

Breaking the Cycle: a consultation response from the Mental Health and Criminal Justice Third Sector Forum

Introduction

The Mental Health and Criminal Justice Third Sector Forum is a group of leading mental health and criminal justice organisations, all of whom have the shared aim of improving the lives and opportunities for rehabilitation of people involved in the criminal justice system. The Forum has a particular focus to work together and share best practice and ideas, to support better mental health and emotional well-being for these people, whose offending behaviour is often linked to a wide range of problems, and who come to the criminal justice system with high levels of social exclusion and deprivation.

The views presented here are submitted on behalf of the Mental Health and Criminal Justice Third Sector Forum. Contributions were received from members including Action for Prisoners' Families, Centre for Mental Health, Hafal, mcch, Nacro, the Prison Reform Trust, Race on the Agenda (ROTA), the Revolving Doors Agency, Together and Turning Point. It is also supported by Mind, Rethink and YoungMinds. Some Forum members have also submitted separate responses on behalf of their organisations.

Overall comments

Members of the Third Sector Forum warmly welcome the Green Paper and its far-reaching proposals. Our response focuses on key issues relating to mental health and presents views on the consultation questions where we have a particular contribution to make.

The Forum warmly welcomes the Government's commitment to make available diversion services to all police stations and courts in England by 2015. Diversion should consider the full range of a person's needs, including learning disability and substance use, as well as mental health problems and it should be a fundamental building block of the Government's reforms to the justice system, and not a separate activity.

The Forum notes that an improved response to the mental health and related needs of offenders would have a significant impact on the overall efficiency and effectiveness of the criminal justice system. Mental ill health and complex need are the norm, not the exception, among offenders. So responding to mental health needs should be fundamental to the whole of the reform process.

The Forum believes that there is much potential to draw services together to support offenders with multiple needs. The creation of health and wellbeing boards, Public Health England and GP commissioning consortia could help to bring together efforts towards prevention, diversion and rehabilitation. Payment by Results systems need to be sensitive to these opportunities and avoid the risk of militating against them.

The Forum believes that more consideration needs to be given to the specific experiences of people from Black and minority ethnic communities. People from many BME communities are over-represented in both criminal justice and mental health services, especially in custodial settings and in use of the Mental Health Act.

Responses to consultation questions

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

The way in which people with mental health problems in the criminal justice system are supported should depend on local service composition and individual need. To date, no one agency or

individual has been responsible for ensuring that key elements are in place for short term offenders.

Current reforms in health and policing are establishing mechanisms that provide opportunities for this local responsibility and accountability to be established. Directors of Public Health and Police and Crime Commissioners will all have responsibilities for the health, safety and wellbeing of their communities, including offenders and those at risk of offending. The Government should mandate these public figures to consider the health and support needs of offenders, and to recognise their key role in ensuring good quality support exists in local communities, both during and after offenders' contact with the criminal justice system.

Directors of Public Health, NHS commissioning consortia, Police and Crime Commissioners and criminal justice commissioners should have a statutory duty to work together to address these issues, and be held to account for the provision of appropriate support.

Q9. *How can we incentivise and support the growth of Integrated Offender Management approaches?*

Forum members broadly support the growth of integrated offender management. Too many people in the criminal justice system continue to receive inadequate support for the breadth of their needs. Creating joined-up systems of accountability is key. Different systems of payment by results are emerging in a range of public services and these need to be brought together to ensure a range of services all work towards common goals and do not leave some groups or individuals outside their sphere of interest simply because they do not fit with their incentive structures.

Health services are crucial to the success of integrated offender management. The police, courts and probation services have all expressed concern about the commitment of NHS commissioners to supporting offenders' health. The new NHS commissioning system presents an opportunity to put this right by building in from the beginning a requirement on commissioning consortia, the Commissioning Board, Public Health England and Health and Wellbeing Boards to cooperate with criminal justice agencies, and vice versa.

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

The importance of the voluntary and community sector is recognised in this Green Paper. The crucial role played by the voluntary and community sector in the criminal justice system is clear. This is now a professionalised sector that provides many public services in a compassionate, flexible and responsive way. One aspect of that provision is the use of volunteers which some Forum members find is not valued as much as it could be. This issue needs to be addressed if the voluntary and community sector in general are to be able to play a full and effective part in the criminal justice system.

The Black and minority ethnic (BME) voluntary sector plays a unique and vital role in reducing reoffending and addressing inequalities in relation to mental health and criminal justice which must be better supported through Breaking the Cycle.

