

## Submission to the Independent Sentencing Review 2024 to 2025

### Theme 1: History and trends in sentencing

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

Specifically considering offending related to substance use, some trends in sentencing have been unplanned, and the consequence of wider system issues. A key tool in addressing crimes related to substance use has been community-based sentences with a rehabilitation requirement – specifically Alcohol Treatment Requirements (ATRs) and Drug Rehabilitation Requirements (DRRs). These programmes are effective – addressing the underlying cause of people’s offending – and efficient – avoiding the cost of someone being kept in prison.

In order to apply these requirements, courts need confidence that effective treatment is available, and this is the appropriate intervention for that individual. This generally requires a comprehensive assessment of the individual’s needs, and a pre-sentence report to explain to the court how this arrangement will be effective and appropriate.

However, the accessibility of treatment was hit by funding cuts. Dame Carol Black’s independent review of drugs found that funding for treatment fell by 17% overall between 2014-15 and 2018-19.<sup>1</sup> These cuts meant that there were fewer staff, and they were more likely to be spread between different settings, so it could take longer to get an assessment for a client, as the assessor wouldn’t necessarily be able to be on site.

These resource challenges coincided with a period when there was pressure to speed up court decisions, meaning that magistrates were less likely to want to wait for an assessment. Facing these deadlines without the confidence of a client assessment and thorough pre-sentence report, clients that might have benefited from a DRR or ATR were often sent to prison.

A 2021 report by HM Inspectorate of Probation identified that use of Drug Rehabilitation Requirements (DRRs) had fallen sharply over the previous decade, from over 17,000 in 2008 to under 5,000 in 2020.<sup>2</sup> By pushing for quicker decisions at the same time as squeezing other parts of the system, this unintentionally changed sentencing practice.

Despite this issue being flagged in the previous government’s drugs strategy, numbers have not increased significantly as yet.

This means that people are likely either to be on community sentences without the most appropriate requirement to their support needs, or in prison on a short sentence, which provides a challenging

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<sup>1</sup> Available from <https://www.gov.uk/government/publications/review-of-drugs-phase-two-report/review-of-drugs-part-two-prevention-treatment-and-recovery>

<sup>2</sup> Available from <https://www.justiceinspectors.gov.uk/hmiprobation/inspections/drug-treatment/>



context to deliver effective support.

Treatment is most effective when there is a therapeutic alliance between client and staff, which is most likely when trust is built up through sustained, stable engagement. This is a challenge for someone on a short prison sentence, as they will have less time in a settled location, and prison itself poses challenges (as discussed elsewhere in this submission) that makes it deliver effective treatment, such as a lack of suitable spaces, and more time spent in cells rather than engaging in meaningful activity.

Moreover, even if there is the opportunity to undertake high-quality, effective work in prison, the sentence in itself makes the situation more challenging, given the importance of wider factors such as employment, housing and personal relationships in supporting recovery – and the fact that a custodial sentence can significantly disrupt all of these.

It is therefore not clear that this reduction in use of community-based sentences with support for substance use has helped delivery of the five key purposes of sentencing: punishment; the reduction of crime; reparation; rehabilitation; and public protection.

While short custodial sentences for people whose offending is linked to substance use may appear to deliver punishment and public protection, this is only temporary and superficial. Without evidence-based treatment delivered in an appropriate setting with wider support and opportunities, there will be little real rehabilitation, and therefore the purposes of reducing crime and protecting the public are also compromised.

## **Theme 2: Structures**

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

As noted in our response to the previous question, criminal justice interventions are most likely to be effective when there is a full assessment of people's needs and the factors that lie behind their offending, and then coordinated, evidence-based support. At present, it is not clear that pathways are working effectively, and there may be a lack of knowledge or trust in the options already available within the system.

Central leadership can improve awareness of different intervention options and help ensure that different parts of the system are all pulling in the same direction. Given sustained cuts in resource to substance use treatment and recovery, courts may have an understandable lack of confidence in their ability to assess people and deliver Drug Rehabilitation Requirements and Alcohol Treatment Requirements. They may also not be fully aware of the evidence and background to these alternatives to custody.

