

DUNDEE CITY COUNCIL

REPORT TO: SOCIAL WORK AND HEALTH COMMITTEE – 24 AUGUST 2015

REPORT ON: COMMUNITY JUSTICE (SCOTLAND) BILL CONSULTATION – RESPONSE TO CONSULTATION

REPORT BY: HEAD OF SERVICE STRATEGY, INTEGRATION, PERFORMANCE & SUPPORT SERVICES

REPORT NO: 286-2015

1.0 PURPOSE OF REPORT

1.1 Previous reports on the Scottish Government consultation on re-designing the community justice system were approved by Committee in March 2013 (reference is made to Article V1 of the minute of the meeting of Policy and Resources Committee held on 11th March 2013 where report 106-2013 was submitted in relation to Re-designing the Community Justice System: A Consultation on Proposals) and in June 2014 (reference is made to Article II of the minute of the meeting of the Social Work and Health Committee held on 23rd June 2014 where report 259-2014 was submitted in relation to Re-designing the Community Justice System: A Consultation on Proposals). The Scottish Government has now introduced the Community Justice (Scotland) Bill and is seeking further views. This report advises the Committee of the content of the response which was required to be submitted to the Scottish Government by 12th August 2015.

2.0 RECOMMENDATIONS

- 2.1 It is recommended that the Social Work and Health Committee:
- 2.1.1 Note the detail of the Community Justice (Scotland) Bill and the implications for the Tayside Community Justice Authority (CJA) and a defined set of local community justice partners as outlined in paragraph 4.3 of this report;
- 2.1.2 Note the Head of Strategy, Integration, Performance and Support Services response to the Bill, appended to this report, which reflects strengths in earlier proposals and includes some areas which require further consideration;
- 2.1.3 Instruct the Head of Service Strategy, Integration, Performance and Support Services to continue to work with the Tayside Community Justice Authority, Community Planning Partnership and key statutory and third sector partners to facilitate the transition to new arrangements.

3.0 FINANCIAL IMPLICATIONS

- 3.1 Responsibilities for strategic planning will transfer from CJAs to a new national body and a defined set of local community justice partners, an initial £50,000 per year has been made available to local authorities to support the transition up to 2018 however the longer term funding arrangements are not yet known.
- 3.2 The Bill proposes that the new national body, Community Justice Scotland, will have responsibility for commissioning some national services and further work will be required in relation to the interface with locally commissioned services.

4.0 MAIN TEXT

- 4.1 The Community Justice (Scotland) Bill follows the Scottish Government consultation on re-designing the community justice system. It was informed by recommendations made by both the Commission on Women Offenders and Audit Scotland reports on the operation of the criminal justice system, which concluded that there was an overly cluttered national landscape involving numerous agencies delivering variable services in different areas, lack of transparency, limited focus on outcomes and complex funding arrangements which impacted on sustainability.
- 4.2 The Bill has also been informed by subsequent consultation, which initially proposed one of 3 models involving a national, regional or local approach towards the management, commissioning and delivery of services to adults who commit offences. The outcome combines national and local, whereby a new body, Community Justice Scotland, would have responsibilities to 'provide national, professional and strategic leadership; provide assurances to Ministers and COSLA through oversight of performance; and to run a national hub for innovation, learning and development'.
- 4.3 The Bill confirms that CJAs will be abolished and their responsibilities transferred to the national body and a defined set of local community justice partners. These partners will include local authorities, NHS Boards, Chief Constable of Police Service Scotland, Scottish Fire and Rescue Service, Health and Social Care Integration Joint Boards, Skills Development Scotland, Scottish Courts and Tribunals Service and Scottish Ministers in their role as the Scottish Prison Service. It notes that the new body will collaborate with these partners in the development of a national strategy and performance framework. The Bill states these partners will have statutory responsibilities to cascade these at a local level and provide annual progress reports. Clearly, a number of these partners are also formally represented on Community Planning Partnerships. The Bill notes that the Government intends to enact the new legislation, establish the new national body, develop the strategic plan and performance framework and transfer responsibilities to the defined set of partners by 2017.
- 4.4 To date, the Social Work and Health Committee has supported the general principles, aims and objectives outlined in the consultation. In general, the Bill reflects both the national and local position on how issues identified by the Commission and Audit Scotland could be resolved. The response argues that the Bill would be strengthened if a number of areas were given further consideration specifically around governance, accountabilities and interfaces in relation to Chief Social Work Officer roles and responsibilities and bodies such as the Care Inspectorate.
- 4.5 The Bill notes that the defined set of local partners will have a 'duty to co-operate' with the development and implementation of strategic plans. The response argues that for the "duty to co-operate" to be effective, a performance framework will require to be established so that agencies are aware of what this new duty entails.
- 4.6 It is also suggested that the approach would be strengthened if the definition of community justice was broadened to include areas focused on prevention such as diversion from prosecution which would also ensure the Crown Office Procurator Fiscal Service (COPFS) was included as a community justice partner.
- 4.7 Locally, community justice partners continue to work collaboratively in response to the proposed new arrangements. The £50,000 additional funding being made available up to 2018 will be used to create a Senior Officer post to work in partnership with key agencies, lead on the preparation of a local multi-agency strategic plan to reduce re-offending, prepare related annual reports and carry out an extensive audit of levels and types of demand to inform priorities and longer-term resource allocation within and between the partners. A key part of this will involve ongoing liaison with the CJA.

