criminal Justice*, 10(2), pp.179-209

The concept of 'two strikes and you're out' should be replaced by a system with flexibility at its core. This should include the potential for diversion for those who have previously been convicted in court. The process for diverting cases back from court following the start of formal proceedings should be improved considerably.

Family support work and parenting services in relation to out-of-court arrangements should be provided by mainstream or specialist non-criminal justice agencies rather than the youth offending team. In this context, youth inclusion and support panel type services should clearly be non-criminal agencies or be combined with mainstream, ECM-led integrated teams. Parenting services are critical but parenting orders should be reviewed with a view to being used in exceptional circumstances. Penalty notices for disorder should be reviewed with a view to abolition. On the other hand, compensation can play a part, even in informal diversionary actions.

Although young people have a right for criminal processes to be conducted without unnecessary delay, it can also sometimes be counter-productive and contrary to their best interests if they are conducted too fast and the quality of assessment and decision making is compromised.

Q49 How can we best use restorative justice approaches to prevent offending by young people and ensure they make amends?

Nacro supports the proposals to develop and expand restorative justice approaches. However, there is a need to define precisely what is meant by the term 'restorative justice' (RJ). We must be clear that RJ should be genuinely *restorative* and, whilst there is a place for reparative activities (or unpaid work), this should not be allowed to be a default, production-line response, or be mistaken for RJ. Whilst minimalist restorative actions, such as those suggested by the police, can be useful, we also need further investment in more comprehensive approaches where appropriate.

RJ approaches should be an integral part of youth justice practice. Confronting unacceptable behaviour and dealing with any problems associated with it has the potential to be restorative and is a means of helping young people to think about the impact of their actions on others. As RJ might feature more than once in a young person's passage through the diversionary and youth justice systems, it should be employed only where it is considered to be meaningful and necessary.

RJ can be at its most effective in response to serious and very serious offences and is not simply a response for low-level minor offending committed by young people. It can be used effectively to tackle much more serious offending in the adult criminal justice system. It should also be noted that RJ can be more effective with older or more mature young people than with very young and immature children.

The referral order in the court system should be used more flexibly, with the potential for it to be used regardless of previous sentencing history (eg, even where a custodial sentence has been used previously). It should only be used where it will not be disproportionate to the seriousness of the offending. The notion of the court having to approve the content of a negotiated contract should be

avoided – it is contrary to the underpinning principles of the panel system. However, safeguards against disproportionality and unfairness should be bolstered, including legal oversight.

The current guidance should be reviewed with less emphasis on traditional youth offending team interventions, less on reparation (unless meaningful and relevant) with more of an emphasis on restorative conferencing involving the family and friends of the offender, as far as is appropriate.

Nacro believes that RJ is a measure that has wider application outside of the youth justice system. It is one of the interventions that resonates powerfully with victims of crime and enables a process of healing to take place. Some offenders also find the experience a challenging but ultimately positive one, citing awareness of the impact of their crime on victims as being a particularly strong influence in desistance. However, victim-offender mediation and restorative conferencing is not a cheap option. Neither is it suitable in all cases. Expert, suitably qualified practitioners and effective multi-agency partnerships must be in place to ensure high-quality service provision. The voluntary sector can be an effective partner in RJ models, with a strong track record of achieving participation and engagement of both offender and victim.

Q50 How can we increase the effective enforcement of youth sentencing?

Overall, Nacro favours an approach that works to gain compliance, but safeguards must be in place to ensure that over-reliance on compliance panels does not become counter-productive, nor has the perverse outcome of increasing (as opposed to reducing) the number of breaches and detracting from professional discretion. That said, panels may provide some scope for the review of orders and revocation wherever possible. There is a place for panels and this should be at the point of complete failure to comply/at the start of breach proceedings.

Supervision/sentence plans should be clear on what elements are enforceable and which are not. This can be articulated through the deployment of primary and secondary contracts with the offender. The notion of breach being applied only where there is a failure to work towards the main achievable aims and objectives of supervision should be established, as opposed to breaching only for process points. Thus, difficulty in keeping to what can be complex diary and travel arrangements without positive adult support or in the face of domestic stress should be addressed via innovative and imaginative methods of attrition prevention. We know that voluntary and community sector organisations are particularly effective in engaging young people and that their ethos and methods of work can secure better outcomes. Attrition rates and improved levels of compliance will be achieved through the greater involvement of voluntary and community sector organisations in the delivery of services.