***Therefore we would recommend key leaders and agencies – including MoJ, HMPPS and HMCTS – ensure magistrates and those across the criminal justice system are aware of the option of DRRs and***

***ATRs, the availability of treatment, and the evidence for this intervention.***

Substance use treatment providers could be a key part of this work in building knowledge of substance use issues across the system, improving service delivery and referral pathways, and building confidence in the treatment offer already available.

The 2021 review of DRRs suggested that even where these interventions are recommended, there are people who miss out on the intervention, or there are issues with sharing information between probation and treatment services.<sup>3</sup>

***Therefore, we recommend system-wide monitoring of use of evidence-based interventions, bringing together datasets across relevant agencies, and a joint approach involving all key partners to drive up use and effectiveness of treatment requirements.***

Crucially, both recovery from substance use and reduced offending are shaped by wider factors, notably housing, employment and personal relationships. There is positive evidence that specific programmes to support people who use substances with wider elements of their lives – specifically employment – does work.<sup>4</sup>

***Therefore, we recommend that the Government ensures that criminal justice interventions (including treatment requirements) acknowledge and address wider factors related to offending.***

There are various models of working that we recommend the government explores and expands as part of this work, including problem-solving courts and multi-disciplinary team meetings. This will require leadership and ensuring sufficient resource is available for this work. It could include adopting what has been called a ‘holistic defence model’, as outlined by the Commons Law Community Interest Company.<sup>5</sup>

### **Theme 3: Technology**

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

There are real opportunities to use technology to improve continuity of care and supervision, as well as risk management across different locations and agencies. At present, it is not clear that all those who are identified as appropriate for a community sentence through an Alcohol Treatment Requirement (ATR) or Drug Rehabilitation Requirement (DRR) make it into treatment, or that where

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<sup>3</sup> See <https://www.justiceinspectorates.gov.uk/hmiprobation/inspections/drug-treatment/>

<sup>4</sup> Note the recent evaluation of the Individual Placement Support (IPS) scheme for people using alcohol or other drugs: <https://www.gov.uk/government/publications/helping-people-in-alcohol-and-drug-treatment-services-into-work/individual-placement-and-support-alcohol-and-drug-study-main-findings--2>

<sup>5</sup> See <https://static1.squarespace.com/static/63483bcefb00e48edb5f318/t/66e1736b2e12d86add3d5f9f/1726051179764/JUSTICE%2B+Report+12.9.24.pdf>

they do there is effective, timely communication and coordination of care and supervision.

Where people are engaged in support, improved data linkage and real time analysis may help predict future risk. There may be specific patterns of engagement or activity that tend to occur prior to relapse or offending, and therefore intensive support could be offered to individuals where such a pattern is identified in real time. Machine learning may be helpful in allowing analysis to identify and learn these patterns.

***We therefore recommend that the Government look at supporting research and practical steps to improve data linkage and analysis, with the proviso that this should include close work and communication with people with lived and living experience, to understand concerns and opportunities in relation to data sharing.***

Such work should be led at a local as well as a national level. While there is positive analysis and learning from central initiatives such as the Better Outcomes through Linked Data (BOLD) project, we would also highlight the data available to service providers and local organisations, and would call on the Government to actively encourage and support *local* analysis of this kind that can improve service delivery.

In considering future applications of technology, it is important to be outcome-focused and realistic. While there are some encouraging instances of the use of alcohol tagging, for example, there are major challenges with applying these more broadly to a wider cohort of offenders or group of offences, or to drugs other than alcohol. Government should also be cautious regarding unintended consequences.

Alcohol tagging seems to work best for offences such as drink driving, where the individual concerned has neither physical dependence on alcohol nor an alcohol use disorder. That is, the criminal justice system can have some confidence in their ability to control their alcohol use, and it is fair to place this expectation on the individual.<sup>6</sup>

Other patterns of substance use make tagging in this way less appropriate. Where someone is physiologically dependent on a substance, it is not appropriate or safe to expect an immediate or complete cessation of use. And where someone has a substance use disorder, it is not reasonable to expect immediate cessation of use; a more appropriate expectation would be for the individual to engage in support to understand and begin to reduce the harm associated with their use of substances. While monitoring substance use may be useful in these cases, this would be as an adjunct to talking therapies and other interventions to support wider behavioural change. Tagging should not be seen as an efficient, cheaper alternative to intensive person-centred support in these cases.

