



Magistrates Association

and

***The Independent Advisory Panel on  
Deaths in Custody***

**Effective community sentences and  
the role treatment requirements can  
play in preventing deaths in custody**

June 2019

## **About the Independent Advisory Panel on Deaths in Custody**

The Independent Advisory Panel (IAP) forms part of the Ministerial Council on Deaths in Custody. Its remit covers deaths which occur in prisons, in or following police custody, immigration detention, the deaths of residents of approved premises and the deaths of those detained under the Mental Health Act (MHA) in hospital. The role of the IAP, an arms-length body, is to provide independent advice and expertise to the Ministerial Board. It assists Ministers to meet their human rights obligations to protect life. The IAP's aim is to bring about a continuing and sustained reduction in the number and rate of deaths in all forms of state custody in England and Wales. Juliet Lyon CBE was appointed Chair of the IAP in September 2016. Members of the IAP appointed in July 2018 are:

- Deborah Coles
- Professor Seena Fazel
- Professor Jenny Shaw
- Jenny Talbot OBE
- John Wadham

Further information on the IAP can be found on the website:

<http://iapdeathsincustody.independent.gov.uk/>

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## **About the Magistrates Association**

The Magistrates Association is an independent charity and the membership body for magistrates. We work to promote the sound administration of the law, including by supporting our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the magistracy, the courts and the broader justice system. With 14,000 members across England and Wales, we are a unique source of independent insight and information on the magistracy.

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## Contents

Executive summary .....	5
Introduction.....	8
Survey responses .....	9
Liaison and diversion services .....	9
Drug and alcohol services.....	11
Mental health services .....	16
Learning disabilities.....	20
Sentencing options .....	23
Women .....	26
Pre-sentence reports.....	28
Concluding discussion .....	31
Recommendations.....	37
References .....	43

# Executive summary

1. This short report is based on a survey undertaken jointly by the Magistrates Association (MA) and the Independent Advisory Panel on Deaths in Custody (IAP). The purpose of the survey was to collect the views of a small, selected group of magistrates on sentencing powers and practice in relation to offenders with mental health conditions, learning disabilities and other needs, with a particular focus on community sentences as an alternative to custody, where appropriate.
2. The survey was developed and conducted in the context of rising levels of suicide and self-harm in prison. According to Ministry of Justice figures, 46% of women and 21% of men in custody have attempted suicide at some point in their lives compared to 6% of the general population<sup>1</sup>. In 2018 there were 92 self-inflicted deaths in prison in England and Wales and 55,598 recorded incidents of self-harm<sup>2</sup>. In the same year, of the 75,750 community orders made - fewer than 1% (just 454) included a mental health treatment requirement (MHTR)<sup>3</sup>.
3. The survey was prompted by concerns about unmet mental health need expressed by, amongst others, the National Audit Office (NAO)<sup>4</sup>; the Justice Committee<sup>5</sup>; HM Prisons Inspectorate<sup>6</sup>; the Prisons & Probation Ombudsman<sup>7</sup>; and respondents to IAP wide-scale consultations with men<sup>8</sup> and women<sup>9</sup> in prison and senior health and justice professionals on how best to prevent deaths in custody.
4. The survey found that magistrates received information about the needs of defendants and offenders from a range of sources. These included liaison and diversion services<sup>10</sup>, pre-sentence reports (PSRs), defence lawyers and, to a lesser extent, the individual defendant/offender themselves. The quality and timeliness of information received varied and it wasn't always clear to

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<sup>1</sup> Ministry of Justice (2013) [Gender differences in substance misuse and mental health amongst prisoners](#), London: Ministry of Justice

<sup>2</sup> [Safety in custody statistics](#), Ministry of Justice

<sup>3</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/796919/probation-2018.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/796919/probation-2018.ods)

<sup>4</sup> <https://www.nao.org.uk/press-release/mental-health-in-prisons/>

<sup>5</sup> <https://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/>

<sup>6</sup> <https://www.justiceinspectorates.gov.uk/hmiprison/>

<sup>7</sup> <https://www.ppo.gov.uk/>

<sup>8</sup> <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2017/12/Keeping-Safe-FINAL-Dec-2017.pdf>

<sup>9</sup> <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2017/12/Keeping-Safe-FINAL-Dec-2017.pdf>

<sup>10</sup> In Wales, criminal justice liaison services. Liaison and diversion services and criminal justice liaison services operate in police custody and the criminal courts. One of their primary roles is to screen suspects and defendants for mental health conditions, learning disabilities, substance misuse and other needs. Referrals to local services may be made. Information is shared proportionately with justice colleagues and members of the judiciary and helps to inform criminal justice decision making.

magistrates how an assessment to determine need could be arranged, or whether this was possible. Magistrates were concerned about the ability of defendants with learning disabilities to participate effectively in court proceedings, and a lack of support being available for these individuals.

5. Magistrates were familiar with, and often included drug rehabilitation requirements (DRRs) and alcohol treatment requirements (ATRs) as part of a community sentence, however few had ever ordered an MHTR. Reasons for not ordering a MHTR included lack of awareness about the orders or relevant information about the offender and, despite their best efforts, being told it was unavailable in their area.
6. Magistrates spoke highly of the opportunity to review offenders subject to a DRR. The review process enables magistrates to monitor progress of individual offenders, receive feedback about the treatment requirement, and gauge the effectiveness of the order. Magistrates would like greater opportunities for reviewing orders in this way. This, in turn, would help raise awareness of what the sentence involves – a lack of knowledge being one of the barriers cited by magistrates for not giving a treatment requirement as part of a community sentence.
7. Magistrates didn't generally think prison was used as a place of safety. Magistrates said that, on occasion, lack of community facilities meant that they had no alternative other than to send a person to prison if they were concerned about the safety of the individual or that of others.
8. Some magistrates said that women specific community sentencing options were available in their area, although only one fifth of respondents thought that there was an MHTR available specifically for women. A small minority said that they were aware that community sentencing options included provision for childcare.
9. Overall, from the responses given, and comments made, magistrates were keen to have the full range of treatment requirements laid down in law, known and available to them as local sentencing options. Most would like fuller, more timely information, on the needs of defendants and offenders, including mental health, substance misuse and social care.
10. Survey responses are followed by a general discussion of findings. Our independent report concludes with a detailed set of, largely practical, recommendations. If implemented, these recommendations could lead to wider use of community sentences and treatment requirements, where appropriate, and fairer management of people with mental health conditions, learning disabilities and other needs caught up in the criminal justice system.



