

VICTIMS' COMMISSIONER'S SUBMISSIONS TO THE SENTENCING REVIEW 2024/25

Introduction

As Victims' Commissioner for England and Wales, I welcome the opportunity to feed into your sentencing review.

I recognise this has been in large part prompted by the prison population crisis. In recent months I have taken a close and active interest in the implementation of SDS40 as well as changes to the Home Detention Curfew Scheme (HDC). These schemes highlight the difficult choices arising from a failure to align prison population projections with prison capacity.

As Victims' Commissioner, I generally avoid offering a view on sentencing as my statutory focus is on the treatment of victims within the justice system. I recognise victims may have strong views on sentencing policy, but we should also understand victims of crime are not a homogeneous group. They come from all walks of life and their experience of crime will vary enormously, depending on the severity of the crime, their vulnerability, and their treatment by criminal justice agencies.

That said, I am concerned any move from short custodial sentences to community sentences should not place victims at an increased risk of harm. The probation service is already under significant strain and any move to manage more offenders for longer periods of time in the community can only exacerbate these pressures. This is particularly an issue in VAWG offending, where victims are typically a greater risk of further harm from an offender and where protective measures such as restraining orders can be inadequately implemented and/ or poorly enforced.

Equally, I recognise this review offers real opportunities. I want to see greater clarity and transparency in regard to sentencing both before and after trial, so that victims have a better understanding of how these decisions are made and what they mean in practice. I also want victims to have greater opportunity to engage with practitioners when consideration is being given to the conditions to be attached to community orders.

Recommendations

I am making the following recommendations to the review:

- The review should acknowledge that whilst short prison sentences may not offer the opportunity to rehabilitate offenders, they can provide victims with respite from ongoing harassment, threats, intimidation and persistent anti-social behaviour. The review should be clear in how it will address this issue if more offenders are diverted to serving sentences in the community.
- Any move from short custodial sentences to community sentences should only be implemented at a time when the Probation Service has the capacity to absorb the additional caseload.

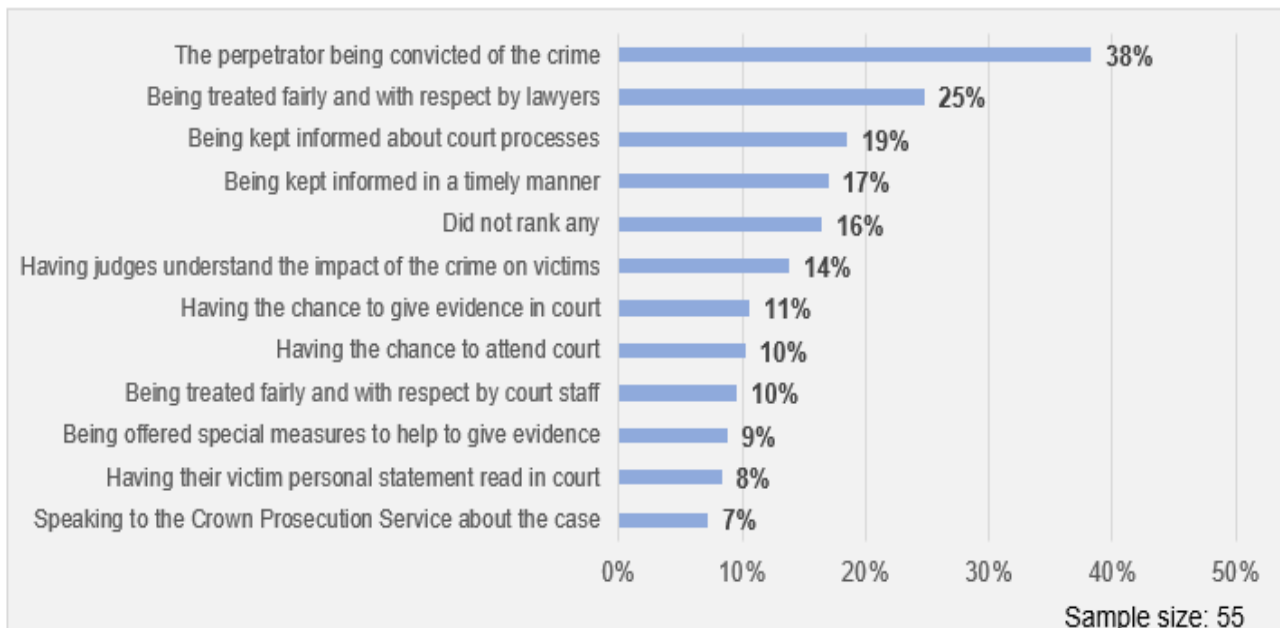
- The review should suggest how the Probation Service can be held to account in for ensuring conditions attached to community orders and release licences are being effectively monitored and enforced. This particularly applies to those conditions intended to protect and give peace of mind to victims.
- Effective enforcement will have an impact on prison numbers. The MoJ should provide realistic forecasts of the prison capacity required to accommodate offenders who persistently breach the conditions of community orders and demonstrate an increased risk of reoffending.
- There should be a statutory duty to consult victims when considering what conditions should be included in a community order. All victims should have the right to challenge and to request protective conditions.
- All victims whose cases result in a conviction in the Crown Court should be offered a free transcript of the sentencing remarks. This will assist them in getting a better understanding of what the sentence means and how much time will be served.
- Victims whose cases result in a conviction in the Magistrates Court should be offered a sentence summary for the same reasons given above.
- In cases where the transcript or summary of the sentencing decision still leaves victims with questions, the CPS should have a duty to meet with the victims and offer advice.
- The sentencing framework arising from this review should specifically aim to create a sentencing process that does not include retrospective adjustments to custodial terms by the government based on the restrictions of prison estate capacity. Retrospective shortening of custodial sentences erodes public confidence in the justice system.
- The Victims' Commissioner and HMI Probation should be commissioned by Ministers to undertake a joint review of the Victim Contact Scheme, specifically looking at how more victims might be encouraged to join the scheme and whether there is scope to share more information with victims.
- The review uses the available statistics and research to ensure that the framework is amended to take into account the specific needs or vulnerabilities of women offenders.

