

Barnardo's Scotland response to the Justice Committee's call for evidence on the Community Justice (Scotland) Bill

Summary

We appreciate the opportunity to provide evidence to the Justice Committee and welcome the introduction of this Bill, in particular the policy intention *"to help create a stronger community justice system based on local collaborative strategic planning and delivery, with national leadership, support and assurance"* and importantly *"local delivery, partnerships and collaboration at its heart"*

Barnardo's Scotland is the largest children's charity in Scotland; we work with some of the most vulnerable and disadvantaged children in Scotland; we do a wide range of work within the justice sector, both inside and outside the prison estate. We run over 120 services and work with over 26,000 children, young people and their families every year throughout Scotland, many of these services provide essential support to families struggling with multiple adversities.

The overwhelming majority of Barnardo's Scotland's services involve some form of relationship with statutory partners, including local authorities, health boards and the Scottish Prison Service. Many of our services are commissioned by local authorities or other community planning partners.

Key points

- 1) A statutory duty should be included so that the third sector are equal partners in the strategic planning and delivery of community justice**
- 2) Clarity is needed over leadership, accountability, governance and the role of CPPs**
- 3) We would like to see a commitment within the Bill to community participation and service user involvement, as well as recognition of the wider community and families in the planning and delivery of community justice**
- 4) The definition of community justice within the Bill would benefit from incorporating children, families, communities, victims, witnesses etc. as well as reference to early and effective intervention and prevention**

- 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 reoffending and reducing the prison population?**

One of the weaknesses identified by the Angiolini Commission was the cluttered landscape of community justice. We are concerned that the new structure might in fact add to this cluttered landscape by creating a more complex system for the third sector to navigate. We are currently working with several of the 8 CJAs across Scotland, however under the new proposals we could potentially have to engage with 32 different bodies rather than 8, in relation to community justice. This could put additional strain on the resources and capacity of the third sector which may result in the third sector not being as actively involved in community justice strategic planning processes as is currently the case under the CJA structure.

Other issues highlighted by the Commission on Women Offenders are covered in our response to question 6.

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

We feel the definition could be enhanced through the following:

Including prevention and early intervention - Despite this being a central feature of the policy memorandum it is crucially missing from the definition of community justice in the Bill. If we are to take a truly preventative approach to community justice, we must start at the beginning and focus on how to keep people out of the justice system and within their communities. As it stands, the definition is restricted to those who have already offended.

The wider role of families and communities - The definition would benefit from including other groups of people involved in community justice. The definition should include the need to support children, families, victims, witnesses and the wider community, not just individuals with convictions. The policy memorandum states that the new model for community justice as set out in the Bill '*draws on the characteristics identified by Scottish Government as key to delivering better outcomes for victims, for people who offend and their families, and for local communities*'. We therefore think it may be helpful to widen the definition of 'community justice' to include these groups as well.

We support proposals for Child and Family Impact Assessments to be undertaken when an adult with dependent children is sent to custody. As it stands there is often a breakdown in the GIRFEC process for children affected by the imprisonment of a parent. There is a real opportunity under the proposed new structures to join up statutory services in order to ensure that the children and families caught up in the justice process are provided with joined up services which best address their needs.

We therefore support the view of the Criminal Justice Voluntary Sector Forum (CJVSV) of which we are a member, that the definition of community justice could be enhanced by:

- *Ensuring the definition also captures activities that take place to support other people affected by the community justice system - For example, children and families of people with convictions, victims of crime and witnesses.*

Amending the definition of an 'offender' in Section 1 (3)(c) - which states that '*offenders means persons who have at any time been convicted of an offence*'. We are not sure how helpful it is to have a definition in legislation which states that you will always be an 'offender' regardless of what stage of desistance you are at. This is particularly relevant for the young people we work with who often face barriers in later life due to their offending history.

The Scottish Government is currently consulting on proposals to amend the Rehabilitation of Offenders Act 1974 to '*allow more people with previous criminal activity to be able to move away from their past offending behaviour and to reduce the length of time most people will have to disclose their previous criminal activity*'¹.

We would like to see something more in line with the policy intentions in the proposed revised 1974 Act by acknowledging that 'offenders' are 'people with convictions' and once these convictions are spent and they have been 'rehabilitated' they are no longer 'offenders'.

We support the view of the Criminal Justice Voluntary Sector Forum to:

¹ <http://www.gov.scot/Resource/0047/00477178.pdf> (pg 1)

- *Change 'offenders' to 'people with convictions' – There has been work undertaken recently in Scotland in relation to labelling and a move away from the term 'offenders'. It would be helpful to ensure that future legislation also supports this move.*

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 the commissioning of services?

As it stands we are unsure if the new national body will have the appropriate powers and responsibilities to achieve the above aims. Although CJS will have a direct oversight role it does not seem to have any powers to drive forward significant improvements at a local level. Community Justice Partners are not accountable to the CJS so we would question what the redress mechanism is for partners who do not comply with the recommendations or requests from the CJS or who fail to make sufficient progress towards outcomes at a local level.

