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The Rt Hon Shabana Mahmood MP
Lord Chancellor and Secretary of State for Justice
Sent by email: PS.LordChancellor@justice.gov.uk

06 June 2025

Dear Lord Chancellor,

SENTENCING REVIEW

I welcomed the opportunity to discuss the Sentencing Review with you ahead of publication. Since our conversation, I have had a chance to consider in detail the findings of the Review and its implications.

From the outset, I have recognised the need to align our sentencing framework with prison capacity. I recognise the significant and detrimental impact on the criminal justice system should the prison population exceed capacity. We need to have a sustainable sentencing strategy, not least because the continual adjusting of sentences through emergency release schemes is eroding public confidence.

At all times, my focus is on the safety of victims and the wider public and this will remain the case. Having reflected very carefully on what is being proposed, I do have some concerns.

I am writing to you ahead of drafting the legislation to implement the Sentencing Review's reforms to share these concerns and ask that you give them full and careful consideration. I would welcome further engagement with your officials on these matters.

Short Custodial Sentences

"Legislate to ensure short custodial sentences are only used in exceptional circumstances…"

Chapter three of the Review recommends that short sentences be used only in “exceptional” circumstances. 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.

In my submissions to the Review, I 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.”

In response, the Review acknowledged the importance of respite for targeted victims:

“*It is important to note that the Review is not recommending legislation to abolish short sentences. Judges and Magistrates need recourse to short custodial sentences in exceptional circumstances, for example in cases of wilful non-compliance with court orders, to provide a victim of domestic abuse with a period of respite, or for offenders who been given a community order or suspended sentence order and go on to reoffend…”*

I welcome this acknowledgement, but I am concerned that “exceptional circumstances” is setting the bar at a very high level. That said, the examples of exceptional circumstances provided by the Review do not appear to be “exceptional” and in all likelihood, will apply to a significant minority of offenders. In addition, these examples, there will be other groups of victims who also benefit from a period of respite from their offender, such as victims of stalking, prolific burglars or the most egregious perpetrators of anti-social behaviour (ASB). The needs of these groups of victims should not be overlooked in the interests of driving down prison numbers.

I would welcome an assurance that sentencers will continue to have the discretion to hand down a short custodial sentence in cases where they believe it will provide necessary respite for the victims and that this discretion will not be restricted solely to victims of specific crime types.

Earned Release

“…. *it is important that these sentences are carried out in a way that is fair and transparent for offenders and victims, and as dictated by the sentence of the court.*

In my submissions to the Review, I called for greater transparency in sentencing, and for executive early release schemes to come to an end. Having read chapter four on the structure of the new Standard Determinate Sentence" I sense that what is being proposed will offer greater transparency and this is to be welcomed.

The Review goes on to recommend early release on the grounds of good behaviour:

"Under this model, the expectation is that most SDS offenders would be released at the one-third point if they have engaged constructively with the prison regime…

"This would set the expectation that all offenders should comply with the rules and poor behaviour (such as violence or use of drugs) will not be tolerated."

The definition of constructive engagement or good behaviour is unclear, but on the face of it, it seems that the determining factor will be the level of compliance demonstrated by the offender in a custodial setting. Obviously, compliance with the prison regime is important, but I believe it should not be the sole arbiter in determining whether the offender has "earned" early release. It is important we look at other factors such as evidence of remorse, and positive action to address the triggers of re-offending, such as tackling substance abuse.

If we confine ourselves to looking at a narrow range of indicators of good behaviour, this might result in some high-risk offenders "earning" early release. For example, we know sex offenders are often compliant prisoners, but can remain very high risk of re-offending in the community. Public safety must be the key factor when determining who has earned early release.

At Risk

I welcome the proposals for enhanced supervision for offenders, as set out in chapter 4 and acknowledge the importance of implementing this supervision immediately upon release. Many offenders fail at the very early stage of their licence supervision and a more structured regime might assist them in transitioning back into the community.

I understand the intention is for enhanced supervision to finish at the two thirds point of the sentence in all cases.

***"The at-risk stage:** For the final third of the sentence, offenders would progress to the at-risk stage where they would not be subject to active supervision…"*

In some cases, this might be appropriate and proportionate, but there will be instances where the offender's behaviour in the community gives serious cause for concern. For example, their behaviour might indicate they present a high risk of harm and imminent reoffending. In this situation, it is impossible to justify the premature termination of supervision at the two thirds point of the sentence.

