



The Policy into Practice briefing series from Making Every Adult Matter (MEAM) explores key national policy developments, what these mean for local people and local services, and how you can get involved in shaping what happens next.

The sentencing white paper: impacts on people facing multiple disadvantage

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In September 2020, the Ministry of Justice (MoJ) published *A Smarter Approach to Sentencing*, setting out the government's plans for significant changes to sentencing policy in England and Wales. This policy into practice briefing reviews the proposals outlined in the paper and asks what the impacts might be for people facing multiple disadvantage.

What is the sentencing white paper and why does it matter to people facing multiple disadvantage?

A Smarter Approach to Sentencing sets out a number of proposals for changes to how people who have committed crimes should be sentenced. It has been published as a [white paper](#), meaning that the suggested changes are a clear indication of what the government plans to do, and will in effect implement some of the key commitments from the Conservatives' [general election manifesto 2019](#). Many of the proposals in the white paper will be taken forward as legislation, with a sentencing bill likely to be brought before parliament in early 2021.

Any changes to sentencing policy will have an impact on people facing multiple disadvantage. The underlying causes that lead to many people entering the criminal justice system often involve a combination of homelessness, poor mental health, trauma, substance misuse and domestic violence. A lack of appropriate support can lead to people being drawn into the criminal justice system, only to have their

challenges exacerbated if they are sent to an overcrowded, under resourced and unsafe prison system.

Sentencing policy can both help and hinder the problem. Progressive sentencing policy that prioritises effective community sentences over short prison sentences for example, can support people facing multiple disadvantage to address the underlying causes of their convictions and live a fulfilling life away from the criminal justice system. On the other hand, sentencing policy can have the effect of sending more people to prison for longer, further fuelling overcrowding in prisons and limiting the kind of effective and holistic rehabilitative and resettlement support that people facing multiple disadvantage need.

Community sentences

What are the proposed changes to community sentences?

The sentencing white paper proposes a number of changes to the availability and delivery of community sentences. The proposals include:

- Greater funding for the Community Sentence Treatment Requirements (CSTRs) programme. [CSTRs are community sentences where an individual consents to attend and complete treatment for a mental health, drug and/or alcohol problem as an alternative to custody](#). The CSTR programme aims to increase the use of CSTRs by improving multi-agency working to ensure that the roles and responsibilities of all those involved in delivering CSTRs are clear, with the necessary treatment pathways in place.
- Pilots of problem-solving courts, targeted at people with high level needs and “prolific offending behaviour”. Problem-solving courts give greater freedom to sentencers to find collaborative and outcomes-focused solutions to address the underlying factors that have led to someone coming into contact with the criminal justice system. They tend to operate out of existing courts, and will focus on a specific issue or target group, such as substance misuse, mental health, families, women or domestic violence.
- Establish a pilot to test new ways of delivering pre-sentence reports in magistrate’s courts, with a focus on delivering fuller pre-sentence reports for individuals identified as having more complex needs.
- The creation of a new community order called a House Detention Order, which includes a lengthy and restrictive curfew, aimed at people “who have not responded to existing community sentences.” The paper suggests this will also be accompanied by other measures to address rehabilitation and prevent further offending as needed.
- An increase to the maximum period of curfew enforced through electronic monitoring from 12 months to two years for more serious offences.

How will proposed changes to community sentences impact people facing multiple disadvantage?

There has been [a worrying decline in the provision of pre-sentence reports](#) over recent years, in both their quality and frequency of completion. Full written pre-sentence reports can be hugely important for people facing multiple disadvantage to ensure sentencers are better informed of the individual’s circumstances that have led them into contact with the criminal justice system. They can be especially important for women, to help sentencers take into account severe and complex challenges stemming from experiences of abuse and trauma. Pre-sentence reports

can also help address the disproportionate sentences given to people from black, Asian and minority ethnic (BAME) communities¹. Full written reports, that provide context and information about someone's life, can act as a mitigation against racist perceptions and biases held by many sentencers.

MEAM therefore cautiously welcomes the announcement of a pilot to improve the use of pre-sentence reports for people with complex needs. We are interested to understand what government views as constituting 'improvement' and whether there will be [clear targets for the completion of written reports as previously proposed](#). MEAM believes everyone facing multiple disadvantage should have the right to a full written pre-sentence report, and would urge the government to adopt specified targets rather than only conducting pilots.