# Introduction

11. Undertaken jointly by the Magistrates Association (MA) and the Independent Advisory Panel on Deaths in Custody (IAP), this survey was conducted in December 2018, and 62 magistrates in England and Wales were invited to take part of whom 31 responded – a return rate of 50%. Of the 62, 46 magistrates were MA mental health and learning disability ‘champions’<sup>11</sup> and 16 were MA branch chairs<sup>12</sup>.
12. Just under two-thirds (19) of respondents were MA mental health and learning disability champions and slightly fewer than one-third (8) were MA branch chairs; four respondents did not indicate which role they held. Most respondents (27) had sat as a magistrate for more than ten years; (three magistrates for between 5-10 years and one magistrate for 1-5 years). Respondents were more or less equally spread across metropolitan (i.e. a city), urban (large town) and rural areas (smaller town(s), rural surroundings) – 11, 10 and 10 respondents respectively.
13. Respondents were asked for their views on local services relevant to offenders with particular needs, including liaison and diversion, drug and alcohol, mental health and learning disability services; pre-sentence reports and sentencing options; and specific provision for women.
14. Responses to each question are shown below. This is followed by a concluding discussion and recommendations.

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<sup>11</sup> The Magistrate Association developed the role of branch mental health and learning disability champions in 2014. Amongst other things, their role is to represent the Magistrates Association in their local area, providing a point of contact for relevant agencies, and to raise awareness of mental health and learning disabilities in the magistrates’ courts.

<sup>12</sup> The Magistrates Association is organised locally around 55 branches, and members of each branch elects a Chair to represent them and manage the Executive Committee, which oversees all branch matters.



# Survey responses

## Liaison and diversion services

15. Magistrates were asked whether their court had a liaison and diversion service<sup>13</sup> (or a mental health nurse attending defendants and providing information to the court). Over half said such services existed in some courts in their area and slightly less than a quarter said they existed in all courts (one respondent didn't answer); see below.

In all courts	In some courts	Not at all	Don't know
7	17	4	2

16. Magistrates were next asked to say what such services involved. Of those who completed this question (26), more than half (16) had a reasonable idea of what the service involved; four magistrates gave a more limited response but recognised that the service was about support for 'vulnerable' individuals; four magistrates said they weren't sure what the service involved; one said 'not a lot' and one 'very little'. Three magistrates described services thus:

*Community psychiatric nurses (CPNs) at the police station five days a week; CPNs at court five days a week and a consultant psychiatrist or registrars two days a week. All have access to the full data base of notes for their Mental Health Trust. This makes a significant difference.*

*Where indicated by the police, the court services or a solicitor, they [liaison and diversion services] interview and support the vulnerable person within the court process, including special measures, support at court on the day.*

*[Liaison and diversion] provide a service 9am-5pm, Monday to Friday in courts and seven days a week in police custody. The aim is to provide improved access to mental health and learning disability support services for vulnerable individuals through effective liaison with appropriate services. Diversion of individuals where appropriate out of the criminal justice system.*

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<sup>13</sup> In Wales, criminal justice liaison services. Liaison and diversion services and criminal justice liaison services operate in police custody and the criminal courts. One of their primary roles is to screen suspects and defendants for mental health conditions, learning disabilities, substance misuse and other needs. Referrals to local services may be made. Information is shared proportionately with justice colleagues and members of the judiciary and helps to inform criminal justice decision making.

17. Magistrates were asked whether reports from liaison and diversion services included reference to specific areas including mental health, learning disabilities and substance misuse. Around half said that mental health, learning disabilities and substance misuse were included, and slightly less than half said they didn't know. One magistrate said:

*Due to rarity of seeing such reports, this is difficult to answer.*

18. Magistrates were asked if they can obtain a timely mental health assessment from their liaison and diversion service, if required, and were asked to rate their response on a scale of one to five – one being very hard and five easily. Responses were mixed with slightly more magistrates saying it was hard rather than easy to get an assessment. One magistrate said:

*On the rare occasions I have asked they have not been available.*

19. Magistrates were asked how effectively they considered their liaison and diversion service to be working. Of those who completed this section (29), around half said the service was adequate (7) or mostly/very adequate (7), and around half said the service was either less than adequate (12) or not at all adequate (3).

Not at all	Less than adequate	Adequately	Mostly	Very
3	12	7	5	2

## Drug and alcohol services

20. Magistrates were asked from where they received information about defendants' substance misuse needs and 29 responded. They were given five options (see below), and were asked to tick as many options as were appropriate. Around three-quarters (21), said they received information via a pre-sentence report (PSR), and a quarter (7) said they sometimes did; around two-fifths (11) said they received information from the defence advocate and around three-fifths (18) said they sometimes did. Smaller numbers said they received information directly from liaison and diversion services<sup>14</sup>, with two magistrates saying they did and slightly more than two-fifths (12) saying they sometimes did.

	Yes	No	Sometimes
Pre-sentence report (29 respondents)	21	1	7
Defence advocate (29)	11	0	18
Defendant (22)	2	6	14
Direct from L and D services (29)	2	15	12
Other (11)	1	5	5

21. Seven magistrates supplemented their response, and some of their comments are shown below:

*PSRs are very good in highlighting drug/alcohol issues and if mental health is an issue.*

*Due to cut backs in service provisions and staffing levels at support bodies, vulnerable persons may slip through the net and not become evident until the day at court.*

*Liaison and diversion would only be involved if the substance misuse related to a mental health or learning difficulty.*

*Most solicitors doing remand courts are duty and show little interest.*

*Criminal justice liaison nurses are rarely seen in court as they cover a large area and are minimally resourced.*

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<sup>14</sup> Note: information contained in the PSR may have come via liaison and diversion services.

22. Magistrates were asked if the Drug Rehabilitation Requirement (DRR) was available in their area as part of a community sentence. Almost all magistrates (27) said it was and almost half (13) said residential DRRs were available. In addition, magistrates were asked whether Rehabilitation Activity Requirements (RARs) in their areas included support for drug problems.

	Yes	No	Don't know
DRR residential	13	11	3
DRR community	27	2	1
Rehabilitation Activity Requirement (RAR)	30	Nil	Nil

23. Five magistrates supplemented their response, and some of their comments are shown below:

*There are bespoke services available for drug/alcohol abuse. Most of the work is community based but the number of in-house beds is extremely limited.*

*We rely on probation services to advise and suggest recommendations, in the main, although our legal adviser teams also provide support and advice, impartially.*

*RAR [Rehabilitation Activity Requirement] days are a real issue because of the length of time it is taking CRCs to make them available and the issue of monitoring, etc.*

*No follow up from CRCs [Community Rehabilitation Companies], mainly testing only. No group work or therapy.*

24. Magistrates were asked if the Alcohol Treatment Requirement (ATR) was available in their area as part of a community sentence. Almost all magistrates (28) said ATRs were available in the community, and slightly fewer than half (12) said residential ATRs were available. In addition, magistrates were asked whether ATRs in their area included provision to support offenders with alcohol problems.