5 **POLICY IMPLICATIONS**

This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management.

There is an Equality Impact Assessment attached to this report.

6.0 CONSULTATIONS

The Chief Executive, Executive Director of Corporate Services and Head of Democratic and Legal Services were consulted in the preparation of this report.

7.0 BACKGROUND PAPERS

7.1 The Community Justice (Scotland) Bill 2015 can be found on the Scottish Government website.

Laura Bannerman
Head of Service Strategy, Integration,
Performance & Support Services

DATE: 7 August 2015

Community Justice (Scotland) Bill

Response from Laura Bannerman, Head of Strategy, Integration, Performance and Support Services, Dundee City Council

- 1. Will the proposals in the Bill transform the community justice system in the way envisaged by the Commission on Women Offenders in its 2012 report, such as addressing the weaknesses identified in the current model, tackling re-offending and reducing the prison population?**

The Commission on Women Offenders said weaknesses in the current model involved structural and funding arrangements. It said there was a fragmented national landscape with numerous agencies delivering variable services in different geographical areas, short-term funding which impacted upon the sustainability of even effective services and a limited focus on outcomes. An Audit Scotland report on the criminal justice system similarly commented on an overly complex landscape, inadequate performance monitoring and a weak approach towards best value. It appears clear that both these reports have informed the Government response in ultimately developing the new Community Justice (Scotland) Bill and progressing various related projects as part of the Reducing Re-offending Programme 2. In our view, proposals in the Bill should go some way to help to simplify the landscape and generate consistent, evidence based, outcome focused, transparent and improvement orientated multi-agency approaches towards reducing re-offending. However, it is also our view that this is dependant upon a number of contingencies and that the Bill could even introduce a range of new issues which, if not resolved, could prove even more problematic.

As such, the effectiveness of the Bill will depend upon strong leadership within both the new body of Community Justice Scotland and the defined set of community justice partners which is applied equally to all agencies to promote a collective approach; absolute clarity on the roles, responsibilities and accountabilities of the new body and local community planning partners; guidance on best practice which reflects an appropriate organisational development model; a new multi-agency performance framework which targets resources towards key priorities known to reflect research on what works; sufficient multi-agency funding to meet types and levels of demand; and robust self-evaluation and external inspection. At the very least, the strategy, performance framework and funding arrangements would need to be addressed and resolved either as part of or running in parallel with the Bill, so partners can make informed comments on both the principles and the practical implications of the proposed duty to cooperate and ways this will be monitored. As these works streams do not appear to have reached the same stage of development, this may involve extending the timetable.

In respect of the extent to which the Bill addresses issues outlined by the Commission and Audit Scotland, it also seems unlikely that it will directly influence sentencing decisions in its current format. As we share views that judicial discretion should not be compromised, the proposed new strategy and performance framework should therefore drive improved

approaches towards the involvement of and communication with the Sheriffs Court. Equally, the continued roll out of initiatives focusing on the needs of particular groups which commit a disproportionate amount of crime and/or experience high remand or custody rates, such as women, persistent offenders and repeat short-term prisoners, is also necessary and should be encouraged as part of the strategy and performance framework. This appears to be an ultimate intention of the Bill with leadership discharged by the new body and community justice partners. However, more detail at this stage on the strategy and performance framework would help inform comments on the extent to which they could be implemented and whether or not it would make a difference to current weaknesses.