Procedural Justice and Victim Confidence

I have undertaken a number of surveys of victims to seek their views and lived experience. The most recent published survey was published in September - [Annual Victims' Survey 2023 - Victims Commissioner](#) . The survey does not ask questions about victim satisfaction with the sentence handed down by the court and therefore it does not offer us a sense of whether victims believe the sentence matches the crime.

However, it does tell us a significant proportion of victims place as much weight or more on how they are treated by the justice system as opposed to whether their case resulted in a conviction:

Figure 1. Proportion of respondents selecting each factor as the most or second most important factor for victims when attending court.



As you will see, treatment can include the extent to which they are kept informed and where appropriate, consulted, whether they are treated with respect and whether their entitlements under the Victims Code are delivered. I refer to this treatment as “procedural justice”.

This desire for procedural justice is therefore very important and we must not lose sight of it during the course of this review.

The survey also revealed many victims had lost confidence in the justice system and the likelihood of receiving justice:

- 38% of respondents were confident the criminal justice system was fair.
- 27% of respondents were confident the criminal justice system was effective.
- 23% of respondents were confident that they could receive justice by reporting a crime.

These figures come at a time when victim attrition during the criminal justice journey is at an all time high.

Every justice system requires the cooperation and engagement of victims if it is to be effective. This review, whilst primarily looking aligning sentencing with prison capacity, must also not lose sight of the importance of victims and how we might rebuild their confidence in the justice process.

Respite

My submissions focus on the treatment of victims within the justice system, and I do not intend to enter the debate about the efficacy of short prison sentences in terms of future rehabilitation of the offender. Clearly, successful rehabilitation of offenders is

paramount in that it means there will be fewer future victims of crime. Whether a sentence is served in closed custodial conditions, open conditions or in the community, rehabilitative work is critical.

That said, some offenders have terrorised communities, or targeted individuals or groups of individuals, causing them to live in a perpetual state of fear and distress. These might include perpetrators of domestic abuse, stalking, local drug gangs or prolific burglars, to name but a few. We must not lose sight of the fact that what a prison sentence does achieve is a limited period of respite for those who are being targeted. This is particularly the case in domestic violence cases, as victims can often need time to re-organise their lives without living in perpetual fear of their assailant.