	Yes	No	Don't know
ATR residential	12	10	3
ATR community	28	1	1
RAR	29	Nil	Nil

25. Five magistrates supplemented their response, and their comments are shown below:

*The alcohol tagging is good and works.*

*There are bespoke services available for drug/alcohol abuse. Most of the work is community based but the number of in-house beds is extremely limited.*

*Very rarely suggested in a PSR.*

*It has to be noted that availability of these resources is limited and often changes from time to time.*

26. Magistrates were asked if DRRs were reviewed<sup>15</sup> in their area; slightly more than half said they were reviewed and slightly more than a third said they were unsure. Magistrates were further asked for their view on this, and most magistrates were positive about the opportunity for review:

*Excellent process and could/should be extended to other treatment requirements.*

27. Some magistrates qualified why they thought the review process was a good idea. Their responses included as a way of encouraging individual offenders:

*On our Bench we like to review defendants we have put on a Drug and Testing order to check the progress of the defendants and to encourage them to complete the order. Sometimes it is necessary to reinforce why they are doing the order.*

*It's more for the defendant's benefit, knowing she/he has to attend court on a monthly basis to update the court on how they are getting*

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<sup>15</sup> Under Section 210 of the Criminal Justice Act, the court may provide for the review of any DRR and must do so in the case of requirements lasting twelve months or more (Supporting Community Order Treatment Requirements, NOMS, 2014:2). Courts must review DRRs which are over 12 months in duration but can choose to review DRRs of any length. The officer of the provider of probation services must prepare a review report on the offender's progress, to the required specification and at the frequency specified by the court. The report should be a collaborative document between treatment provider(s) and the officer of the provider of probation services and should be discussed with the offender prior to the court review wherever possible (Supporting Community Order Treatment Requirements, NOMS, 2014:19).

*on. Would think it would be more beneficial if the same bench of magistrates followed the defendant's journey throughout the order.*

28. monitoring offenders' progress, and responding accordingly:

*Useful to praise efforts or encourage to improve, or sanction.*

*It is an excellent way of monitoring the progress or lack of it. In my experience the majority of people on DRR supplement with illicit substances on top of prescribed medication.*

29. and, in receiving feedback, being able to gauge the effectiveness of the order:

*Important for decision making and gauging/ monitoring effectiveness.*

30. A small number of magistrates noted that while reviews used to happen, they occurred less frequently now or had stopped altogether, which was a source of some regret:

*I used to sit on the dedicated drug courts, but these have been withdrawn as not deemed essential. In my opinion and those of colleagues who also sat on the panel this is a great pity. We had some success in helping individuals overcome their addiction thus reducing crime.*

31. although in one area at least there was a regular review process involving the same three magistrates:

*It meets monthly. There are three designated Magistrates.*

32. In some areas, feedback on how well the order was progressing came directly from probation services/CRCs rather than from reviews undertaken by magistrates:

*We rely upon the Probation services feeding back progress reports; both good and bad for the Bench to hear and consider.*

33. Although one magistrate noted that:

*Non-compliance [is] allowed to continue for far too long before breaching action is taken.*

34. Magistrates were asked if, in their view, ATRs would benefit from a provision to review, and most, around four-fifths said they did think it would be

beneficial. When asked why, most responses reinforced views already given regarding reviews for DRRs; namely, encouraging individual offenders, monitoring progress and, in receiving feedback, being able to gauge the effectiveness of the order:

*Any order that requires a defendant to give regular updates and receive support and congratulations, when necessary, on their performance would serve to add considerable focus to their own treatment.*

*It's very good to monitor progress and it's rewarding when there's success.*

*It would allow magistrates to gauge if the requirements are effective and if so/or not why this is the case.*

*It would give magistrates knowledge on its success and shortfalls.*

35. One magistrate further noted that reviews would also provide the opportunity to hold service providers to account:

*I think it desirable [and] one of the reasons would be so we could review whether the CRC had started the course.*

36. Further thoughts from magistrates about alcohol tagging, the ATR and alcohol, more generally, included:

*The alcohol tagging works in our area, wish the length of time could be extended.*

*As a magistrate I would like to see people on ATR asked to keep a drinks diary, which also includes thoughts and feelings. This would be brought to court by the defendant for reviews.*

*Alcohol misuse is often a root cause which is not always admitted by the perpetrator of offences and there has to be a willingness on the individual to participate and undertake courses. Many are often in denial no matter what the extent of misuse is!*

37. However, one magistrate said:

*We do not have sufficient information about the [ATR]. I know it exists, but I'm not clear on content or success.*

## Mental health services

38. Magistrates were asked whether they got the information they needed about a defendant's mental health needs, and 29 responded. Around a quarter (7) said they did and slightly fewer than three-quarters (21) said they sometimes did.
39. Magistrates were asked from where they received information and 27 responded. They were given five options (see below), and were asked to tick as many options as were appropriate. Most said they received information from the PSR (26) and defence advocate (26). Slightly fewer magistrates (24) answered the question about liaison and diversion services, and of those who did respond just under half (11) said they received information from them<sup>16</sup>; and eight magistrates said they received information from the defendant.

	Yes	No
PSR (27 respondents)	26	1
Defence advocate (27)	26	1
Liaison and diversion services/reports (24)	11	13
Defendant (16)	8	8
Other (9)	3	6

40. Magistrates were asked to specify 'other' sources of information and one magistrate said information also came from the legal adviser. One magistrate observed that:

*[The] source of information is not always evident or available knowledge to the Bench.*

41. Further comments from magistrates under this section are shown below.

- Concerning liaison and diversion services:

*The [liaison and diversion] team is there five days a week with access to all their patient notes. If the person is considered a patient with another Mental Health Trust, they call their colleagues and then come back to court with information and recommendations.*

*If mental health has been identified as an issue the Mental Health worker will give an assessment.*

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<sup>16</sup> Note: information contained in the PSR may have come via liaison and diversion services.