Problem-solving courts could offer positive outcomes for people facing multiple disadvantage, if they divert people away from custody and into community support. [There is much international evidence on problem-solving courts](#), which generally suggests they work well where the decisions of judges are informed by the expertise of specialist agencies. The Manchester Women's Court provides a positive example of this, where the court, probation services and voluntary sector women's centres work together to meet the needs of women, many of whom face multiple forms of disadvantage.

MEAM welcomed the announcement in January 2019 for greater funding of CSTRs through [the NHS Long Term Plan](#), and the CSTR programme should help divert people facing multiple disadvantage away from prison and into treatment that can help address the underlying causes of their convictions. It's very welcome that this white paper acknowledges the need to promote the use of combined treatment requirements for people who are suffering from a combination of substance misuse and mental health problems. People facing multiple disadvantage will often face the complexity of dual diagnoses, so by combining treatment for mental health and substance misuse in a sentence, people will be more likely to be treated in a more holistic way and achieve better outcomes. Despite these positive proposals, it is unclear the level of funding the MoJ will make available.

¹ We acknowledge that the term BAME can be problematic as it refers to a group of people who are far from homogenous. The intersection of race, ethnicity, faith, and culture makes social identities multi-faceted and shifting; the experiences of individuals within these groups will vary. Wherever possible, we seek to be specific when describing groups of people but at times use the term BAME – albeit reluctantly – to describe inequality and discrimination across groups when necessary.

Proposals around problem-solving courts, CSTRs and pre-sentence reports therefore are largely positive and welcome. There is however a real risk that the potential positive impacts they could have in steering people away from custody could be undone by measures to make community sentences “tougher”, without sufficient community-based support. For example, the introduction of a punitive House Detention Order, stricter curfews and increased tagging, risk more people breaching the terms of their licence and therefore being returned to prison. People facing multiple disadvantage, who are unlikely to have settled accommodation and face the most complex challenges in their lives, may particularly struggle to adhere to tight restrictions. [In addition, despite the MoJ having conducted a large amount of research on the ineffectiveness of short term sentences](#), the proposals fail to mention anything about reducing short prison sentences, meaning many people will still end up in the dead end of short spells in prisons without paths towards an improved life in the community.

Prison sentences

What are the proposed changes to prison sentences?

The sentencing white paper also proposes changes to custodial sentences:

- People who receive a sentence of four years or more for certain serious and violent convictions will now spend two-thirds of their sentence in prison, rather than being automatically released halfway through their sentence. [This is an extension of the rules implemented earlier this year](#) to end halfway release for people serving sentences of seven years or more for certain serious offences.
- A new type of sentence, 'Sentence for Offenders of Particular Concern' (SOPC), will be given to people convicted of certain sexual crimes. Under a SOPC, people can only be considered for release after two-thirds of their sentence has been served in prison and with approval from the parole board.
- A new power will be established to allow the government to hold someone in prison if there is concern that the person has become radicalised during their sentence and presents a terror threat.
- Tariffs for people convicted of life sentences (the minimum time a person must spend in prison) will increase.
- The government will push for greater implementation of existing minimum custodial sentences for certain repeat offences, including domestic burglary, importation of drugs and possession of a knife. The white paper says different approaches will be sought when sentencing people who commit a large number of generally low-level crimes, though little detail is provided.

How will proposed changes to prison sentences impact people facing multiple disadvantage?

People facing multiple disadvantage are most likely to come into contact with the criminal justice system through low level offences. The bulk of these proposals however are focussed on violent, sexual and terrorism related offences, and therefore the vast majority of people facing multiple disadvantage will not be affected by these measures in the most direct sense.

The overall and combined impact of these proposals however will be to increase the prison population - something that will have a significant impact on the experience of people facing multiple disadvantage in prison. Even prior to these new announcements in the white paper, the prison population in England and Wales was already projected to increase by 15,000 to reach a total of up to 105,000 by 2025. [Scotland, England and Wales already have the highest imprisonment rates in Europe](#)

caused largely by sentences that are ever increasing, despite there being [no evidence that longer sentences make any difference to public safety](#). Sending ever more people to prison will further contribute to the challenges facing a [prison system that is already underfunded, overcrowded, unsafe and ill-equipped to meet the basic needs of many people in prison](#).