In addition we would seek clarity on commissioning arrangements at both local and national level. Barnardo's Scotland is involved in national programmes as well as delivering services at a local level and we would welcome clarity on how the commissioning processes would sit together.

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?

We are concerned that there is no clear governance or accountability set out within the Bill between Community Justice Partners and Community Planning Partnerships. As we understand it the link with CPPs and community planning more widely is to be made by reading across between this Bill and the Community Empowerment (Scotland) Act, however our services are not clear what this relationship will look like in practice.

The Bill states that local statutory Community Justice Partners will be responsible for preparing, delivering and reviewing a community justice outcomes plan but CPPs are not mentioned, this has created some confusion as to the roles and responsibilities of CPPs and Community Justice Partners which we would welcome clarification on.

Similarly there seems to be a lack of clarification within the Bill itself on leadership of local partnerships. The policy memorandum states that *'the responsibility for resolving any local issues, with planning or the quality of delivery, rests with the community justice partners of that local area'* but it is not clear where the ultimate accountability would lie within these partnerships as their structure and make up is not set out in legislation.

There also appears to be a lack of any obligations contained within the Bill for CPPs to establish sub-groups for community justice as a vehicle to drive forwards the agenda, this could be looked at in guidance and could build on models of good practice and partnership work established by CJAs.

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

We welcome the intention of the Bill to put local planning and delivery at the heart of community justice whilst recognising that national oversight is needed. However we are unsure as to whether the proposed structures will provide this as it is not clear how partners/partnerships/individuals will be held to account. It does not seem that the newly established Community Justice Scotland will have any powers to intervene if Community Justice Partners are not achieving the desired outcomes or if they fail to 'comply with any reasonable request', CJS can suggest improvements but it is up to the discretion of Community Justice Partners as to whether they act on these.

We understand that it is still to be determined how the voluntary sector will link with Community Justice Scotland, when established. However we would like to see an explicit role for the third sector

within Community Justice Scotland to support cross-sector collaboration. The third sector is often rooted in local communities and can be best placed to provide the link between local and national.

Section 38 of the Policy Memorandum states that *'to achieve its aims Community Justice Scotland will be required to work alongside many partners and stakeholders. These include COSLA, community justice partners, Community Planning Partnerships, local authorities, Police Scotland, Scottish Prison Service, NHS Scotland and the third sector'*. This is to be welcomed; however we would like clarity as to what this commitment to working alongside the third sector will entail. The Bill does not state which organisations will be represented on Community Justice Scotland, we believe it is essential for the third sector to be represented here.

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

(a) Leadership, strategic direction and planning?

Lack of leadership was highlighted by the Commission on Women Offenders in 2012; we are concerned that the proposals within the Bill will not fully address this. There still doesn't appear to be a clear lead agency responsible for community justice, ultimate responsibility for strategic delivery lies with the statutory Community Justice Partners who are accountable to a number of different bodies but how these partnerships are set up within the structures of CPPs is not clearly set out in legislation.

We would also seek clarification on the role of Elected Members within the new structure as the Bill does not set out a specific role for them. Local Councillors currently play a pivotal role in the CJAs we are involved in and have provided strong community leadership for many years. We are concerned at the potential loss of their role under the new arrangements and the vital link they provide to local government.

(b) Consultation and accountability?

We believe the Bill could be strengthened by enabling the full involvement and engagement of the people affected by the community justice system and those who support them, in the strategic development and design of community justice services as per the Christie Commission (2011) which stated that *'in doing so, [designing and delivering service provision] they would involve fully the local public and communities, along with other stakeholders including the third sector and private sectors'*

In our evidence on the Community Empowerment (Scotland) Bill we stated that:

'The legislation should require that the local outcomes improvement plan that each CPP must create, is created through a participative process of community engagement.'

We believe that in the spirit of the Christie Commission, we must ensure that, communities come together with agencies to co-produce their public services. To do this it is essential that the development of local outcomes improvement plans should be developed through a participative process of community engagement.'

There should be duties on CPPs that reflect this, that require them to involve people who live and work in the local area in local decision making, and the deciding of outcomes. This must go beyond consultation to participation in the decision making process'

We would like to see the same principles applied to this Bill to ensure that CPPs and Community Justice Partners are engaging and involving communities and users of community justice services at all stages, including the development of community justice outcomes improvement plans.

The explanatory notes state that "*robust accountability and driving improvement will also be important aspects of the new model*" (Page 3) however as we have highlighted previously we are concerned that as drafted the Bill omits this level of accountability. There is no duty to include the third sector as an equal partner in community justice partnerships, however the third sector will undoubtedly play role in service delivery. We would welcome clarification on whether service providers will be held accountable for community justice outcomes.