*I have a sense the [liaison and diversion] service is stretched and patchy. We occasionally have workers in court, but this is increasingly rare; and I've not had any up to date information about the service to make me think it is working well behind the scene.*

*On a positive note, more advocates are seeking out liaison and diversion and asking for their support in court on behalf of the defendant.*

*Very rarely do liaison teams submit a report. It is far more common that the defence solicitor advances an argument along the lines of the defendant hears voices or has a significant mental health illness. I have only ever seen reports from the liaison team for a handful of cases in 10 years. Often the reports tell you very little and rarely influence sentence.*

- Concerning defence advocates:

*Information from the defence advocate is not very reliable and is usually just the defendant self-reporting.*

*Rarely in terms of defence advocates – they often use mental illness as mitigation when the defendant does not have a formal diagnosis. This seems unfair to those who genuinely do suffer from mental ill health.*

42. The following two comments from magistrates raise particular concerns:

*[Information] is all very random and difficult to assess.*

*This is a very grey area with a hands-off approach because 'it is not within our expertise'.*

43. Magistrates were asked if they find sentencing guidelines clear in setting out how they should take account of the mental health needs presented by some individuals, via their inclusion as a mitigating factor, and 26 responded. Slightly more than a third (10) said they found sentencing guidelines clear and around three-fifths (16) said they did not. A further three magistrates provided the following comments:

*Yes, normally, if not I ask questions and if needs be get the mental health team in court.*

*They could be clearer.*

*Impossible to say yes or no as cases differ and much depends on the information provided in open court.*

44. Magistrates were asked if they had specific mental health services they could use as part of a sentence in the community, and 28 responded. Around a fifth said they had (5), around two-fifths (12) said no such services were available and almost two-fifths (11) didn't know. Around two-fifths (12) said specific mental health services were available via a RAR.

	Yes	No	Don't know
Mental Health Treatment Requirement (MHTR) (28)	5	12	11
RAR (29)	12	9	8

45. Awareness and apparent availability of MHTRs contrasts strongly with DRRs and ATRs – almost all magistrates said DRRs (27) and ATRs (28) were available.
46. Magistrates were asked if they have ever ordered a MHTR and if not, why not. Of those who responded (27), around a third said they had ordered a MHTR and slightly fewer than half said they had not. It was unclear from the remaining responses whether magistrates had ordered a MHTR or not.
47. Of those who said they had ordered a MHTR, two qualified their response by saying they had done so 'very rarely'. One magistrate said they had ordered an MHTR but:

*...the feedback I got in court from the legal adviser was that this wasn't possible.*

48. And another said:

*[I've] never seen it in a PSR. On occasion I have suggested it and it's been denied.*

49. Of those who said they had not ordered a MHTR, one magistrate said they 'didn't know about them' and another said, 'the matter has never arisen'. Further responses from magistrates can be summed up by the following comments:

*[I've] tried so many times but there is no service [in my area], and if there was it would take too long to set up.*

*Most reports have a mental health requirement. Where it becomes more problematic is where – treatment in the community or residential care – as resources are limited.*

*It has never been an option.*

*Discouraged, lack of services.*

50. Magistrates were asked, on a scale of one to five, how confident they felt in giving MHTRs and 27 responded. Responses were evenly spread across the range from 'not at all confident' to 'very confident'.

## Learning disabilities

51. Magistrates were asked how often they get information about a defendant's learning disabilities, and 29 responded. Most said they sometimes got information (20) or did so 'very often' (3).
52. Magistrates were next asked from where the information came. They were given four options (see below), and were asked to tick as many options as were appropriate.

	Yes	No
PSR (29 respondents)	28	1
Defence advocate (29)	28	1
Defendant (20)	9	11
L and D service (24)	8	16

53. Magistrates were further invited to comment on information received and eight magistrates responded. One magistrate said information came from the Crown Prosecution Service. Other responses were:

*This is all ad hoc, chance, sometimes missed.*

*It's occasional rather than the norm.*

*[The] information source is multiple at times, albeit the level of detail can be broad brush if not backed up by expert opinion.*

*Defendants tend to be reticent/reluctant to inform us of such issues.*

*My personal view is that liaison and diversion are aware of this issue but other court users less so. Learning difficulties can be more difficult to spot than mental health issues, so I feel there is more emphasis on mental health, although the situation with learning difficulties has improved thanks to liaison and diversion.*

*Considering that [my area] was a pilot [for liaison and diversion services], I can't say with confidence that it has had an impact on court practice. It may be operating effectively behind the scenes but if it is, I'm not aware of it.*

54. Magistrates were asked if support services were available in court to assist and explain matters to defendants with learning disabilities, and 28 responded. Around a fifth (6) said support services were available, nearly half

(13) said they sometimes were, and the remainder said there were no support services.

55. Magistrates were asked if they had concerns about the ability of defendants with learning disabilities to participate effectively in court proceedings, and 29 responded. Most, around two-thirds (19) said they did have concerns, and slightly fewer than a third said they sometimes did; only one magistrate said they were not concerned.

56. Magistrates were given the opportunity for further comment and most expressed their concerns:

*This is very neglected in [my area]. The defence solicitors usually do this; it is all very random.*

*The biggest problem I have witnessed, multiple times, is in Crown Court. Judges and barristers do not seem to understand and modify questions appropriately. I have seen cases where a youth with learning disability did not have an appropriate [responsible] adult, etc.*

*Because of limited understanding it is very hard to know if they are fully understanding what is going on – and the consequences of what is going on.*

*Because it is not always clearly evident there are learning disability issues the process at court can proceed blind to that knowledge; and because many cases last a relatively short time, such difficulties can be masked as being obstructive, non-cooperative, or even dismissive when in fact they are not and the person is simply overcome with the court process, language and protocol.*

*Mostly, defendants with learning difficulties have no support worker or social worker as they should have.*

*I have asked for this [support service] to become available but not much hope. Even solicitors don't bother.*

*Too many seem unable to articulate or able to complete means forms.*

*[I have concerns] ...especially if they are unrepresented, which is more and more frequently the case.*

*Services could be improved.*

57. A smaller number spoke more positively of ways in which a defendant with learning disabilities might be supported.

*If the court is aware, we do our utmost to assist by using simple language, etc. If severe learning disabilities, then we would expect someone to be accompanied.*

*Not often concerned; advocates and JPs work well to reduce concerns.*

*[Defendants with LD] are normally represented and magistrates are usually experienced in handling such matters in court.*

58. Magistrates were asked if there were specific services for offenders with learning disabilities they can use as part of a sentence in the community and were given two options – the MHTR and the RAR. Around a fifth said services were available via the MHTR<sup>17</sup> and slightly less than a third via the RAR. Around two-fifths said no specific services were available and slightly more than a third didn't know; see below.

	Yes	No	Don't know
MHTR (28)	5	13	10
RAR (27)	8	10	9

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<sup>17</sup> Note: the MHTR is for offenders with a treatable mental health condition. A MHTR cannot be ordered because a person has learning disabilities but may be ordered if a person with learning disabilities also has a treatable mental health condition.