Moreover, there are two practical concerns.

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<sup>6</sup> See, for example: <https://journals.sagepub.com/doi/full/10.1177/0141076816682366>

First, there are technical limitations to tagging in terms of what substance use is detected. Testing for one drug – particularly alcohol – is straightforward, and the technology is well-established. However, substance use disorders can be characterised by a substitution effect, whereby one access to one substance is restricted, another substance or behaviour is accessed instead. In some cases, this substitution can in fact pose greater risks.

At present, technology allows for tagging to identify a specific selection of substances, but each requires a separate form of detection. Therefore tagging for any specific substance risks that individual switching to use another substance they are not currently being tested for – a substance which they may be less familiar with, and therefore they may be more exposed to risks in using it.

In the current environment, this can often mean switching use to fast-changing synthetic drugs. Testing technology and equipment cannot necessarily keep up with the changing nature and number of substances available, and so their use is not detected, but individuals are pushed towards substances that they – and medical professionals – know less about. This increases the risks to people’s own physical and mental health, without necessarily reducing their offending or risks to the wider public.

Second, there is the practical concern of what happens when use of a substance is detected. The evidence suggests that tagging is effective when there are swift and certain consequences associated with breaches – with one example given being a single night in custody.<sup>7</sup> If tagging is to be effective in reducing reoffending, there must be a swift and certain response, taking into account the pressures on the criminal justice system, and specifically prison capacity. It seems unlikely that in England and Wales today this could be a night in custody, and therefore an alternative would have to be developed.

At the same time, there may be opportunities to use tagging and other technology to provide further information to support monitoring, risk management and support as described above. There may be patterns of activity gathered through wearable technology that may help us provide more timely and tailored support, avoiding people reoffending or being recalled to prison, or otherwise putting themselves or others at risk.

***Therefore, while alcohol tagging may be an effective intervention for a specific cohort of people, we encourage Government to take a practical, questioning approach to other forms of tagging – whether monitoring substance use or location – to ensure this is likely to genuinely reduce risk to offenders and the wider public, without unintended consequences.***

#### **Theme 4: Community sentences**

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

For people with a substance use disorder, the most effective action that can be taken to reduce the

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<sup>7</sup> See <https://www.jstor.org/stable/24590898>

issues related to their use of alcohol or other drugs – including their offending behaviour – is structured support or treatment. This offer can generally be more comprehensive and effective in the community rather than prison.

For people who are already engaged in treatment, a prison sentence – even if relatively short – can disrupt their treatment and progress, and can have a negative impact on their engagement with other support services and their wider social and economic situation, for example in relation to housing and employment. All this serves to make it harder to achieve and sustain recovery, which in turn increases the chances of wider issues such as re-offending.

***Therefore where an accurate and proportionate assessment of risk allows, we recommend that the default should be for people whose offending is linked to their use of substances to be treated in the community rather than placed in prison.***

These issues can particularly challenging for women, especially those with families.

***We therefore recommend specifically promoting community sentences for women, especially those with families.***

This would be to build on the new sentencing guidelines from April 2024 that give mitigation on sentencing for expecting mothers and those with who've given birth in the previous 12 months.<sup>8</sup> Given the impact on the family - and with an appropriate balance of risks – it would be good to see this extended to pre-school age children.

In terms of action that can be taken in the community, fines are unlikely to be an effective or efficient intervention for many people whose offending is linked to substance use.

First, many are likely to lack the funds, partly as a result of the destructive effects of their substance use.

Second, if fines are intended as a deterrent to that individual or others, this is dependent on a rational choice model of behaviour. By definition, someone with a substance use disorder is not making rational decisions: they are continuing with their substance use despite negative consequences for themselves and others. Therefore adding another negative consequence is highly unlikely to prompt a change in their behaviour; this requires structured interventions.

In assessing the most appropriate form of community support, it is possible that this need not involve the court. As noted elsewhere in this submission, the key to effective use of interventions such as Alcohol Treatment Requirements (ATRs) or Drug Rehabilitation Requirements (DRRs) is a timely comprehensive assessment of the client, and the development of an effective care plan. Neither of these elements require the involvement of the court so much as a probation officer and treatment

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<sup>8</sup> See <https://www.sentencingcouncil.org.uk/news/item/sentencing-pregnant-women-and-new-mothers/>

professional.