The importance of this should not be underestimated or dismissed in a rush to empty prison cells.

The review needs to acknowledge this and set out how community respite might be achieved when more sentences are being served in the community.

Probation Service

It would appear that the intention of this review is to place greater emphasis on community-based sentences as opposed to prison. Given the recent NAO report showing demand for prison places will exceed capacity by over 12,000 places in 2027, I understand the driving force behind this.

However, a move towards more community sentences is dependent upon the Probation Service having the capacity to take on this additional workload. The probation reset last summer highlighted that the service is already under significant pressure. It is struggling to fill vacancies and two major restructures in the past ten years has denuded the service of many experienced practitioners.

I welcome the government's commitment to recruit over 1000 new members of probation staff, but it remains to be seen whether this campaign is successful. Managing high risk offenders is a highly skilled operation and however successful the recruitment campaign might be, it cannot not address the recent haemorrhaging of frontline experience.

The adjustment from short term custodial sentences to community sentences can only be managed effectively and safely if the probation service has the capacity to meet the challenge. If it does not, I have serious concerns about public protection.

Enforcement

The inevitable consequence of extending licence supervision to all short-term sentences, extending supervision periods, and providing more effective means of monitoring compliance, such as electronic tracking, is that more offenders will be recalled to custody. I note this is cited as one of the drivers behind the increase in prison population.

However, one of the consistent themes I hear from victims is that conditions attached to licences and community orders are not properly monitored or enforced, giving victims little confidence in community supervision. Any plan to divert more offenders into community sentences will need to address this concern.

Victims and the wider public are entitled to know how these sentences will be managed and enforced. Failure to reassure them on these points will undermine public confidence in both the justice system and the findings of this review.

As I make clear above, the first step is to ensure the probation service has the capacity and the skills to manage these offenders. The second is ensure non-compliance is swiftly and effectively dealt with. Future prison population projections must include realistic provision for those who persistently breach their conditions and present an increased risk of reoffending.

This is particularly important with conditions which relate to public protection, for example, no-contact conditions, exclusion zones and breaches of electronic curfews. Such conditions are the most effective way of reassuring victims and the wider public. If monitored effectively, these conditions can keep victims safe.

In short, licence conditions and conditions attached to community orders must be monitored and enforced robustly and there must be prison capacity to support this.

Victim Engagement

Effective enforcement is not the only means of addressing public confidence.

All too often, a victim can feel like a detached bystander within the justice system, with little information being shared and decisions only explained late in the day or sometimes, not at all. Obviously, a victim is not a party to the case, but they should be regarded as active participants.

If the government is looking to reset the dial based on this review, it is imperative that full and proper consideration be given to how victims might participate in the decisions relating to how the offender is managed in the community. I am not advocating victims be given a veto, but simply that they be given a statutory right to be consulted prior to trial or sentencing.

The consultation might include:

- A full explanation of the proposed conditions for the community order or the licence and how they will be monitored;
- The opportunity to challenge or request amendments to the conditions; and
- The opportunity to request protective conditions and to explain the reasons why the victim believes they are necessary.

The sentence should not be handed down until the judge or magistrate is satisfied a meaningful consultation with victims has taken place.

An effective engagement process can give victims a sense of procedural justice, as well as giving them confidence the conditions are appropriate and will be effective and properly monitored.

Sentencing Transparency

I know only too well that the sentencing hearing can be highly charged, with many conflicting emotions. I suspect this applies to defendants as well as victims. The complexity of the sentencing exercise is hard to explain in layman's terms. This complexity in part arises from the fact in sentencing the court must follow rules set down in law as well as guidance such as the sentencing guidelines. From a lay perspective, discounts for an early guilty plea, the nuances of concurrent and/ or consecutive sentences and a reduction in sentence due to time spent on remand or electronic tagging can add a bewildering degree of opacity to sentencing.

Against this backdrop, it is inevitable that many victims struggle to understand what the sentence means in practice. The judge will explain how the sentence had been calculated but for the untrained ear, this might be difficult to follow, particularly as many will be in a state of trauma. I have met victims many years after the sentence has been handed down who remain unclear what it meant in practice.