2. Are you content that the definition of ‘community justice’ in the Bill is appropriate?

No, the definition appears to be too restrictive. Instead of focusing just on sentence disposals and the management of offenders, it should encompass the criminal justice system as a whole, from arrest to sentence. Within this, the definition of community justice could be widened to include the principles, aims and objectives outlined in summary justice reforms. In this respect, it is essential that, building on research on what works to reduce re-offending, the definition includes reference to the right agency doing the right things at the right time with the right person based on levels of risk and need. In this context, there is also a significant gap in the list of proposed community justice partners, which does not at present include the Crown Office Procurator Fiscal Service. The involvement of COPFS in such schemes as Early and Effective Intervention, Diversion from Prosecution and Fiscal Work Orders is essential. The involvement of COPFS has also been shown to be effective in identifying and intervening proportionately with persistent offenders appearing in Court.

3. Will the proposals for a new national body (Community Justice Scotland) lead to improvements in areas such as leadership, oversight, identification of best practice and commissioning of services?

The proposed new body is welcome in terms of its proposed functions to provide national, professional and strategic leadership; to provide assurance to Ministers and COSLA through oversight of performance; and to run a national hub for innovation, learning and development. The appropriate development of a new national strategy and performance framework will be particularly important and must reflect the vision of collective, multi-agency responsibility to contribute towards reductions in re-offending. In order to be embraced and implemented at a local level, both the strategy and performance framework must be developed collaboratively with partners. Once they have been developed and are being implemented, centralised oversight, benchmarking, knowledge exchange and support should promote continuous improvement within and between agencies and areas. In our view, this type of collaborative and flexible leadership, rather than a hierarchical type of approach, will offer more scope for innovation in the longer-term.

However, there continues to be some ambiguity in the roles, responsibilities and accountabilities of the new body and partners. The Bill states, for instance, that ‘partners will not be accountable to Community Justice Scotland for operational delivery’ and ‘local

authorities will be accountable through their own locally established structures'. Yet it goes on to state that Community Justice Scotland will 'have powers to direct community justice partners to publish Community Justice Scotland's assessment of its performance; to notify it of actions they will take to deliver improvements; and to make recommendations to Ministers on rescue taskforces, how funding is used and requirements for local inspections'. Contrary to the recommendations of the Commission on Women Offenders, these do not appear to be 'clear lines of governance'. It is understood that assurances had been given that within the parameters of the new, mutually agreed national strategy and performance framework, the new body would provide collaborative support.

Similarly, in terms of governance, the Bill does not make reference to the roles and responsibilities of Chief Social Work Officers under the Social Work (Scotland) Act 1968. The overall objective of the CSWO is to ensure the provision of effective, professional advice and guidance to local authorities, elected members and officers, in the delivery of Social Work services. The CSWO assists the local authority in understanding the complexities of Social Work service provision and commissioning, including particular issues such as corporate parenting, child protection, adult protection, the management of high risk offenders and the role Social Work plays in contributing towards national and local outcomes. They have responsibility for overall performance improvement and the identification and management of corporate risk in so far as these relate to Social Work services. It would be helpful if the Bill could reiterate that these roles will be safeguarded and even promoted in any new arrangement. In terms of oversight and scrutiny of Social Work services, it would also be helpful if the Bill could clarify the relationship of the new body with the Care Inspectorate.

The principle of managing, delivering and commissioning services in accordance with research on effective practice, local demographics and best value is again welcome. However, the Bill appears to give the impression that there will be an open market for the delivery of all services which similarly ignores existing statutory responsibilities and current local arrangements. In this respect, the Bill could helpfully make reference to duties placed on local authorities, again under the Social Work (Scotland) Act 1968, to deliver certain services to offenders in the criminal justice system. These responsibilities are discharged by Social Work and may or may not already involve Social Work commissioning services at a local level to meet their obligations. It follows that the Bill could provide more detail on the powers available to the new body to commission national services and the processes it would be required to follow, in terms of which services could be commissioned, the extent to which the new body would need to consult and the circumstances in which partners could opt out of proposed arrangements.

4. Taking into account the reforms set out in the Community Empowerment (Scotland) Bill relating to Community Planning Partnerships, will Community Justice Partners have the powers, duties and structures required to effectively perform their proposed role in relation to community justice?