Recent evidence suggests that there are opportunities to make effective use of existing mechanisms such as Integrated Offender Management as a partnership between different criminal justice and wider support agencies, to help reduce reoffending.<sup>9</sup>

***Therefore, we recommend that options for expanded use of out of court interventions are explored further for people whose offending is linked to their use of alcohol or other drugs.***

In guiding delivery of DRRs, ATRs and other community interventions, there is a need to balance consistency and a tailored offer. It could be helpful for professionals, and more efficient for commissioners and service providers if there was a centrally-agreed pathway and specification. This should be developed through dialogue with the sector, and allow tailoring of support for individuals' specific strengths and circumstances.

In delivering these interventions, more use could be made of technology for virtual consultations and treatment. Given the importance of an intensive offer, enabling virtual interaction can increase the frequency of contact and the ability of people to access other resources including mutual aid and peer support.

***We therefore recommend that guidance and definitions of treatment permit and encourage accessing virtual support, and ensure that people who might wish to access support have access to appropriate technology to enable this.***

In some senses, one of the most effective 'innovations' would be to reflect on the existing evidence base and provide more holistic support that seeks to address the underlying factors that can support reductions in reoffending.

We know that people are less likely to commit crime when their accommodation, personal relationships and employment are safe, stable and rewarding. This cannot be captured by a narrow focus on risk factors -including substance use.

We already have strong evidence on programmes that are effective in addressing these issues, for example the recent evaluation of Individual Placement and Support (IPS) for people with substance use issues, which found the programme was effective in helping people with alcohol dependence and 'other drug' dependence find a job, and it was cost-effective for improving quality of life.<sup>10</sup>

***Therefore we recommend that community sentences should be asset-based and actively seek to***

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<sup>9</sup> See, for example, <https://www.gov.uk/government/publications/integrated-offender-management-process-evaluation-report>

<sup>10</sup> Available from <https://www.gov.uk/government/publications/helping-people-in-alcohol-and-drug-treatment-services-into-work/individual-placement-and-support-alcohol-and-drug-study-main-findings--2>

*ensure that offenders receive a wide range of support taking account of the context of their whole lives.*

## **Theme 5: Custodial sentences**

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

For substance use treatment in prison to work, there needs to be sufficient resource, suitable space and leadership for the agenda. Treatment is also more effective where there is a sustained period of engagement between staff and client, to enable a trusting relationship to be built up, given the importance of the therapeutic alliance to effective outcomes.

*Therefore we recommend that for people where substance use has played a role in their offending behaviour, they are given the opportunity to engage in a stable, well-equipped and prioritised treatment programme. The support offer in prison and people's pathway through different institutions could be deliberately designed to ensure this stability.*

The most effective treatment takes place where there are settings with focused, intensive support and a critical mass of motivated individuals to allow for effective peer support. There should also be space and facilities for wider interventions to allow for meaningful activity, such as gardening or physical exercise. These factors are in place in the most effective Drug Recovery Wings and Incentivised Substance Free Living (ISFL) units.

To create this offer requires senior leadership and prioritisation, and the space and resource to deliver effective programmes. At present, this is highly variable between different prisons, and in some cases substance use has only been prioritised after related issues have reached crisis point.

*We therefore recommend that Government provides central leadership to ensure the prioritisation and appropriate resourcing of substance use treatment and associated support within prisons.*

The way that support for substance use issues is commissioned in prison can result in a de-prioritisation of the aim of reducing reoffending. Substance use treatment is included as part of wider general healthcare contracts, commissioned through NHS England, and is generally sub-contracted from a broader healthcare provider to a specialist service provider which then has limited contact with the commissioner.

This narrow focus is at odds with both the type of work being done and the outcomes it delivers. Substance use issues are likely to be shaped by wider factors including prior trauma, wider mental health, and social and economic issues such as employment and housing. Effective treatment must therefore take a similarly broad approach, looking at the whole context of a person's life, and results in prison will partly depend on wider support such as access to purposeful activity.