BME voluntary organisations have a unique value in working with and having positive and long-term impacts on a significant group that are at risk of reoffending or offending that other organisations would find difficult to reach. This value is often not fully recognised or costed within models such as Payment by Results. Additionally, the way such models are developed can create barriers to the engagement of BME VCS organisations (many, but not all of which, are shared with other small VCS organisations). The role of the BME VCS to address discrimination at the stage of diversion in particular is a largely untapped potential.

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

Payment by results offers opportunities for improved joint working and innovation. However there are real challenges in making payment by results work for people with multiple and complex problems. The Government should work closely with local agencies and service users to work through these challenges and establish payment by results mechanisms that are truly effective.

The Forum recognises that the Government is committed to rolling out the use of payment by results approaches across a range of sectors. This provides a number of opportunities and risks for people with multiple needs in contact with the criminal justice system.

The approach has the potential to improve joint working across agencies through the identification of shared outcomes. There are also opportunities for innovation and improved user involvement. However, there are also real challenges in making payment by results work for hard to reach groups with complex and multiple problems. Basing payment by results mechanisms on single, simple metrics such as reduced reoffending will lead to missed opportunities to bring together local partners to most effectively provide the key elements of support outlined above. We urge the Government to work closely with service users and local agencies to establish on which metrics payment by results mechanisms should be based.

The Government should consider a wide range of outcomes that meet the needs of national Government, local agencies, communities and individual service users. These may not always be compatible so careful planning is needed. These outcomes may also manifest themselves at different rates, making the case for a system of combined outcome and activity based payments.

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

Holistic, personalised support is essential in order to effectively address the multiple needs of offenders and reduce reoffending. This should be facilitated by a lead professional or agency, and supported by joint working between agencies. There should be a continuity of support between prison and the community, and after offender supervision ends.

As identified in the green paper many of the most prolific offenders have "multiple problems" including poor mental health, drug and alcohol problems, and/or homelessness. These issues are interlinked and mutually-reinforcing. It is essential that they are addressed holistically. The nature, extent and triggers of these problems vary hugely between individuals and a personalised approach is essential for rehabilitation to be effective. One size does not fit all.

The need to address a wide range of issues means that one agency cannot, and should not, be expected to be expert in all areas. Joint working is therefore essential. In addition to understanding between agencies of referral criteria and mechanisms and good communication, experience has shown that a lead professional or agency acting as a broker between services is a highly effective way of ensuring this coordinated support. The importance of having 'someone on your side' cannot be underestimated as a crucial element of successful support and rehabilitation.

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

Breaking the Cycle acknowledges the links between mental health and offending for adult female offending which is gender-specific but it must make an ongoing commitment to working in a gender-specific way, including with girls in the youth justice system.

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

There are examples of employers who work directly with prisons and probation services to take on people with a history of offending and mental ill health. These include the Timpson's Academy in HMP Wandsworth and the Forestry Commission's link with HMP Dartmoor. These employers offer industry-standard training and support in-work with the option of employing people when they leave prison.

The role of prisons and probation service should not be to provide sheltered work or training but to attract local employers to work with prisoners and offenders. They can appeal to employers' business and CSR objectives and facilitate recruitment and ongoing support to offenders and employers alike once they have taken a person on.

By taking on the Individual Placement and Support approach that has been used extensively with people with mental health problems and those with learning disabilities outside the justice system, many more former offenders could be supported into paid employment.

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?*

There are many examples of good practice in diversion, with over 100 schemes in operation across the country working in a variety of ways with different levels of funding and support. Few, however, offer the level of coverage that a fully functioning diversion service has the potential to provide. While existing good practice examples can therefore provide the nuclei for pilot and demonstration sites for a national roll-out, it is vital that the aim is to achieve an 'all stages' approach that enables people to be diverted at any point in their journey through the justice system to forms of support that are responsive and effective.

Arrangements for diversion must also include provision for those with learning disabilities. A large proportion of offenders have a mix of both mental health and learning difficulties while children in custody also have high levels of speech and communication difficulty.

The development of a commissioning template will be important to ensure that quality standards are set out for all localities. Diversion schemes require a minimum level of quality and coverage to offer good value for money. Many existing schemes fall below the threshold for a good quality service and we need to learn from this in the national roll-out process.

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

The extension of diversion to cover all police stations and courts in England is both very welcome and long overdue. It should be carried out with every effort made to evaluate the impact of diversion on the individuals concerned (and their families and communities) and the service models that achieve the best value for money in practice. This should be used to form a set of quality standards for diversion, applicable nationally, to guide all areas to create effective and cost-effective arrangements in their localities. These quality standards should include specific provision for children and young people as well as for women, for Black and minority ethnic communities and for people with learning difficulties and disabilities.