## Sentencing options

59. Magistrates were asked how often they had given Treatment Requirements in the last year. Around two-thirds said they had 'often' given DRRs (19) and ATRs (18). This contrasts sharply with the use of MHTRs – not one magistrate said they had 'often' given MHTRs. Slightly more than half said they had never given a MHTR and slightly less than half said they had done so rarely; see below.

	Never	Rarely	Often
DRR (29 respondents)	0	10	19
ATR (29)	1	10	18
MHTR (28)	15	13	0

60. Magistrates were asked what the barriers were, if any, in preventing them from making more use of non-custodial sentences and 25 responded. They were given three options (see below), and were asked to tick each that applied. Responses were evenly spread across the three options provided, which were:

- Lack of confidence in non-custodial/community sentences
- Lack of knowledge of what non-custodial/community sentences currently consist of
- Lack of non-custodial/community sentences in your area.

61. Magistrates were invited to comment, and ten did so. Three magistrates said there weren't any barriers:

*No barriers really, as probation will advise on services. Occasionally custody is the only option because of record and previous failure to complete community sentence.*

*No barriers, just limited resources based on demand.*

62. Four magistrates said they would avoid giving a custodial sentence, wherever possible; despite two of the four expressing little confidence in the ability of the Community Rehabilitation Company to deliver a timely and effective community sentence:

*Lack of MHTRs, but I have never imposed a custodial sentence in lieu of this.*

*I will always give a non-custodial sentence if appropriate but have very little confidence in CRCs who are far too rigid and slow in their processes. A recent breach after 10 months had not started two programmes and done very little unpaid work, yet [the offender] was working on a four on four off basis but not accommodated on his non-working days.*

*This is a bit of a loaded question – if it passes the custodial threshold it's a custodial sentence. If it's a community sentence I utilise them but often with no confidence the elements of the order will be implemented effectively by the CRC.*

63. One magistrate noted that PSRs sometimes discourage non-custodial sentences:

*Frequently in probation reports, probation officers cite a defendant's unwillingness to cooperate with drug and alcohol rehabilitation as a reason why these options are not suitable. We have very limited resources [in my area]. Often defendants do not wish to comply with these requirements.*

64. One magistrate expressed concern about 'setting an offender up to fail', especially if the custody threshold had been passed:

*Concerned that sentences where the custody threshold is passed, and the community order option is taken that the Bench may just be delaying the custody process and sometime setting the individual up to fail and become part of a revolving door of offending.*

65. Magistrates were asked if, in their area, a lack of community alternatives to a custodial sentence meant that prison is sometimes used as a 'place of safety', and 26 responded. Most, slightly more than two-thirds (18) said they did not think prison was sometimes used as a place of safety, and slightly fewer than a third (8) said they thought it was. Some magistrates qualified their response:

*There have been occasions where cases require mental health input, but nothing has been available in the community and the defendant has been remanded for his own safety and for the safety of others. Better facilities are required.*

*[Prison is sometimes used as a place of safety] particularly if a defendant is deemed at risk to themselves.*

*Occasionally, on a short-term basis, for remand purposes.*



*Only in the case of mental health issues. It becomes a default sentence. It is a last resort to protect the public.*

*Despite what the press may believe, magistrates only use the removal of a person's liberty when that is the only 'just and proportionate' sentence.*

*With 310 deaths in custody in a 12-month period of which 77 are suicide and 46,000 incidents of self-harm, I would never ever assume prison is a safe place for vulnerable people!*

*No, custody is only for those who clearly cross the threshold and every other avenue has been tried.*

## Women

66. Magistrates were asked if there were any community sentencing options appropriate/specifically for women in their area and were given four options (see below), and 28 responded. Around two-fifths said appropriate or specific options for the DRR, ATR and RAR were available for women and similar numbers didn't know. Around a fifth said appropriate or specific options for women were available for the MHTR and slightly fewer than three-fifths said they didn't know.

	Yes	No	Don't know
DRR (28 respondents)	11	6	11
ATR (28)	12	5	11
MHTR (28)	5	8	15
RAR (27)	12	5	10

67. Three magistrates commented further:

*As with men, I have often had to sit there past closing time while they find a placement and insist one is found.*

*Much discussion on this specific topic is currently underway, and whilst there is knowledge of specific arrangements for women, particularly via the family courts, there is not a specific path to consider for 'women' separate to men.*

*I believe they can be treated at the same charity used for men, so no idea if it is appropriate but definitely not specific.*

68. Magistrates were asked if, in their area, community sentencing options included provision for childcare, and 29 responded. For each option, only one or two magistrates said there was provision and most, around four-fifths, said they didn't know; see below.

	Yes	No	Don't know
DRR	1	3	25
ATR	1	3	25
MHTR	2	5	22
RAR	1	3	25

69. One magistrate added:

*Good question – I have always assumed defendants undertaking these sentencing options can access childcare if there was no alternative, via friends and family – but that is only an assumption on my part.*

## Pre-sentence reports

70. Magistrates were asked if PSRs play a significant role in their decision-making regarding sentencing and were asked to rate their response on a scale of one to five, one being insignificant and five being very significant; and 29 responded. Most magistrates, three-fifths, said PSRs were very significant and more than a quarter rated significance at point four out of five; see below.

Insignificant				Very significant
0	0	3	8	18

71. Magistrates were asked, compared to three years ago, whether they were asking for PSRs less often or more often, and were asked to rate their response on a scale of one to five – one being less often and five more often. Most responses (17) seem to suggest that little had changed as magistrates elected for the middle rating of three out of five, with around a fifth saying they requested PSRs more often; see below.

Less often				More often
1	0	17	5	6

72. Magistrates were asked about the quality and detail of PSRs and there were a range of views from 'excellent' to 'poor':

*Generally good.*

*Sometimes they are excellent, others very poor.*

*Recently, last few months, we've seen more detail about the detailed RAR days to be offered.*

*Too much cut and paste and not enough checking of content.*

73. When asked about oral PSRs, delivered on the same day, magistrates said:

*We've always had a very high proportion of oral same day reports.*

*Sentence on the day, no need to adjourn.*

*Have always tried to get same day reports.*

74. Finally, magistrates were asked to provide any further information on any issue they would like to cover in regard of this survey and some of their comments are shown below:

*Mental health in [my area] is badly provisioned.*

*There is a distinct lack in service provision of mental health treatment requirements.*

*Services for defendants with mental health issues are badly needed. It's quite clear that some who come before the court have a mental health issue that needs health input rather than imprisonment.*

*I believe we need to find out more about defendants who seem to have mental disorders.*