Even in cases where the victim comes away with a clear understanding of when the offender will be released, they do not anticipate retrospective adjustments being made by the executive in the form of early release schemes, such as HDC or end of custody licence or the early removal scheme.

A sentencing review that takes into account the needs of victims should make recommendations to address this. I have four requests to make of the review.

- The new sentencing regime should aspire to remove the need for government to make retrospective adjustments to custodial sentences based on the need to operate within prison capacity. For example, early removal to another jurisdiction or time spent on HDC could be incorporated into the judge's sentencing, thereby making the sentencing process more transparent to victims and defendants. Retrospective adjustments to sentences undermine confidence in the justice system.
- In the Crown Court, judge's sentencing remarks offer a detailed explanation of how the sentence was calculate. Most victims can only obtain a transcript of the sentencing remarks if they are able to pay a fee (bereaved families of homicide can apply for a free transcript of the judge's sentencing remarks, and there is an ongoing pilot where victims of sexual violence can also apply for a free transcript). The transcript enables victims to consider the remarks in the privacy of their own home and to reach an informed understanding of what the sentence means. I would like to see all victims who secure a conviction in the Crown Court to be offered a free transcript of sentencing remarks.
- For the same reasons, those victims whose cases are heard in the Magistrates Courts should also be offered a sentence summary which outlines broadly what will happen.

- In cases where a victim continues to struggle to understand how the sentence has been calculated, the CPS should have a duty to speak to the victim and explain the factors the court has considered as part of the sentencing exercise such as culpability, harm, time served on remand etc.

Sharing information with victims post-trial

For many victims, the criminal justice process does not stop the day the trial concludes. The need for transparency in the sentencing process goes beyond the sentencing hearing.

For victims of serious sexual and violent offending, they can join the Victim Contact Scheme, which will support them and provide information post-trial. This can include information relating to appeals, tariff reviews, applications to the Criminal cases Review Commission, transfer to open conditions, parole reviews, licence conditions and recalls to custody.

The sharing of information after sentencing is patchy and inconsistent. For example, a victim will receive far more detailed information about the offender's progress through a High Court judgment than through a Parole Board decision summary.

Around four in ten victims eligible for the Victim Contact Scheme decline to participate, often because they do not fully understand what the scheme is about. As was demonstrated in the Worboys case, this low take up rate can have significant consequences when victims outside the scheme learn through a third party that the offender has been released.

Again, sharing information and empowering victims by providing a fuller account of what is happening is an important part of procedural justice.

If this review of sentencing is to achieve a more transparent system for both victims and defendants, the sharing of information post-trial is important.

I would like the review to recommend to the Ministry of Justice that Ministers commission the Victims' Commissioner and HMI Probation to undertake a joint review of the Victim Contact Scheme, looking at what information is shared, how it is shared and how we achieve greater victim participation.

Women Offenders

I accept there are some women offenders who present a risk of harm and must serve a prison sentence.

That said, statistically, women offenders tend to commit non-violent offences and there is a well-established link between abuse/ coercion and offending.

The impacts of custody on women are often more substantial as women are more likely to be primary carers for children and other family members.

There are less women's prisons in the estate which increases the likelihood of imprisonment further from 'home' and 'community', exacerbating the impact of imprisonment and causing collateral 'punishment' to others such as children and other dependants who may be unable to visit due to financial or other logistical issues.

Around 60% of women in prison have experienced domestic abuse¹. Female prisoners are more likely to have a mental health condition or disability and are at greater risk of self-harm than men².

For all of these reasons this category of offenders should be given special consideration as the 'short sharp shock' approach to sentencing can have far reaching impacts both on the offender and others in the offender's life such as dependants.

Additionally, these short sentences represent a potentially disproportionate financial burden to the state, when weighed against harm caused by offending and risk to the public.

For these reasons, I would ask that the review uses the available statistics and research to ensure that the framework is amended to take into account the specific needs or vulnerabilities of women offenders and whether these can best be met outside of a custodial setting.

¹ [Female Offender Strategy](#)

² Ibid.