Liaison and diversion should be delivered by highly skilled professionals who have good working relationships and referral pathways into voluntary sector support. Each scheme should have a named lead, responsible and accountable for local delivery.

It is unclear in the Green Paper how liaison and diversion services would work alongside criminal justice investigations and how information regarding mental vulnerability would be acted upon through subsequent court appearances. Currently mentally vulnerable detained persons are afforded the safeguarding of an Appropriate Adult, but this provision ceases at police disposal and does not continue into court.

Secure family relationships play an important part in regaining and maintaining mental health and in managing on-going mental problems and so can help in preventing offending, sentence planning and rehabilitation.

The role of housing and housing support in achieving diversion should also be explored. Reducing the use of custody means that housing and homelessness services will have a vital role to play in diverting people with mental health difficulties to safe accommodation and keeping them out of prison. Homelessness, mental ill health and offending are closely inter-linked and responses to any of these risks need to be integrated, for example through the use of community or place-based budgets. Recent reductions to Supporting People budgets in many local authority areas are putting housing support at risk, particularly for offenders whose needs transcend traditional public service siloes.

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

Services for prisoners with personality disorder should be offered to all those with such a diagnosis, not just those that are most severe. Current provision is limited to those given the label of 'severe and dangerous personality disorder' yet two-thirds of prisoners have some form of personality disorder many of whom would benefit from diversion, treatment and support. One quarter of women prisoners, for example, have borderline personality disorder, a condition that makes being in custody especially traumatic. Reinvesting funding from the DSPD pilots to a broader range of responses to personality disorder among the offender population would help a larger number of people and provide better value for money.

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

It is vital that payment by results systems do not reinforce the siloes that already exist between sectors and services. For a majority of offenders, rehabilitation will encompass not just reducing reoffending but supporting them into employment, improving their mental health and tackling drug or alcohol misuse. Parallel PBR systems for different service sectors will incentivise silo working.

Q35. *How best can we increase understanding of prison sentences?*

The Forum welcomes the proposed changes to remand. Fewer adults and young people in custody awaiting trial will result in fewer families being separated by imprisonment and will give families time to make arrangements if a custodial sentence becomes likely. Judges and magistrates need more training to boost their understanding of the mental health impact of remand. Prison should not be used as a means of getting treatment to people who come before the courts and where possible other options that avoid the use of custody should be sought.

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

The Green Paper makes no reference to the Home Office Community Justice Court Pilot Scheme. A pilot site in Wales (Merthyr Tydfil) is running a very proactive service in which Hafal's Criminal Justice Link Officers participate on a weekly basis, providing support, advice and signposting to offenders with mental illness. This model could be a solid foundation on which to build interventions into the offender pathway and would lend itself to integration with developing liaison

and diversion services. Through this schemes, agency representatives meet with magistrates, prosecutors and defence solicitors prior to court sessions in order to identify those offenders who would benefit from a community based sentence and additional support is then provided by the relevant agencies.

Q38. Would a generic health treatment community order requirement add value in increasing the numbers of offenders being successfully treated?

A generic health care requirement has the potential to offer many more offenders an alternative to imprisonment and overcome some of the barriers to the existing mental health and alcohol treatment requirements. We support greater flexibility around community orders to allow providers to have more room to tailor the intervention to the offender and the creation of a more generic "health treatment requirement". An individualised approach is crucial for people and families with mental health, drug and/or alcohol problems who often have multiple needs.

It is vital that the courts can divert offenders with mental health problems to community orders with the assurance that health services will be there to support them. We in principle support the proposal for a more flexible approach to assessment when giving a mental health treatment requirement (MHTR). However, one of the current problems with the MHTR is that sentencers, probation staff and health professionals lack knowledge about the MHTR and when it can be used. Increased flexibility could enhance this uncertainty unless there is practical guidance for criminal justice and health professionals on how to construct and manage MHTRs.

Any conditions for treatment must also be compatible with the Human Rights Act 1998 in that they should follow the principle of the least restrictive course of action in proportion with the crime. If treatment orders are used too frequently, this has the potential to push people 'up tariff' in that the next step following a breach is seen to be custody. The mental health treatment requirement, for example, should be targeted at those with the highest level of need and risk or the weakest motivation for change.

Liaison and diversion services should be involved in the MHTR to ensure timely assessments and to inform sentencing recommendations.