The Community Empowerment (Scotland) Bill makes provisions to allow Ministers to determine national outcomes, requires bodies to consult on and participate in local

community planning, to involve communities, to review and report on progress and to comply with guidance. It therefore reflects the Community Justice (Scotland) Bill, which includes the same provisions but with a specific focus on community justice. This is helpful as it reinforces the importance of all stakeholders developing a collective and shared approach towards the development of inter-dependant services. However, whilst this approach is broadly welcome, it is essential that the Community Empowerment partners are wholly consistent with Community Justice partners; that new national outcomes are consistent with those in community justice; that partners are consulted on the details of any new national outcomes, performance framework and guidance; that in terms of governance the relationship between any new national body and local partners is absolutely clear; that local partners retain discretion over local structures; and that local partners also retain a reasonable degree of discretion over the commissioning of services to meet outcomes.

5. Does the Bill achieve the right balance between national and local responsibility?

No, there are apparent ambiguities and contradictions which could lead to significant tensions between national and local bodies and undermine arrangements unless resolved.

6. Will the proposed reforms support improvement in terms of:

- a) **Leadership, strategic direction and planning?** Yes, supported by legislative requirements, the new body will be well placed to collaboratively develop a new national vision, strategy, plan and performance framework for community justice partners operating at national and local levels. A requirement to report on local arrangements will promote transparency and continuous improvement. However, this is clearly dependant upon the suitability of the national framework.
- b) **Consultation and accountability?** Yes, in the sense of the new body being required to consult with partners on the development of the vision, strategy, plan and performance framework and of those partners being accountable to local Elected Members. However, ambiguous national and local governance arrangements are a key issue which needs to be resolved. The Bill should include an explicit statement which removes any sense of uncertainty in this respect.
- c) **Partnership and collaboration?** Yes, at a national and local level both the Community Empowerment and Community Justice Bills clearly promote partnership working between Government, local partners and local communities. However, there appears to be a risk of this being undermined if the ambiguities in respect of governance arrangements remain. It is also crucial that the new performance framework is realistic and that sufficient funding is provided to meet demands.
- d) **Commissioning of services and achieving best value for money?** No, at present proposed arrangements for the commissioning of services, in terms of the type of services which could be commissioned and the decision making processes on opting in and out of national arrangements, appear too vague. There must also be an

approach towards best value which reflects the nature of services being delivered to often hard to reach client groups with complex needs, as well as impact and cost.

7. Are the resources, as set out in the Financial Memorandum, sufficient to transform the community justice system in the way envisaged by the Commission on Women Offenders in its 2012 report?

The Summary of Costs outlined in Table A appear sufficient to establish and run Community Justice Scotland, develop the new strategy and performance framework and support the transition from Community Justice Authorities to Community Planning Partnerships up to 2017-18. The annual running costs of the new body appear to reflect the overall cost of the 8 CJAs. The extent to which this will reflect best value seems to be at least partially dependant upon the points raised in this response.

However, beyond 2017-18, the Bill does not provide any illustration of additional costs for partners associated with the planning and reporting on community justice. Moreover, the Bill does not provide any detail on the proposed new performance framework, including any resource implications. Overall, it lacks clarity on the long-term funding arrangements for the management, commissioning and delivery of community justice, including the issue of short-term funding. It therefore seems to fail to address key issues identified by the Commission.

8. Is the timetable for moving to the new arrangements by 1 April 2017 achievable?

No, whilst it is clearly important to maintain forward momentum, the timetable seems too ambitious to allow the issues upon which the success of the Bill is dependant to be adequately addressed. Crucially, these include a wider definition of community justice; absolute clarity on national and local governance arrangements and accountabilities, including the role of the CSWO; more detail on the proposed new performance framework and its resource implications; and more detail on overall funding formulas and allocations.

9. Could the proposals in the Bill be improved and, if so, how?

It would appear that there is now an opportunity for the Scottish Government to unequivocally outline national and local governance arrangements and consult with community justice partners on crucial details which are presently missing from the Bill. Whilst the Bill goes some way towards addressing the issues outlined by both the Commission on Women Offenders and Audit Scotland, the absence of these details makes it very difficult to comment on the full extent to which the identified issues will be resolved.