(c) Partnership and collaboration?

Barnardo's Scotland delivers community justice services and projects across Scotland and is an active partner in many of the current Community Justice Authorities. There is a concern within our existing services that the proposed new structures could undermine much of the progress and collaborative work achieved by CJAs and their partners. The third sector has expertise in building relationships, engagement and participation which are key to developing community justice services.

At a local level an obligation will be placed on statutory partners to engage with the voluntary sector with regard to the local planning of community justice services. However we are disappointed to see that a duty on CPPs to convene a local partnership which reflects the range of partners including the third sector is not in the Bill as drafted. We are concerned the proposed set up will weaken current arrangements under CJAs where the third sector have been active and equal partners alongside statutory partners, and instead create a system where the third sector are stakeholders to consult with rather than active partners.

We would like to see the Bill include the third sector as an equal partner in community justice; this could be done through placing statutory responsibilities on those responsible for leadership and governance to include the third sector as an equal partner in the planning and delivery of community justice services.

The Bill could be strengthened in this way by making clear links to other planning processes within legislation such as the Children and Young People (Scotland) Act 2014 and the Public Bodies (Joint Working) Act 2014.

From our experience of being involved in Public Social Partnerships and existing Community Justice Authorities, the most successful partnership working between third sector and statutory partners has involved mutual respect and working towards a common purpose. We are currently involved in several successful Public Social Partnerships relating to justice such as the National Shine, Women's Mentoring programme and the Thrive project in Perth & Kinross and Angus working with children and families affected by imprisonment. We would hope that the provisions within the Bill would help to facilitate and learn from such partnerships which seek to strengthen collaboration between the third sector and statutory partners.

We also have a partnership with Action for Children funded via the Reducing Reoffending Change Fund PSP which provides a mentoring service for young male offenders. There is a concern among staff about losing current influence with CJAs; although the partnership does have good relationships in general with CPPs. However our experience is that there are some CPPs who are more committed to working with the third sector than others. This is a concern for us moving forwards to a community justice model based around CPPs; we would welcome more clarification on how the third sector will be actively engaged by CPPs and Community Justice Partners in all aspects of community justice planning and service delivery.

There is also a risk that through this change process, focus could be lost on the need to continue with evidence based interventions such as our partnership with Action for Children, while CPPs get to grips with their new role, potentially affecting third sector delivery of reducing re-offending interventions.

National Third Sector GIRFEC project

Barnardo's Scotland leads on the National Third Sector GIRFEC Project. The project aims to support Community Planning Partnerships, Third Sector Interfaces and the wider third sector to embed their role in implementing Getting it Right for Every Child in localities. A vital part of this involves strengthening the role of the community and third sector in community planning. Through the work of the project we have found that approaches vary widely across different CPPs, particularly engagement with the third sector.

While there are many good examples of the third sector working effectively with community planning partners, there can still be significant issues which diminish the effectiveness of these relationships. CPPs are currently being put on a statutory footing through the Community Empowerment (Scotland) Act but as it stands there are still issues with the interaction between CPPs and Third Sector Interfaces. These include:

- A lack of capacity and support for capacity building, to enable the sector to engage effectively.
- Voluntary sector organisations capacity to help shape services is not always fully recognised – they can be seen merely as delivery agents.
- Consultation with voluntary organisations sometimes only takes place when plans are relatively advanced, missing significant opportunities.
- Lack of willingness of Community Planning Partners to understand how their local voluntary sector work, and lack of recognition on the part of the local voluntary sector of the need to find new way of engaging with CPPs.

We would welcome further clarification of how the legislation will help to combat these issues.

(d) Commissioning of services and achieving best value for money?

We would seek further clarification on how funding will be allocated to services if, as stated in the financial memorandum, section 27 funding is allocated directly from Scottish Ministers to Local Authorities. Some of our services have raised concerns that funding may be restricted to narrow 'core services' within local authorities such as supervision orders and other core social work services. With increasing pressure on local authority budgets there is a danger that funding will be diverted away from non-essential services which could marginalise the third sector.

From our experience of CJAs one of the benefits has been the innovative projects which have resulted through collaboration with partners, such as the SACRO early and effective intervention project in the South West CJA and the Court liaison at Kilmarnock Crown Court. There is a concern that projects and services like these might get 'squeezed' if they are not seen to be priorities. It is not clear who will be driving this innovation under the new structures. There is a danger that these initiatives may become diluted if the answer is no-one. Other areas which might miss out could be work with offenders who aren't on statutory supervision orders and work with families of offenders.

We would like to see the National Outcomes for community justice cover a broad range of outcomes so that children, families and the wider community are covered. This would mean community justice partners would have a duty to fund non-essential services in order to achieve these outcomes, such as Prison Visitors Centres and projects such as those mentioned above.

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

See key points at beginning of evidence.

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