Q51 How can we succeed in reducing the need for custodial remand for young people?

The proposed single remand order is tentatively welcomed, but this is entirely dependent on the detail. For example, a single order based on a straight remand in custody would be regressive and inappropriate and contrary to children's rights.

All children and young people in custody (on remand or sentence in this context) should have some form of legal status that is based on safeguarding, meeting needs and promoting health and well-being. The inclusion of 17 year olds is welcome and in line with the UNCRC. It ends the anomaly of treating them as adults in remand legislation. However, there are resource implications, and youth offending teams and local authorities need to know how they will be expected to meet their obligations within the current climate of reductions in resources.

Nacro supports the proposal to amend the *Bail Act 1976* to remove the option of remand for a young person unlikely to receive a custodial sentence, so long as this can be supported by sufficient information being made available in court at an early enough stage.

With regard to the single remand order, more detail is required before an informed comment can be made. Nacro would be concerned to establish what the legal status of children and young people would be, to ensure there are appropriate safeguards for meeting the needs of young people subject to this order, and that there are also sufficient resources for this.

Finally, the use of secure accommodation under the *Children Act 1989* (s25) should be studied with a view to applying its principles and procedures in the criminal courts for remand purposes. In particular, the stress on the role of the local authority to fully assess the need for detention and to provide evidence of that to the court is our preferred new model.

The proposal to review detention for public protection is welcome. Our opinion is that such preventive and indeterminate sentences are not appropriate for children and are contrary to children's rights principles. They should be reviewed with a view to abolition. We also propose a careful review of the arrangements that deal more specifically with Schedule One offences/offenders with regard to children.

Q52 How do you think we can best incentivise partners to prevent youth offending?

A system of payment by results could be applied here but we are conscious that there is an issue about sufficient volumes to provide the economies of scale to develop a viable market for large-scale outsourcing. Nevertheless, co-commissioning within specific localities based on shared outcomes of reducing crime, the fear of crime and reoffending would inevitably need to take account of offences committed by young people. Nacro has been calling for reinvestment which shifts the balance of resources away from the secure estate towards targeted prevention activity with the most at-risk young people. Activity which steers young people away from gangs, violence, substance misuse and a balance of measures to address their involvement in antisocial behaviour, combined with targeted enforcement by the police, are important priorities despite shortages in public money.

Q53 How can we deliver a performance management and inspection regime that achieves our aim to reduce burdens and increase local accountability?

Nacro agrees with the proposal to bring the inspection of youth offending teams within arrangements for the inspection of mainstream children's services. The previous concerns set out above, lack of consistency and risk of rights' infringements are also applicable to youth offending teams.

Q54 What are some of the ways we might be able to further involve local communities in youth justice?

We agree in principle with the proposals in the Green Paper to build on the current involvement of local communities and local services. Notwithstanding the importance of simplicity inherent in binary measures of reduced reoffending, there needs to be recognition of the fact that rehabilitation with young offenders is not always straightforward, especially where they have complex needs. In other words, services and efforts must be persistent and be applied over time without the simple expectation that they will yield instant results. Thus, the focus might be on how levels of need are reduced, how protective factors are enhanced, how the frequency and seriousness of offending changes – rather than simply on whether offending has abruptly ceased.

Opportunities for local communities to engage with young people in the youth justice system can be provided through the greater involvement of voluntary and community sector organisations. Nacro is mindful of the fact that some small, local organisations may struggle to engage due to reductions in their funding, particularly in a payment-by-results environment. The development of consortia and partnerships at the local level must ensure adequate reach into communities and could organise themselves, but such bodies will require infrastructure support and the work traditionally carried out by these groups not being overlooked.

Opportunities for volunteering are critical to the success of community involvement. Again, the effective engagement of volunteers is highly dependent upon voluntary organisations having the capacity to recruit, train, support and manage volunteers, and to cover the costs of their involvement. Peer mentoring and various forms of peer support are valuable in reducing reoffending. However, the current arrangements for vetting and barring impact negatively on volunteering and Nacro welcomes the government's intention to reform these arrangements.

