

Sentencing Council - Imposition of community and custodial sentences guideline – revised: consultation

Response from LandWorks

Question 1: What is your name?

Question 2: What is your email address?

Question 3: Are you answering as an individual? If so, are you happy for your name to be included in the consultation response document?

Question 4: If you are answering on behalf of an organisation, group or bench, please provide the name of the organisation, group or bench

This response is on behalf of LandWorks. Established in 2013, LandWorks is an award-winning rehabilitation and resettlement charity that provides a supported route back into the community and employment for people coming out of prison or serving community sentences and at risk of going to prison. Based in Devon, we provide intensive placements at our training site lasting around six months each on average, followed up with a range of on-going support.

The evidence, including from independent evaluation, shows that our approach works. Fewer than 6% of trainees reoffend within one year and 94% of those seeking employment go on to and remain in work.

Our model is based around a ‘working day’ with trainees (as we call our participants) taking part in our onsite enterprises including a wood workshop and a sustainably operated market garden, both creating produce for sale to the local community.

Alongside this opportunity to build important vocational and social skills and prepare people for employment - many of whom have not worked before in their lives - each trainee is given an individual resettlement plan and access to a wide range of tailored wraparound resettlement support. This includes counselling, substance misuse sessions and practical support with housing and finances. We have partnerships with a range of local agencies including the NHS and Citizens Advice including some support sessions delivered directly at our site.

Perhaps more than anything we aim to provide a supportive community and build trusted relationships, helping people to create a new positive identify for themselves, change their lives for the better and stop offending. While we are a relatively small charity, we believe we have built a model that works and that could be built on within the criminal justice system.

LandWorks has close working relationships with both the probation service and local prisons. All referrals come through the statutory agencies and placements are available

for individuals either on licence following release from prison, attending on day release through ROTL arrangements, or subject to community orders, often serving Rehabilitation Activity Requirements and/or Unpaid Work requirements.

This response is based on our experience of operating LandWorks over the last 10 years. We have only answered the questions most relevant to our experience. In general, we welcome the revisions including those relating to the importance of pre-sentence reports, the evidence on the effectiveness of different sentences including the relative ineffectiveness of short custodial sentences, and the importance of courts tailoring sentences to the individuals before them. We would be concerned if the evidence on the ineffectiveness of short custodial sentences led to a ratcheting up of custodial sentence lengths, believe the probation service needs more resources in order to meet the aims of guidance including providing high quality pre-sentence reports; and we believe more can be done to deliver holistic community based orders that would serve as effective alternatives to custody.

The primary contact at LandWorks is Chris Parsons, Project Director. The main email contact is info@landworks.org.uk.

www.landworks.org.uk – main website

<https://penprojectlandworks.org> – website dedicated to the PeN research project that documents the lived experience of trainees at LandWorks

Question 5: Do you agree with the proposed chronological order of the guideline? Would you make any changes?

We welcome the proposed restructuring of the Imposition guideline and in particular the aim that this will encourage sentencers to work through the sections of the guideline in the order in which they are presented.

Question 6: Do you have any comments on the unified thresholds section?

We very much welcome the proposed changes relating to the unified thresholds section of the guideline, bringing together all the guidance for considering whether a case has passed a community or custodial threshold and aiming to make it clearer and more comprehensive.

We strongly support the Council's view that caution should be exercised before the existence of relevant previous convictions is used as the sole basis to justify a case passing the custody threshold, and in particular stating the view that numerous and frequent previous convictions might indicate an underlying problem that could be addressed more effectively through a community order with relevant requirements, and will not necessarily indicate that a custodial sentence is necessary. We strongly support the Council's encouragement to sentencers to think broadly across the possibilities that different requirements imposed as part of a community order can bring, rather than automatically 'ratcheting up' to a custodial sentence when faced with

a person with multiple previous convictions and especially if the offence in question does not itself necessarily pass the custodial threshold.

Our experience through operating LandWorks is that the vast majority of individuals within the criminal justice system are facing a range of deep-seated personal challenges that underpin their offending behaviour, and that, almost by definition with younger people, a series of convictions will indicate someone facing significant challenges. Substance misuse and mental health problems are very common, but even if this is not particularly the case, there is often a long history of poor educational experience, neglectful and abusive relationships, lack of positive relationships, poor employment prospects, and difficult accommodation circumstances, that create a cocktail of challenges, are directly related to offending behaviour and make positive change that much harder without support. Much too often these individuals are products of the care system.