*Community orders [are needed] specifically for those with learning difficulties.*

*I have been disappointed with the outcome of the [liaison and diversion] initiative. As I said previously, [my area] was a pilot and things were very slow to get off the ground. I made attempts to build links with the team and had them speak at training events but the impression I got was that they were under resourced and under-staffed.*

*Access to intermediaries in court on the day. Use of simpler documentation. Support for when a defendant is struggling, often low level when there is no legal representation.*

*The standard and quality of PSRs is variable, with some reports being of a very poor quality.*

*RAR days being used as a 'catch-all' by the CRCs. Activity needs to be much more specific and targeted. Mental health issues are not served well.*

*I have run training courses on mental health diversion and legislation. I have also run training courses on Learning Disabilities, diversion and legislation. Some crown court judges also attended. Both courses were recorded and are available online which people in my area are well aware of. I have mental health meetings with court clerks, police, probation, Serco, mental health trust diversion manager and mental health professionals. Any issues are addressed. I also meet up with*

*forensic psychiatrists from around UK. I am going to Australia to present at an international meeting regarding misdiagnosis and people who should not be in prison.*

*By coincidence, the current eDiversity training via the Judicial College (5 modules) covering deaf; learning disabilities; autism spectrum; blind or partial sighted; mental health disorder is invaluable for magistrates to be competent in the fields to recognise such issues before the court. Given the short time span an individual can be in front of the court, such knowledge is imperative. An excellent training tool.*

## Concluding discussion

75. The purpose of this survey was to collect magistrates' views on sentencing powers and practice in relation to offenders with mental health conditions, learning disabilities and other needs, with a particular focus on the use of community sentences as an alternative to custody, where appropriate.
76. It has long been acknowledged that a high proportion of offenders experience poor mental health, especially women, which can lead to self-medication of drugs and alcohol and consequent misuse. The number of treatment requirements given as part of a community order, however, is low. In 2018<sup>18</sup> the percentage of treatment requirements commenced as part of a community order or suspended sentence order was:

	Community Order 2018, total: 75,750	Suspended Sentence Order 2018, total: 34,257
MHTR	0.6% (454)	0.6% (205)
DRR	5.7% (4,317)	7.7% (2,637)
ATR	4.1% (3,105)	4.7% (1,610)

77. The use of community and suspended sentence orders has fallen steadily by around a third during the ten-year period 2008 to 2018, from a combined total of 166,598 in 2008 to 110,007 in 2018. During this period the proportion of Mental Health Treatment Requirements (MHTRs) and Alcohol Treatment Requirements (ATRs) has remained largely the same, while the proportion of Drug Rehabilitation Requirements (DRRs) has reduced<sup>19</sup>.
78. According to one recent report (Centre for Justice Innovation 2018) there are a number of reasons that have contributed to this decline, ultimately leading to 'a worrying sense that trust of sentencers in the delivery of community sentences is fraying.' In similar vein, a report by the Magistrates Association (2018) found that a lack of information about Community Rehabilitation Companies, particularly about available community sentences, contributed towards reduced sentencer confidence in community sentences.
79. In 2017/18, five sites across England tested a protocol to increase the use of the Community Sentence Treatment Requirements (CSTR) and reduce short-term custodial sentences by providing effective, robust community orders that may include mental health, drug, and alcohol treatment requirements (MHTR,

<sup>18</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/796919/probation-2018.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/796919/probation-2018.ods)

<sup>19</sup> Ibid.

DRR and ATR). This 'CSTR programme' has led to a significant increase in the number of MHTRs in the five sites, and promising health and justice outcomes for offenders. Information and awareness sessions for members of the judiciary and court staff facilitated valuable information sharing and improved partnership working across the criminal justice pathway. The CSTR programme is a partnership between the Ministry of Justice and Department of Health and Social Care, NHS England and Public Health England. It is hoped that an announcement concerning next steps and roll out will be made in summer 2019.

80. In the year to June 2018 around 61,500 people were sent to prison to serve a sentence. The majority (70%) had committed a non-violent offence and almost half were sentenced to serve six months or less (Prison Reform Trust 2018). In recent months the Secretary of State for Justice and Minister for Prisons have spoken out against the use of short prison sentences, which, according to the then Minister for Prisons, Rory Stewart are 'long enough to damage you and not long enough to heal you' (The Daily Telegraph, January 2019). Plans to scrap short prison sentences have been mooted but, as yet, nothing has been confirmed.
81. Prisons are overcrowded<sup>20</sup> and unsafe<sup>21</sup>; they can make pre-existing mental health conditions worse and cause mental health problems where none had hitherto existed. There were 325 deaths in prison custody in the 12 months to December 2018, up 10% from the previous year. Of these deaths, 92 were self-inflicted. In the same year there were 55,548 incidents of self-harm – the highest number ever recorded. The 2017-18 annual report of the Prison & Probation Ombudsman notes:

*As in previous years, many of the prisoners whose deaths we investigated in 2017-18 suffered from significant mental health issues.... Mental health issues were also sometimes missed when set against a history of substance and alcohol abuse, and mental health treatment was regarded as an afterthought rather than considered holistically as part of a prisoner's whole condition (Prisons & Probation Ombudsman 2018).*

82. Against this backdrop, our survey asked selected magistrates for their views on liaison and diversion services, pre-sentence reports (PSRs) and

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<sup>20</sup> In 2017–18, two-thirds of prisons in England and Wales were overcrowded (81 of the 120 prisons). Nearly 20,700 people were held in overcrowded accommodation—almost a quarter of the prison population. The majority were doubling up in cells designed for one (Table 2.2, 2.3 and 2.4, Ministry of Justice (2018) Annual HM Prison and Probation Service digest: 2017 to 2018, London: Ministry of Justice).

<sup>21</sup> In the 12 months to September 2018, there were 52,814 self-harm incidents, a 23% increase from the previous year, and a new record high. In the 12 months to September 2018, there were 33,803 assault incidents, up 20% from the previous year (Ministry of Justice Safety in Custody Statistics, January 2019).



sentencing options relevant to offenders with mental health conditions, drug and alcohol misuse, learning disabilities, and specific provision for women.