Moreover, the delivery of substance use treatment in prisons has a function wider than healthcare; it



is crucial to the objectives of reducing drug use in prisons, and of reducing reoffending. But these objectives are not currently given high priority in the commissioning of substance use treatment services in prisons. Where key performance indicators have been set out for these services, they focus on healthcare process measures rather than changes in behaviour or reducing reoffending.<sup>11</sup>

***We therefore recommend that substance use treatment in prison is directly commissioned as a dedicated service, and overseen with a specific focus on reducing reoffending and wider wellbeing and social functioning.***

Unfortunately, for those who arrive in prison without problems related to substance use, there is currently too great a risk that they then develop an issue while in prison. This is in large part a pragmatic response by prisoners to the situation they find themselves in: intoxication is a swift and effective way to avoid boredom and fear. In the longer-term the use of these substances can lead to dependency and substance use disorder, which can produce a vicious cycle of further harmful substance use.

However, we know that meaningful activity and therapeutic support are effective in reducing the use of substances for this purpose, and so this should be prioritised in considering the future use of sentencing, to ensure it leaves people better equipped to lead happy, productive lives in the community, rather than leaving them facing greater challenges.

***We recommend that activity to reduce the use of alcohol and other drugs in prisons prioritises the provision of alternative activities to provide structure and address boredom and fear.***

## **Theme 6: Progression of custodial sentences**

**How should we reform the way offenders progress through their custodial sentences to ensure we are delivering justice and improving outcomes for offenders, victims, and communities?**

‘Substance use disorders’ are defined by an individual being unable to control their use of a substance despite harmful consequences. As Dame Carol Black’s independent review of drugs stated, ‘addiction is a chronic health condition’ and requires sustained support and repeated follow up, in recognition of the ‘fundamental relapsing and remitting nature of the condition’.<sup>12</sup>

These principles should be applied to support for people whose offending is linked to substance use. That is, a return to substance use and offending should be understood as characteristic of the relapsing and remitting nature of their condition.

The appropriate response, rather than being punitive, should be to enhance and intensify the support

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<sup>11</sup> See <https://www.gov.uk/government/publications/public-health-commissioning-in-the-nhs-2024-to-2025/nhs-public-health-functions-agreement-2024-to-2025#key-performance-indicators>

<sup>12</sup> See <https://www.gov.uk/government/publications/review-of-drugs-phase-two-report/review-of-drugs-part-two-prevention-treatment-and-recovery>

for this underlying condition and address the root cause of their offending. It is not clear that a recall to prison is the most effective response.

***We therefore recommend that there is specific guidance, training and support for all relevant professionals involved in sentencing and supervision to ensure an appropriate, informed response to lapses in offending behaviour and substance use.***

The whole approach to a person's journey through the criminal justice system could be simplified to be more effective and efficient and deliver improved outcomes for all involved in the process.

Other organisations, including our members, have written about this in more detail from their specific perspective in their responses to this consultation. The key is that there should be consistent support throughout someone's journey, which requires: continuity in goals and support planning; information sharing; and access to wider support, including links with family and other supportive networks. This can be supported by Government through coordinating contracts and specifications, including in relation to data systems and recording requirements for providers.

## **Theme 7: Individual needs of victims and offenders**

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

While services and support are often designed around specific elements of people's lives, or challenges they face, people's experiences – and these factors themselves – are generally intertwined. Issues with substance use, for example, are generally not best understood or treated as simply relating to that substance. Instead, they are likely to be shaped by wider factors including prior trauma, wider mental health, and social and economic factors such as employment and housing. These factors interact and can be mutually reinforcing, and therefore trying to address each of them in isolation is unlikely to be effective or efficient.

***We therefore recommend that the approach to sentencing, and supporting people to reduce their offending, should look at the whole context of a person's life, and seek to integrate and coordinate support across what might otherwise be seen as different domains or services – such as mental health and substance use.***

This principle should shape sentencing across the system, and all agencies involved should seek to improve coordination across different support services. This will require specific leadership from central government through guidance, service design, and encouraging coordination of support.

While some guidance on positive approaches for particular groups of people could be helpful – and we note some points in relation to women in the criminal justice system above – we would emphasise the importance of acknowledging an individual's circumstances and needs, as some broad categories can obscure the particular context of individuals' lives.