Sustained support and intervention in the community, viewing the individual as a whole and getting to understanding their background, can be crucial in beginning the process of promoting positive change. In contrast, the evidence is clear that a prison sentence can often serve to exacerbate existing problems (poor family relationships, negative peer relationships, lack of employability, substance misuse problems, mistrust of authority). While – sometimes very importantly - prison can put a temporary halt to offending, it can make the longer-term prospects for rehabilitation much harder and should only be used when necessary.

Many individuals who have attended LandWorks have said how they wished that something like this had been made available to them earlier in their lives and that they are sure that with the right support their individual stories could have been a lot different, and it would have prevented a continuation and escalation in offending behaviour. If there is the opportunity to work effectively in the community to address underlying problems related to offending it is in everyone's interests and can help to meet the full statutory purposes of sentencing.

“If it wasn't for LandWorks I'd be back in prison, without a shadow of a doubt,”
LandWorks trainee, 2015

“If I'd gone to a place like this, it would have probably stopped me going in (prison) the second time.” LandWorks trainee, 2017

“I was trying to get help before, but I couldn't get anywhere. It took getting into trouble to actually be able to get some help. The system's just back to front.” LandWorks trainee, 2021

Question 7: Do you have any comments on the first part of the pre-sentence report section, before the list of cohorts?

Question 8: Do you agree with the general inclusion of, and specific cohorts included, in the list of cohorts in the pre-sentence report section?

Question 9: Do you have any comments on second part of the PSR section, specifically on the court giving an indication to Probation, adjournments and on committal?

We strongly welcome the proposed new unified and more comprehensive section on pre-sentence reports (PSRs) in the revised guideline and we agree that a PSR should be necessary in the majority of cases.

We agree that PSRs can be an important tool to ensure the court has relevant information about the person before them and the offence, and other relevant considerations for sentencing such as risks and needs. Having this information, including around personal histories and information on risks and needs is critical to understanding the most appropriate sentence and, in the case of community orders, the most appropriate combination of requirements. We agree that without these assessments the sentencer may not have the most informed view of the person's circumstances and risks as is possible, or a complete assessment of their suitability for a particular community order requirement. This risks that a sentence that is unsuitable for them and their needs, and/or the failure of that sentence not being completed.

However, while all this is the case, our experience is that too often the quality of PSRs provided is simply not good enough and they are not always undertaken, or undertaken comprehensively, under existing guidelines. They can too often fail to provide a full understanding of the individual in question and their circumstances, are prepared quickly and too often prepared by probation staff in isolation from the officers who know the most about the individual in question. Also, our experience is that those in front of the courts often do not know how significant these reports can be.

Therefore, while the proposed improvements to the guideline around PSRs are welcome, we believe that there also needs to be significant work undertaken to improve the quality of PSRs. We fully recognise the constraints that the probation service is currently under and believe there are significant resource implications and operational changes needed in order to improve the system and for the positive benefits that the Sentencing Council would like to see to be realised.

We generally welcome the proposed list of cohorts set out in the revised guideline for whom a PSR may be particularly important. However, we would like to reiterate that we believe that a PSR can be vital for the majority of people before the courts facing community and custodial orders and we would not want the guidance on cohorts to imply that a PSR may not be equally important for other individuals. It may be beneficial for this point to be made crystal clear in the revised guideline.

Especially given our concerns about the quality of PSRs and the speed that they are sometimes undertaken, we welcome proposals in the revised guideline to give probation more guidance and notice in order to prepare their assessments.

Question 10: Do you agree with the inclusion of, and information proposed on deferring sentencing

We welcome the proposed inclusion of information on deferred sentencing in the guideline and we support the proposed inclusion of a line that references young adults as a cohort for whom deferring sentence may be particularly appropriate, alongside other people in transitional life circumstances.

Question 11: Do you have any comments on the Purposes and Effectiveness of Sentencing section?

We strongly support the inclusion of the new section on Purposes and Effectiveness of Sentencing in the revised guideline.

We support the guideline reflecting the evidence about the effectiveness of different sentence types and lengths in terms of rehabilitation and reducing reoffending including that short custodial sentences are less effective than other disposals at reducing reoffending and sentences served in the community may be more effective at promoting positive outcomes for people with addiction or mental health issues. In general, we support the principle that the guideline should be evidence based in this way.

While recognising that this point should be clear from the overall guidance on thresholds, we would welcome consideration of whether there should be an explicit statement included in the revised guideline that makes the point that the evidence of the relative ineffectiveness of short custodial sentences in reducing reoffending should not lead to a ratcheting up of custodial sentence lengths, with more longer custodial sentences used, where not otherwise justified or appropriate.