83. Information about a defendant's health, social care and support needs can help to inform court proceedings, including the need for reasonable adjustments and, if found guilty, sentencing options. Based on assessments and access to pre-existing health records, liaison and diversion services are well placed to provide information about individual defendants that addresses, where relevant, their mental health and substance misuse problems, and whether they might have learning disabilities and/or autism, acquired brain injury and/or communication needs. Reports written by liaison and diversion services help to inform criminal justice decision making, including by the police, Crown Prosecution Service, members of the judiciary and writers of pre-sentence reports (PSRs).
84. In this study, although most magistrates were aware of liaison and diversion services and had a reasonable idea about what they could expect from them, a significant minority didn't know that reports included information about mental health, learning disabilities or substance misuse.
85. There was a mixed response from magistrates as to how effective they considered their local liaison and diversion services to be, with around half saying services were adequate or mostly/very adequate and around half saying services were less than adequate or not at all adequate.
86. Magistrates were more likely to receive information concerning a defendant's mental health and substance misuse needs from a PSR than they were from liaison and diversion services. While PSRs should be informed by written reports from liaison and diversion services, they will only be delivered once a defendant has been found guilty. This means that the need for reasonable adjustments during court proceedings for individuals with learning disabilities and certain mental health conditions may be missed.
87. Although most magistrates said that PSRs played a significant role in their decision-making regarding sentencing, there was a mixed response to reports with magistrates describing a range from excellent to poor. Magistrates said they were more likely to request a PSR now than they were three years ago. Some magistrates further noted that same day reports enabled sentencing on the day, so avoiding the need to adjourn. The CSTR protocol (referred to above) aims for same day PSRs and sentencing on the day in order to facilitate treatment as early as possible. Standard delivery reports are the most comprehensive PSR, however this does not guarantee a quality product (Centre for Justice Innovation 2018). As one magistrate observed:

*Too much cut and paste and not enough checking of content.*

88. In the ten-year period, 2008-2018, there has been a significant decline in the use of PSRs in both the Crown and Magistrates' Courts, and a dramatic decline in the use of Standard PSRs in favour of Fast Delivery PSRs, both written and oral (Ministry of Justice 2019). A recent thematic inspection report on post-release supervision of short-term prisoners found that PSRs had been completed in less than a quarter of inspected cases (HM Inspectorate of Probation 2019). In the same report, however, magistrates who were surveyed said they were referring to PSRs much more often than in a quarter of cases, which may indicate that courts were receiving information from probation that was not being recorded as a PSR. This, in turn, may mean that information provided by probation about an offender, including information about mental health conditions and other needs, was not being passed on to the prison, if an offender was sentenced to immediate custody.
89. In our survey, magistrates were asked about the availability of **treatment requirements** as part of a community order. Almost all said there was availability of DRRs and ATRs and most said they had 'often' included these treatment requirements as part of a community sentence. This contrasts strongly with availability of the MHTR. Slightly fewer than a fifth of magistrates said this treatment requirement was available, with the remainder saying it either wasn't available or they didn't know whether it was or not. Over half of magistrates said they had 'never' included the MHTR as part of a community sentence and fewer than half said they 'rarely' had. The reasons given for not using this treatment requirement ranged from not knowing it existed through to magistrates trying their level best only to be told *'there is no service and if there was it would take too long to set up.'*
90. The DRR provides the opportunity to **review progress**, and this was explored in our study. Slightly more than half of magistrates said DRRs were reviewed in their area and around a third were unsure. Where reviews took place, feedback was very positive and there were three main reasons for this:
- As a way of encouraging individual offenders
  - Monitoring progress, with praise or sanctions, as necessary
  - The ability to gauge effectiveness of the order, including performance by the Community Rehabilitation Company.
91. Most magistrates said the opportunity to review progress should include ATRs and, by extension, MHTRs:

*Any order that requires an offender to give regular updates and receive support and congratulations... would serve to add considerable focus to their own treatment.*

*It would allow magistrates to gauge if the requirements are effective and if so/or not, why this is the case.*

92. This lack of feedback for magistrates, once they have sentenced an offender, was highlighted in the report by the Centre for Justice Innovation (2018), *Renewing Trust*.

*Sentencers remain largely in the dark about what happens after they sentence someone to a community sentence and have few opportunities to witness progress and compliance with court orders. There is no routine process by which sentencers' perceptions of community sentences are gathered.*

93. Magistrates were asked about **barriers** that prevented them from making more use of community sentences, where relevant. Around a third identified a lack of confidence in community sentences, a lack of knowledge about what was involved, and lack of local options. Limited resources sometimes meant that treatment requirements weren't available and PSRs would sometimes cite an unwillingness on the offender's part to comply with a community order.
94. Most magistrates said they didn't think a lack of community alternatives to custody meant that prison was used as a **place of safety**. Where magistrates said they thought that sometimes prison was used as a place of safety, it was because they had concerns about the safety of the individual or of others, and felt they had no alternative, in the absence of any other community facility.
95. Most magistrates were concerned about the ability of defendants with **learning disabilities** to participate effectively in court proceedings. Magistrates were not always aware when a defendant might have learning disabilities and, as a result, their behaviour could be construed as 'obstructive, non-cooperative or even dismissive', rather than the person needing support. Where it was available, support was ad hoc with magistrates not being able to gauge if individual defendants fully understood what is happening in court and what the consequences might be. Around a fifth of magistrates said specific sentencing options were available for offenders with learning disabilities, with around two-fifths saying that no options were available or that they didn't know.
96. The Female Offender Strategy (Ministry of Justice 2018) calls for specific responses to **women** who offend. Magistrates were asked about community

sentencing options, including treatment requirements, for women in their area. Around two-fifths said women specific options were available for the DRR, ATR and RAR, and just one-fifth said there was a women-specific MHTR; around two-fifths didn't know. Magistrates were asked whether community sentences included provision for childcare. A small minority said childcare was provided, but the majority didn't know.

97. Overall, from the responses given, and comments made, magistrates were keen to have the full range of treatment requirements laid down in law, known and available to them as local sentencing options. Most would like fuller, more timely information, if appropriate, on the mental health and substance misuse needs of defendants and the social care and support needed by people with learning disabilities.

## Recommendations

### **1. Building confidence in community sentences, including treatment requirements**

- a. The Ministry of Justice should ensure that forthcoming reforms to probation services include the requirement for local probation services to keep sentencers informed about community sentencing options in their local area. This could be achieved through information and presentations to magistrates by local probation services and the requirement for magistrates to visit community sentencing options at least once a year, alongside the opportunity to hear directly from offenders about progress made.
- b. A feedback mechanism for sentencers should be created for identification of areas where community sentencing options provided for in law are not made locally available in a timely way. Information gathered via this mechanism should be used to inform local commissioning arrangements and fill gaps in existing services, as well as being aggregated for national reporting.
- c. A process whereby magistrates and district judges review the progress of individuals given treatment requirements should be developed; see 2g.
- d. Magistrates and district judges should receive timely information from liaison and diversion services about a defendant's mental health, learning disability, substance misuse and other needs; see recommendation 3.
- e. The Judicial College should analyse whether current training on mental health conditions and disorders, including acquired brain injury, meets the needs of the judiciary and consider what further training may be required.