Many people facing multiple forms of disadvantage are being failed by the system, struggling to access services in prison, and being released from prison to homelessness. Restrictive regimes imposed during Covid-19 to limit the spread of the virus have exacerbated these challenging conditions, by limiting the access people in prison have to voluntary sector services, positive activities, time out of cells and resettlement support. There are also significant concerns about how people facing multiple disadvantage will be supported in a coordinated way when the ongoing [reform to probation services are fully implemented in 2021](#).

It is disappointing that the focus of this white paper therefore is to further inflate sentences, adding to the pressures in the system, and threatening poorer outcomes for service users including those facing multiple disadvantage. MEAM coalition member Clinks believes that instead of increasing the use and length of prison sentences, the MoJ should develop a clear strategy for reducing the number of people in prison. [Clinks' sentencing briefing](#) shows how government can achieve this, by addressing sentence inflation, reducing the use of short prison sentences and increasing the use of community sentences as an alternative to custody.

Beyond sentencing: additional measures on neurodiversity and criminal records

The white paper also proposes a few additional measures that go beyond the direct remit of sentencing. MoJ for example has committed to conduct a national call for evidence on how the system can better understand the prevalence of neurodiversity amongst people in the criminal justice system, and also develop a national training toolkit to upskill frontline staff on neurodiversity. Neurodiversity refers to the variation and diversity of neurocognitive functioning amongst the population, and this work will focus on how to ensure equality of treatment, access and experience for people who have specific speech, language and communication needs.

The link between neurodiversity and multiple disadvantage isn't well understood, but it is likely that some people facing multiple disadvantage will benefit from services that account for neurodiversity. Some local areas have carried out work to better ensure their services are accessible for people across the neurodiversity spectrum.

For example, The City of Westminster has conducted some work to specifically improve the design and delivery of its homelessness services for autistic people². In collaboration with Resources for Autism, St Mungo's, National Autistic Society, and Homeless Link they developed a toolkit focused on autism and homelessness and ensured that autism was a screening prompt on housing assessments, while also creating a local directory of autism services. We therefore welcome the commitment in the white paper to understand neurodiversity and adapt services to ensure equal treatment and access for people in the criminal justice system.

The paper also proposes changes to disclosure periods for criminal records. With some exemptions, people who serve up to four years will no longer need to disclose their conviction to employers if they don't reoffend for four years. Some people who serve sentences of over four years will no longer need to disclose convictions if they do not re-offend for over seven years. Employment is not always accessible for people facing multiple disadvantage, but for those who are able to look for employment, this is overwhelmingly positive, meaning many more people will no longer be required to disclose their conviction for most jobs or education courses, nor for housing or insurance. [As Unlock highlights however](#), these proposals don't go far enough, as exemptions to these reforms may mean that as many as two-thirds of people sentenced to more than four years in prison will continue to have a lifelong 'never spent' conviction.

People facing multiple disadvantage are likely to experience stigma, discrimination, isolation and loneliness. Stigma can often be related to convictions, so the ability for more people to live without having to disclose previous convictions is a welcome way to reduce stigma. The use of language however can also play an important role in reinforcing stigma and discrimination and it is therefore unfortunate that the paper uses often emotive and loaded language. There are frequent references to "dangerous criminals", "dangerous offenders", people "getting what they deserve" and statements such as "our prisons are full of these types of criminals". Arguably, the MoJ will struggle to implement its rehabilitation agenda, if government messaging further stigmatises people with convictions.

² In this document, we use the term "autistic people" as a person-first descriptor rather than a person with autism, which is the preference expressed by many, but not all, autistic people.

<https://www.autism.org.uk/get-involved/media-centre/how-to-talk.aspx>

What's next?

It is very disappointing that there is no formal consultation on the paper, and there has been very little consultation in its development. By shutting out the expertise of front-line staff, voluntary sector experts, service users and those with lived experience from the development of these proposals, the government is arguably pressing ahead with a set of poorly evidenced policy changes which may, in some cases, be counter-productive to their wider ambitions of reducing reoffending. Clinks is continuing to work with the MoJ to understand what opportunities there might be to address this.

Legislation is expected to be brought before parliament in early 2021. The timeframes for the various pilots and funding of community sentences are still being developed, but local areas will want to look out for further announcements on these proposals, and see how they can work alongside agencies in problem-solving court pilot areas, CSTR programme areas and wherever pre-sentence report pilots may be rolled out.