We support the idea that sentencers are reminded to step back and review whether the sentence they have arrived at fulfils the statutory purposes of sentencing, asking the court to consciously consider the purposes of sentencing in imposing the sentence. We agree that the sentence should be tailored to the individual in considering the purposes of sentencing. In general, we believe that it is important that the courts are aware of what community-based interventions and projects are available in their area to consider fully how the purposes of sentencing can be applied to the individual in question.

Question 12: Do you have any comments on the new section on young adult offenders?

We support the new section on young adults within the Purposes and Effectiveness of Sentencing section.

Our experience of young adults in the criminal justice system is that they more often than not multiple challenges, have had very little support and care through the lives, lack positive adult role models and can be very immature for their age, and often putting up a 'protective shield' that simply does not reflect the reality of their lives. Effective, holistic community interventions based on a proper understanding of their lives have the potential to make a real difference, providing support, trust and boundaries that have not been present before in their lives.

Question 13: Do you have any comments on the new section on female offenders?

We welcome the new drop-down section on females within the effectiveness section of the revised guideline and would welcome further female specific guidance and guidelines to be issued by the Council based on the available evidence and research.

Our experience fits with the research findings that females can offend for quite different reasons to men and in particular that they can be extremely vulnerable, for a variety of reasons. It is critical that this is taken into account when sentencing and when considering appropriate community order requirements. For example, a visible Unpaid Work placement can be particularly inappropriate for a vulnerable woman in a way that it might not be for a man.

Question 16: Do you have any comments on the new information against each of the requirements in the requirements section?

We broadly welcome the proposed changes to the requirements section of the revised guideline. We welcome the proposed new information and the aim of making the information more consistent and accessible.

Question 17: Do you agree with the new approach to rehabilitative requirements in the Community Order Levels section?

We broadly support the proposed amendments to the community order levels section of the guideline.

We welcome proposals that aim to provide a flexible approach to help ensure that community orders are tailored to the individual in question, reflecting their personal circumstances, risks and needs. We welcome the aim that requirements are imposed after an assessment of the most effective sentence for the particular individual in question.

We also agree that the seriousness of the offence and the needs of the person before the court are not necessarily aligned, including that a person who commits a low level crime may have high rehabilitative needs and we support the proposed flexibility and we agree that community order requirements imposed for the purpose of rehabilitation should be determined by the person's needs. However, there does need to be some caution of loading too many requirements on order and it is important that the system in general does not view community order requirements as the only way for people in the justice system to get the support they need. People with significant mental health or addiction needs, for example, should be getting statutory support regardless of the community order. In general, it is our experience that many people in the criminal justice system need holistic support based on an overall understanding of their life and circumstances, and that support needs to be sustained over a significant period of time.

We believe that it is important for the courts to have a good understanding of the community-based interventions and projects in their area that can be accessed, and that probation can work with to deliver the requirements. In general, the courts should

be supportive of local initiatives that provide holistic and sustained support based on evidence of effectiveness and take their availability into account when sentencing if possible.

Question 19: Do you have any comments on the Imposition of custodial sentences section? We welcome comments both on content and format/structure.

We welcome the proposed new first line in this section that reiterates the approach to thresholds introduced in the first section of the revised guideline; that a custodial sentence (whether immediate or suspended) can only be considered where the court is satisfied that the seriousness of an offence and all circumstances of the offence and the offender mean that no other sentence is suitable.

We welcome the further amendments to the section to reflect the evidence on the effectiveness of different sentences including that short custodial sentences are less effective than other disposals at reducing offending and that increasing lengths of custodial sentences is not effective for reducing reoffending for people with addiction or mental health issues.

As set out above, we would welcome any further amendments that may be helpful to discourage the courts from either consciously or unwittingly ‘ratcheting up’ custodial sentence lengths in response to the evidence about short custodial sentences.

Question 21: Do you have any comments on the suspended sentence order section, including the guidance on requirements of a suspended sentence order?

We broadly welcome the proposed changes in relation to suspended sentences including reiterating the importance of courts ensuring that requirements imposed are the most suitable for the individual and are predominantly rehabilitative in purpose.

Question 24: Do you have any comments on the resource assessment and/or on the likely impact of the proposals on sentencing practice?

We agree that the revised guideline is very likely to increase the demand on probation. It is clear that the service is currently significantly under-resourced and struggles to meet existing demands. We believe that for the courts to have confidence in the sentences it imposes and for the ambitions of the Sentencing Council set out in the revised guideline to be realised, it is critical that overall probation resources are increased. We would also stress that any savings made from a reduction in the use of short custodial sentences should be used to invest back into the system.

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