## 2. Community Sentence Treatment Requirements<sup>22</sup>

- a. Following the five Community Sentence Treatment Requirement (CSTR) trial sites, the Ministry of Justice and Department of Health and Social Care should agree funding arrangements for national roll out of CSTRs. This should include universal and timely access to the Mental Health Treatment Requirement (MHTR), Drug Rehabilitation Requirement (DRR) and Alcohol Treatment Requirement (ATR).
- b. A protocol for secondary care MHTRs should be developed and funding arrangements agreed by the Ministry of Justice and Department of Health and Social Care.
- c. The overall funding necessary for treatment requirements should be reviewed by the Ministry of Justice and Department of Health and Social Care and made available, and the need to ring fence local funding considered.
- d. The need for services for specific cohorts should be considered in the development and delivery of treatment requirements. Intersectionality<sup>23</sup> should also be considered; for example, young men from Black and Minority Ethnic communities and women who have experienced abusive relationships with men.
- e. Treatment requirements should be flexible and able to respond appropriately to offenders with multiple needs; for example, people with co-existing mental health and substance misuse problems.
- f. Treatment requirements should be accessible for people with acquired brain injury, learning disabilities and/or autism and be flexible in responding to need.
- g. The Ministry of Justice and Department of Health and Social Care should create a mechanism whereby treatment requirements are reviewed by magistrates. This would enable magistrates to monitor progress of how treatment requirements are delivered and of individual offenders (in an appropriate manner, taking into account patient and clinical confidentiality).

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<sup>22</sup> Mental Health Treatment Requirement (MHTR); Drug Rehabilitation Requirement (DRR); Alcohol Treatment Requirement (ATR).

<sup>23</sup> Meaning where specific cohorts sit within more than one disadvantaged group and are therefore at risk of increased vulnerability.

### **3. Liaison and diversion services**

Many liaison and diversion services have established protocols for providing regular updates for members of the judiciary and court staff and receiving feedback on services provided, which is welcomed.

- a. Quarterly updates from liaison and diversion services should be provided to, amongst others, the Bench Chair and MA branch mental health and learning disability champion. The Bench Chair should ensure information is disseminated to all magistrates. Information provided by liaison and diversion services should include:
  - i. how members of the judiciary are informed about a defendant's mental health, learning disabilities, substance misuse or other needs and suggestions for reasonable adjustments, as necessary
  - ii. when members of the judiciary can expect to receive this information, i.e. as part of the case management file
  - iii. what members of the judiciary should do if, in the absence of a report by liaison and diversion services, they are concerned about a defendant's mental health, learning disability and/or autism or other needs – including the possibility of acquired brain injury, and would like an assessment to be undertaken by liaison and diversion services
  - iv. what members of the judiciary should do if they believe a defendant's condition or circumstances have changed and a new assessment might be necessary.
- b. A feedback loop between liaison and diversion services and members of the judiciary should be established to provide feedback on what is working well and where there are concerns so that early solutions can be found where difficulties arise.
- c. Reports from liaison and diversion services should inform PSRs and be clearly referenced within the PSR as coming from liaison and diversion services; see recommendation 5c.

#### **4. Sentencing Council guidelines**

- a. Over half of magistrates said they didn't find Sentencing Council guidelines clear in setting out how they should take account of mental health needs. The two Sentencing Council consultations (*Expanded Explanations in Sentencing Guidelines* and *Sentencing Offenders with Mental Health Conditions or Disorders*) are both welcomed and timely, and provide the opportunity to ensure feedback from magistrates, including via the Magistrates Association.



## 5. Pre-Sentence Report (PSR)

- a. Relevant agencies should clarify when a pre-sentence report (PSR) is required and what information should be included. Written guidance should be issued, noting that sentencers should have full discretion to specify what information they want included in response to a specific case.
- b. Where a custodial sentence is being considered, the National Probation Service should ensure that PSRs address risk and vulnerability of the offender and whether a community sentence might offer improved justice and health outcomes.
- c. Reports from liaison and diversion services should inform PSRs, and information provided by them should be clearly identified as such in the PSR. In the absence of information from liaison and diversion services, the case should *either* be adjourned until the offender is seen by liaison and diversion services and a report made *or* a 'nil return' should be recorded by the report writer to confirm the absence of mental health needs, learning disability and/or autism, and substance misuse.

## 6. Prevention of suicide and self-harm in custody

- a. Access to secure and specialist beds, whether for assessment or treatment and care, should be dealt with in the same urgency for individuals in the criminal justice system as for those in the wider community. Prison should not be used as a temporary solution while a hospital bed is found, neither should it be used as a place of remand while awaiting a mental health assessment; instead, s.35 of the Mental Health Act should be invoked. For those convicted, but requiring treatment, there should be a greater use of s.38<sup>24</sup>.
- b. Prison should never be used as a place of safety; this has implications for the Bail Act 1976 provision to remand a person into custody for their own protection<sup>25</sup>.
- c. Should there be no alternative to a custodial sentence, reports by liaison and diversion services should be shared proportionately with the prison service and be available when the offender first arrives into prison.
- d. The impact of the prison environment on prisoners' mental health and wellbeing should be recognised. Prisoners should expect to be accommodated in an environment that promotes their mental health and wellbeing, and at the very least does no harm.

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<sup>24</sup> See the final report of the Independent Review of the Mental Health Act 1983, *Modernising the Mental Health Act, increasing choice, reducing compulsion*; recommendation 129: *Magistrates' courts should have the following powers, to bring them in line with Crown Courts: a. remand for assessment without conviction under section 35 of the Mental Health Act (MHA); b. remand for treatment under section 36 of the MHA.* Site accessed 31 May 2019: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/778897/Modernising\\_the\\_Mental\\_Health\\_Act\\_-\\_increasing\\_choice\\_reducing\\_compulsion.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778897/Modernising_the_Mental_Health_Act_-_increasing_choice_reducing_compulsion.pdf)

<sup>25</sup> See the final report of the Independent Review of the Mental Health Act 1983, *Modernising the Mental Health Act, increasing choice, reducing compulsion*; recommendation 130: *Prison should never be used as 'a place of safety' for individuals who meet the criteria for detention under the Mental Health Act.* Site accessed 31 May 2019: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/778897/Modernising\\_the\\_Mental\\_Health\\_Act\\_-\\_increasing\\_choice\\_reducing\\_compulsion.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778897/Modernising_the_Mental_Health_Act_-_increasing_choice_reducing_compulsion.pdf)

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