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

It is crucial that offenders are first assessed carefully for speech and communication problems. These impairments have been noted to run at around 60% among youth offending populations and NAPO completed a similar survey last year with adult offenders revealing similar results. These speech impairments have been noted to increase the risk of breaches of orders. Simple changes in communication by professionals and by criminal justice workers can help improve understanding. Breach is important as a last resort where there is a need to boundary behaviour (for example with some people with personality disorders or conduct problems) or if there has been persistent non compliance. However, if the overall context within which the breach occurs is general improvement and progress, then the professional should have the flexibility to take no action. There is an ethical difficulty in simplistically breaching someone for behaviours which are the result of their illness

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

The focus of community sentences must be on engaging offenders in evidence based interventions. There should also be a public health response to crime with a focus on early intervention at every stage and every opportunity across the criminal justice system. There must be holistic screening of need and multi-agency ownership of improved longer term outcomes.

Models of provision should facilitate building assets and addressing multiple needs, and recognise that many needs will not only span different agencies but also children and adult services.

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

The Children's Commission recently completed a review of mental health provision in the youth justice system (yet to be published), to which ROTA was on the advisory panel. This identified the importance of the physical environment on young people's mental health, particularly within the secure estate. Questions arose over the size of prison units that hold young people with recommendations that large units had a negative impact on the mental health of children in custody as it reduced their ability to feel safe and secure. Breaking the Cycle must address this.

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

Helping to reduce demand on the criminal justice system is very much dependent on partnership working. The idea of the Local Incentive Scheme is a positive step in the right direction but there is the opportunity for further engagement with the community to ensure the resources and knowledge of the local area is used to structure the most effective services.

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

Young people have specific mental health needs, and the provision of mental health services for young people are different to that of older people. The Youth Justice Board will be abolished and Breaking the Cycle doesn't state if or how it intends to keep some separation between youth justice provision and wider criminal justice provision within the MoJ and as such risks losing this specialism.

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

There is a need for greater consideration of the experiences of Black, Asian and minority ethnic people (BME) with mental health issues in Breaking the Cycle.

Consecutive research studies and data monitoring show that BME groups, and particularly Black people, are disproportionately represented in both the mental health and criminal justice systems. Insufficient progress and effort has been made to address this disproportionality in recent years and Breaking the Cycle risks becoming another missed opportunity.

The high numbers of BME people coming into criminal justice settings, coupled with the discrimination they are likely to face once they are there results in the criminal justice system acting as a gateway to the mental health system for many BME people.

BME people are also overrepresented in admission rates into mental health care. The 2009 Census by the Care Quality Commission found that 22 per cent of all patients were from BME groups. The rates of individuals subject to the Mental Health Act were higher than average for black Caribbean, black African, other black and white/black Caribbean mixed and other white groups. BME people are more likely than white people to take more coercive pathways into mental health services by means of higher compulsory admission rates to hospital, greater involvement in legal and forensic settings and higher rates of transfer to medium and high security facilities.

Studies into criminal justice decision making have shown that professionals more readily associate BME defendants with a sense of danger. This is reflected in the decisions they make. A study into the operation of the civil sections of the Mental Health Act 1983 found that police officers are prone to associating BME people with risk factors with the result that BME people are more likely

to be detained by police under Section 136 of the MHA. A 2008 study by the Independent Police Complaints Commission on the use of Section 136 found that the rate of detention for BME people was almost twice as high as that for white people.

The rates of people from other black and black Caribbean groups detained under Section 37/41 has remained higher than average for the last five years. Black patients have been found to be almost twice as likely to be referred for treatment via the courts.

Prison, in particular, acts as a common point of referral to mental health services for BME people, with BME prisoners more likely than their white counterparts to be referred from prison establishments to psychiatric units.

Once within the mental health system the evidence is that BME patients' experiences are more negative than their white counterparts. BME patients are more likely to experience physical seclusion and restraint than their white counterparts.

Foreign national offenders often have mental health needs which go beyond, and are different from, those experienced by the general offender population (and indeed indigenous BME groups) and which can be exacerbated by other factors that render them more vulnerable than other offenders/defendants.

Consecutive reports have found that the foreign national prisoner experience is extremely challenging and debilitating, whilst the trajectory for self-inflicted deaths amongst foreign national prisoners, which was generally declining from 2002 to 2005, has been rising since 2006.

It is crucial that health, criminal justice and social care agencies explore and find ways of working with BME communities to identify solutions at national, regional and local levels. Breaking the Cycle must include measures to ensure this happens.

The Bradley Review stipulated that diversion schemes should consider the ways in which they can meet the needs of particular groups. This stipulation must be further developed in Breaking the Cycle for example through robust impact assessments, stakeholder engagement and further exploration of a 'Count me in' census equivalent for the offender pathway and prisons in particular.

Contact details

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