EQUALITY IMPACT ASSESSMENT TOOL

Part 1: Description/Consultation

Is this a Rapid Equality Impact Assessment (RIAT)?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Is this a Full Equality Impact Assessment (EQIA)?		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Date of Assessment: (dd/mm/yyyy)	Committee Report Number:	286-2015	
Title of document being assessed:	Committee Report -Community Justice (Scotland) Bill 2015		
1. This is a new policy, procedure, strategy or practice being assessed (If Yes please check box) <input type="checkbox"/>	This is an existing policy, procedure, strategy or practice being assessed? (If Yes please check box) <input type="checkbox"/>		
2. Please give a brief description of the policy, procedure, strategy or practice being assessed.	Following recommendations by the Commission on Women Offenders, the Bill reflects the outcome of Scottish Government consultations on re-designing the community justice system.		
3. What is the intended outcome of this policy, procedure, strategy or practice?	To promote a nationally consistent and locally accountable approach to the management, commissioning and delivery of services to adult offenders.		
4. Please list any existing documents which have been used to inform this Equality and Diversity Impact Assessment.	Community Justice (Scotland) Bill 2015		
5. Has any consultation, involvement or research with protected characteristic communities informed this assessment? If Yes please give details.	No		
6. Please give details of council officer involvement in this assessment. (e.g. names of officers consulted, dates of meetings etc)	Glyn Lloyd		
7. Is there a need to collect further evidence or to involve or consult protected characteristics communities on the impact of the proposed policy? (Example: if the impact on a community is not known what will you do to gather the information needed and when will you do this?)	No		

Part 2: Protected Characteristics

Which protected characteristics communities will be positively or negatively affected by this policy, procedure or strategy?

NB Please place an X in the box which best describes the “overall” impact. It is possible for an assessment to identify that a positive policy can have some negative impacts and visa versa. When this is the case please identify both positive and negative impacts in Part 3 of this form.

If the impact on a protected characteristic communities are not known please state how you will gather evidence of any potential negative impacts in box Part 1 section 7 above.

	Positively	Negatively	No Impact	Not Known
Ethnic Minority Communities including Gypsies and Travellers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gender	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gender Reassignment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Religion or Belief	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
People with a disability	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Age	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lesbian, Gay and Bisexual	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Socio-economic	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy & Maternity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please state)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Part 3: Impacts/Monitoring

<p>1. Have any positive impacts been identified?</p> <p>(We must ensure at this stage that we are not achieving equality for one strand of equality at the expense of another)</p>	<p>Yes – the Bill is intended to promote improved outcomes for all communities, including both offenders and victims of crime.</p>
<p>2. Have any negative impacts been identified?</p> <p>(Based on direct knowledge, published research, community involvement, customer feedback etc. If unsure seek advice from your departmental Equality Champion.)</p>	<p>No</p>
<p>3. What action is proposed to overcome any negative impacts?</p> <p>(e.g. involving community groups in the development or delivery of the policy or practice, providing information in community languages etc. See Good Practice on DCC equalities web page)</p>	<p>N/a</p>
<p>4. Is there a justification for continuing with this policy even if it cannot be amended or changed to end or reduce inequality without compromising its intended outcome?</p> <p>(If the policy that shows actual or potential unlawful discrimination you must stop and seek legal advice)</p>	<p>N/a</p>
<p>5. Has a 'Full' Equality Impact Assessment been recommended?</p> <p>(If the policy is a major one or is likely to have a major impact on protected characteristics communities a Full Equality Impact Assessment may be required. Seek advice from your departmental Equality lead.)</p>	<p>No</p>
<p>6. How will the policy be monitored?</p> <p>(How will you know it is doing what it is intended to do? e.g. data collection, customer survey etc.)</p>	<p>The Bill will place a duty to cooperate on all relevant agencies with the development and implementation of a strategic plan to reduce re-offending. This will be monitored through a new performance framework and publication of an annual report.</p>

Part 4: Contact Information

Name of Department or Partnership:	
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Type of Document	
Human Resource Policy	<input type="checkbox"/>
General Policy	<input type="checkbox"/>
Strategy/Service	<input type="checkbox"/>
Change Papers/Local Procedure	<input checked="" type="checkbox"/>
Guidelines and Protocols	<input type="checkbox"/>
Other	<input type="checkbox"/>

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Signature of author of the policy:	Glyn Lloyd	Date: dd/mm/yyyy)	30/07/15
Signature of Director/Head of Service:	Laura Bannerman	Date: dd/mm/yyyy)	30/07/15
Name of Director/Head of Service:	Laura Bannerman		
Date of Next Policy Review: (dd/mm/yyyy)	Annually		