



**Ministry of Justice consultation, Swift and Sure Justice:
The Government's Plans for Reform of the Criminal Justice System
A response from the Prison Reform Trust's
Care not Custody programme**

The Prison Reform Trust, established in 1981, is a registered charity that works to create a just, humane and effective penal system. The Prison Reform Trust aims to improve prison regimes and conditions, defend and promote prisoners' human rights, address the needs of prisoners' families, and promote alternatives to custody. Our activities include applied research, advice and information, education, parliamentary lobbying and the provision of the secretariat to the all party parliamentary penal affairs group.

The *Care not Custody* programme, which is led by the Prison Reform Trust and chaired by Lord Bradley, is concerned with the effective recognition, treatment and support of offenders with mental health problems, learning disabilities and other learning, developmental and behavioural disorders¹, and this response reflects that concern. Those areas of direct relevance to the *Care not Custody* programme have been responded to.

Introduction

The Prison Reform Trust welcomes moves to increase efficiency and accountability across the criminal justice system. However, we are concerned that vulnerable suspects, defendants and offenders might be discriminated against should the pursuit of swift justice be made at the expense of sure justice. The Prison Reform Trust wants to ensure that the support needs of vulnerable individuals are properly recognised and met throughout the criminal justice process.

The commitment, by government, for liaison and diversion services to be available in every police custody suite and court in England by 2014 should help in ensuring that individual support needs are recognised and met. For example, liaison and diversion services will assist criminal justice staff in recognising and meeting support needs from the point of arrest, during court proceedings and in helping to ensure the most appropriate disposal – including, for some individuals, diversion away from criminal justice.

The high numbers of people with mental health problems, learning disabilities and other learning, developmental and behavioural disorders who offend is well documented. However, many of these disabilities and impairments are 'hidden', that is, they are not immediately obvious to criminal justice and to many healthcare staff.

¹ Referred to in this response as 'vulnerable'.

To help break the cycle of reoffending for these individuals, robust screening and, where appropriate, assessment procedures are necessary to help safeguard against discriminatory practice and to ensure the most appropriate disposal. While such procedures will inevitably take time the benefit of an appropriate disposal, for example, adapted offending behaviour and drug treatment programmes and mental health treatment and care, provides the best opportunity to help reduce reoffending, so saving on both the personal and financial costs of crime.

1. Identifying and meeting support needs

Screening and, where appropriate, assessment to identify and respond to individual support needs is the first step in ensuring 'sure' justice. Evidence shows that the particular support needs of people with learning disabilities are frequently neither recognised nor met within the criminal justice process (Talbot, 2008). In 2008, the Joint Committee on Human Rights raised concerns about the right of people with learning disabilities to a fair trial (Article 6, ECHR), and '*serious failings in the criminal justice system, which gives rise to the discriminatory treatment of people with learning disabilities*' (paragraph 12, March 2008).

Effective screening and, where appropriate, assessment procedures undertaken by liaison and diversion services at the point of arrest will safeguard against discriminatory practice and help to ensure that proper support is put in place. Information yielded from screening and assessment procedures will further help to ensure:

- adherence to the Police and Criminal Evidence Act, for example, by calling for an Appropriate Adult for suspects who are 'mentally disordered or otherwise mentally vulnerable' – the absence of which might mean that evidence from a vulnerable suspect is inadmissible in court
- that the necessary special measures and/or reasonable adjustments are put in place in court, which, in turn will help to ensure the defendants effective participation in court proceedings and their right to a fair trial
- the most appropriate disposal from the court, that is, a sentence that takes into account the particular support needs of the offender and relevant treatment options and adapted programmes to help reduce reoffending
- that alleged offenders, including those who are vulnerable, are held to account.

Once screening/assessment has been undertaken by liaison and diversion services, information should be presented in a timely fashion and in a way that is helpful to criminal justice staff and members of the judiciary. Information sharing protocols and effective information technology will be necessary.

The responsibility placed on liaison and diversion services to ensure this first step on the road to swift and sure justice is significant. However, services will only succeed with multi-agency cooperation from the police, courts, probation, healthcare and local authorities.

Audit activity and outcomes from existing liaison and diversion services, currently being undertaken by the Offender Health Research Network at Manchester University, will further inform the development of, and evidence base for, future services.

2. Vulnerable defendants in the criminal courts

For a detailed commentary on vulnerable defendants in the criminal courts, see [‘Fair Access to Justice?’](#) (Talbot, 2012), a short briefing paper from the Prison Reform Trust, which forms an integral part of this consultation response.

The use of special measure and reasonable adjustments in court can be used to make proceedings both more effective and efficient.

Video links in criminal proceedings (paragraphs 151-153) provide opportunities to reduce long travel times between prison and court, which is welcomed. However, careful management of the video link procedure is required, especially for individuals who have difficulties with communication and comprehension, such as people with learning disabilities and those on the autistic spectrum. Safeguarding procedures should be developed alongside these proposals, which should include:

- the requirement for screening and, where appropriate, assessment of all individuals taking part in a video link (this should have already been undertaken by liaison and diversion services while the individual was in police custody)
- based on the results of the screening and assessment procedure, the provision of relevant support before (to ensure understanding) and during (to assist with communication) the video link
- a signed undertaking by the individual that he/she understands that the video link is an integral part of the criminal proceedings they are a part of.

3. Effective sentencing

Matching the particular needs of the individual offender to sentencing decisions is a hallmark of effective sentencing. For example, the use of community orders with mental health treatment options for offenders with mental health problems, and adapted programmes, such as offending behaviour or drug treatment, for offenders with learning disabilities or low IQ. When particular disabilities and impairments are not taken properly into account, it is all too easy to set the offender up to fail, which is likely to result in breach and a return to court – resulting in yet more time being spent by probation and court staff, members of the judiciary and others, and additional costs.

For sentencing to be effective, it is essential that those involved in sentencing decisions are aware of the particular needs of the individual. Sentencers need relevant and comprehensive information about the individual offender on which to base their decisions. Information should include details of an individual’s disabilities or impairments and their particular support needs. This information should be provided by liaison and diversion services and should form an integral part of the pre-sentence report (PSR). The requirement of a ‘nil’ return in PSRs should be adopted to confirm the absence of any disabilities, impairments and support needs, so ‘safeguarding’ against sentencing decisions being made on incomplete information. The increased use of ‘fast delivery’ PSRs (Revolving Doors, 2012) and oral reports makes such safeguarding especially important.

Further, when making decisions about sentencing and in deciding how best to respond to the needs of the individual offender, sentencers will need information about local service provision and may need specialist input from liaison and diversion services and Probation Trusts. Sentencers should be aware that to deny an offender access to a community order on the basis of his/her disability, or to resort to the use

of a custodial sentence because adapted provision is not available in the community, could be discriminatory practice.

To support sentencers, and magistrates in particular, in responding appropriately to vulnerable defendants, the Prison Reform Trust, together with Rethink Mental Illness, the Magistrates Association, The Judicial College and Justices Clerks Society, are developing an on-line information pack, which will be available in Spring 2013.

Should you require further information or clarification on any of the above, please, contact:

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26 September 2012