In this situation, there needs to be provisions to enable probation staff to extend enhanced supervision to sentence expiry, so as to protect the public for longer. Legislation might set out the criteria for such a step. One option might be that an application to extend supervision to sentence expiry must be made to the Parole Board, whose decision will be final.

Recall

Tighten the threshold for recall so that it is only used to address consistent non-compliance with licence conditions or specific and imminent risk.

Chapter four also sets out a new model for recall. I am aware of the concerns arising from the growth of the recall population over the past six years. There appear to be many reasons behind this growth, including more offenders serving longer periods on supervision, and an increase in the number of offenders being supervised. It may also be that an overstretched service struggling with ever increasing caseloads finds recall a safer option than attempting to offer more intense supervision.

I am concerned by the plans to increase the threshold for recall. As currently worded, probation officers would only be able to return offenders to custody if there is "consistent non-compliance". This implies offenders will be allowed to remain in the community whilst breaching conditions designed to manage their risk harm. I assume "consistent non-compliance" will also include a higher level of tolerance towards breaches of exclusion zones and no-contact conditions which are specifically intended to provide peace of mind and safety for victims.

I am concerned this proposal will have a direct and an adverse impact on vulnerable victims. Instead of using legislation to restrict the discretion of probation managers to seek recall, it might be better to look at other tools such as more training and lower caseloads. These would give probation officers both the capacity and professional confidence to keep more offenders in the community, whilst at the same time retaining the authority to seek recall (even after one breach) if they conclude this is the only safe option open to them.

Introduce a longer FTR period (for example, 56 days) to reflect this more serious non-compliance and risk, replacing short-term recall of 14 or 28 days and standard recall for SDS.

I am also concerned that recall for SDS offenders (other than TACT offenders) will be limited to 56 days. Consistent with my concerns about the proposed "at

risk” phase of the sentence, we are limiting our ability to protect the public when we have offenders who present a high risk of harm and a high risk of imminent reoffending. The number of offenders who fall into this category might be small, but their potential impact on public safety is significant. In these cases, there needs to be an option to seek a standard recall so that the offender can remain in custody potentially until sentence expiry. Again, responsibility for taking such decisions might rest with the Parole Board. To release such offenders after 56 days so as to maximise the bounty in prison places would be irresponsible and in some cases, dangerous.

Sentencing Remarks

In my submissions to the review, I called for victims whose cases are dealt with in the Crown Court to be offered a free transcript of the judges’ sentencing remarks. Crown Courts deal with the most serious cases and most victims will have suffered and in some cases, will have been traumatised as a result of the crime. The transcript allows them the opportunity to consider the remarks away from the court room and to fully understand what the sentence means and how it has been arrived at.

The Review has not taken this on board. Instead, they recommend that the current pilot to offer transcripts to victims of sexual offences be made a permanent offer. This does not go far enough. Victims of serious violence, for example, will often suffer trauma and their injuries can be life changing. It is impossible to understand why this offer is not being extended to these victims. It implies a victim hierarchy, something I have always strongly opposed.

I hope the government will go further than this recommendation and extend the offer to all victims whose cases result in a Crown Court conviction.

Victim Participation

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. Whilst a victim is not a party to the case, they should be regarded as active participants.

For this reason, in my submissions to the Review, I stated we needed to consider how victims might participate in the decisions relating to how the offender is managed in the community. This is not to suggest that victims be given a veto, but 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 offer of greater victim participation will help build public and victim confidence in community sentences and sends a clear signal to victims their voice in being heard. I hope MoJ can reflect on this point.

Conclusion

I am not seeking to oppose the broad direction set out by this Review, but I am seeking reassurance as to the safety of victims and the wider public. There is an important balance to be struck between public safety and maximising the bounty in prison places. I fear elements of this review might appear to place the bounty above public safety and this worries me.

I hope my concerns will be reflected in any legislation arising from the Review.

A copy of this letter has been placed on my website.

Yours sincerely,

Baroness Newlove LLD (hc) DCL
Victims' Commissioner for England and Wales

Copied to:
Junior Lord of the Treasury (Government Whip) and Parliamentary Under-Secretary of State, Sir Nic Dakin MP
Alex Davies Jones MP, Minister for Victims and Violence Against Women and Girls
Amy Rees, Director General Chief Executive HMPPS
Isla Scott, Deputy Director, MoJ Victims and Witnesses Policy and Strategy
The Lord Timpson OBE DL, Minister of State for Prisons, Probation and Reducing Reoffending,