Q55 How can the functions of the Youth Justice Board best be delivered by the Ministry of Justice?

The proposal for the Ministry of Justice to oversee placements in custody and commissioning the secure estate is supported in principle – although any department/unit that is established would be better as a cross-departmental unit with the minister for children represented, along with other key ministers.

However, commissioning of the secure estate must be driven by children's rights and the promotion of their best interests, health and well-being. That must mean reinvesting any savings in the best quality small units. The first Youth Justice Board vision for the secure estate has never been realised and, in some respects, there has been a move away from it. That vision could be revisited along with research into comparisons of regimes and approaches.

Nacro believes that the Ministry of Justice should concentrate on reducing custody, since this is both the most effective way to reduce reoffending and is more costly than any other part of the system. Custody can be reduced very significantly, but not if the main focus is on the provision of 'robust community sentences' – although that certainly can contribute to reducing custody. The main gains will be made by encouraging localities to adopt the systemic approach that we advocate: from the arrest stages, through bail and remand, sentencing and enforcement, with an emphasis on professional discretion within a strategic framework, to attrition prevention.

Q56 What sort of offences and offenders should neighbourhood justice panels deal with and how could these panels complement existing criminal justice processes?

A system set up to recruit volunteers to neighbourhood justice panels should be set up in such a way that it effectively complements the existing system for recruiting to referral order panels.

The panels should deal with referrals involving young people who have admitted clearly to offences which lie between the most minor that do not require action and those that must be dealt with in court. However, it is preferable to respond more fully to the proposals in the context of consultation on new approaches for dealing with antisocial behaviour.

Q57 What are the other ways in which we can work effectively across government to increase local flexibility to tackle offending?

Nacro advocates adopting and implementing the proposals in *Healthy Children, Safer Communities* and recognising that it provides a blueprint for the whole youth justice system, not just for the provision of health services. We also recommend closer co-operation and collaboration between Westminster and the Welsh Assembly Government so that good practice and effective policy can be shared.

Q58 What more can be done to support family relationships in order to reduce reoffending and prevent inter-generational crime?

Nacro believes that the best way to work with families is in a voluntary capacity and on an individual rather than a group basis. Distinctions should also be made between parents that

engage and those who do not who are often part of the problem. This distinction suggests that there is no single method of working, but a variety of different approaches that should be orientated to individual circumstances and needs.

Work with troubled and troublesome families goes far beyond the remit for youth offending teams. Early intervention can be most effective in the early years. Family support work and parenting services should be provided by agencies that specialise in this field. Work with women should be carried out by gender-specific specialists to ensure that there is appropriate support for those experiencing domestic and sexual violence. Nacro believes that the existing network of women's community projects funded jointly by the Ministry of Justice and the Corston Coalition of Independent Funders and delivered by voluntary organisations should be sustained and commissioned to provide holistic family support services, working within multi-agency teams. Again, Nacro supports full implementation of the strategy in *Healthy Children, Safer Communities*.

Q59 What more can we do to engage people in the justice system, enable and promote volunteering, and make it more transparent and accountable to the public?

Many people are engaged in the justice system as volunteers – magistrates, lay inspectors, prison visitors, members of prison independent monitoring boards and trustees of voluntary organisations, to name but a few. Many more work as volunteer mentors or provide other forms of unpaid voluntary support to charities and statutory agencies working with offenders.

Nacro welcomes the proposed reforms to the vetting and barring scheme and to the *Rehabilitation of Offenders Act 1974*. Both reforms will ensure that barriers to volunteering are reduced.

The plans for elected local police and crime commissioners have yet to be spelt out in detail, but may provide further routes for involvement in the justice system at local level. Voluntary sector organisations (often through local second-tier infrastructure support organisations) are often represented within local community safety partnerships, but again it is unclear how these structures will develop in the future. There is a need for government to continue to consult with voluntary and community organisations to ensure that opportunities for volunteering are maintained which enable volunteers to play a central role in the system.