



# **Revolving Doors Briefing on amendment to the Police, Crime, Sentencing and Courts Bill at the House of Lords Committee Stage**

## **About Revolving Doors**

**Revolving Doors** is a national charity that aims to change systems and improve services for people 'in the revolving door' – people who come into repeat contact with the criminal justice system due to multiple unmet needs such as mental ill-health, substance misuse, homelessness, poverty, and other traumatic life events. We work to create a smarter criminal justice system that makes the revolving door avoidable and escapable. We do this by working alongside national and local decision-makers. We combine lived experience insight, robust research, and system knowledge to drive effective policy solutions.

This briefing outlines Revolving Doors' position on the Police, Crime, Sentencing and Courts Bill, in particular relating to Part 6 of the Bill, which deals with cautions and conditions attached to cautions, and Part 7 of the Bill which deals with sentencing and release, particularly regarding the need for a presumption against short sentences.

## **Part 6: Cautions**

Revolving Doors are approaching the issue of cautions within the Bill to align with our New Generation Policing project. New Generation Policing is an initiative that supports police and crime commissioners and police services to develop and implement new interventions to stop young adults from being caught in the cycle of crime and crisis. Our partnership aims to divert young adults at the cusp of the revolving door away from the criminal justice system and develop systemic responses to the combination of trauma, poverty and structural inequalities that drive the revolving door.

## **Why focus on cautions and young adults?**

Our analysis shows us that although young adults only constitute 10% of the population, they receive 31% of all cautions for 'revolving door' pattern offences.<sup>1</sup> People in the revolving door are characterised by repeated low-level, non-violent offences, such as theft and minor drug offences, driven by multiple unmet needs, including mental ill health, problematic substance use, homelessness and domestic abuse. Their health, care and offending related needs go hand in hand with trauma, persistent poverty, long-term unemployment, and social exclusion. It is essential that cautions serve not just as a punitive measure for young adults, but as methods of effectively diverting young adults away from the revolving door of crisis and crime.

Cautions can play a key role in diverting young adults away from the criminal justice system, whether it be a first-time offence or a pattern of repeat offending linked to poverty, trauma, mental health, and substance misuse. When used effectively, cautions with conditions attached can divert young adults into services such as drug and alcohol treatment or anger management services, which can address the drivers of their offending. The use of an out of court disposal can avoid the trauma of arrest, police custody, court procedures and a potential prison sentence, and young adults can be offered a means to turn their lives around.

The National Police Chiefs Council note that ‘there is a growing evidence base within policing including force initiatives such as Checkpoint in Durham Constabulary, Turning Point in West Midlands Police and CARA (Conditional Cautioning and Relationship Abuse) in Hampshire Police, that early intervention and diversion can be highly effective in preventing reoffending and increasing victim satisfaction.’<sup>ii</sup>

## **The current out of court disposal framework**

In most police force areas in England and Wales there are currently six different out of court disposals (OOCs) available: community resolutions; cannabis/khat warnings; Fixed Penalty Notices; Penalty Notices for Disorder; simple cautions; and conditional cautions. Prior to this Bill’s introduction into parliament, cautions had been streamlined into a two-tier framework, with conditional cautions representing the upper tier, and community resolutions representing the lower tier. Police forces then started trialling a two-tier framework for OOCs, with OOCs will be consolidated into two options: community resolutions (for less serious offending/people with limited offending histories) and conditional cautions (for more serious offending/people with more significant offending histories). Fixed Penalty Notices were retained. Streamlining six different types of cautions into a two-tier framework was to provide ‘a simplified framework for the public and practitioners to understand and work from’ and to provide ‘wider national consistency and scrutiny’.<sup>iii</sup>

The White Paper that precluded the PCSC Bill, *A Smarter Approach to Sentencing*, proposed rolling out this two-tier framework nationally. Whilst we welcome the simplification of out of court disposals, we feel the wording surrounding this two-tier framework within the Bill is potentially confusing, and there are certain points around OOCs and diversion that we feel need clarifying to ensure that young adults are being diverted away from the criminal justice system where possible and not being arbitrarily criminalised.

## **OOCs in the Bill**

The Bill proposes a two-tier framework for OOCs, but in a slightly different way to the two-tier framework that was originally being piloted.

The Centre for Justice Innovation note that ‘the upper tier, now named the ‘Diversionary Caution’, simply renames the current conditional caution. The new ‘Community Caution’ is the name for the lower tier, and will be an umbrella disposal for outcomes such as penalty notices for disorder and simple cautions.’<sup>iv</sup>

The ability and option to provide community resolutions are crucial for diversion. Community resolutions remain as an informal disposal and therefore do not feature in this Bill.

## **Our concern**

Both the diversionary caution and the community caution outlined in the Bill require the imposition of conditions on the person receiving the caution. Where conditions can facilitate positive changes for both the perpetrator and the victim, such as restorative justice, attendance of drug and alcohol treatment, and meaningful unpaid work, they can be beneficial. However, often conditions can be arbitrarily punitive and not necessarily effective in reducing reoffending.

The Centre for Justice Innovation note that ‘the Ministry of Justice’s two-tier out of court disposal pilot evaluation highlighted the dangers of up-tariffing within out of court disposals. It showed that, contrary to the principle of de-escalation, people who would have received simple cautions were given conditional cautions instead. Conditional cautions involved people having to complete more interventions than they otherwise would and came with the threat of enforcement in the case of non-compliance.’<sup>v</sup>

We asked our New Generation Campaigners how they viewed conditions attached to cautions, what they found useful, and what they did not find useful:

***“Rather than condition it could be an ‘intervention’ – something that’s going to be helpful”***

***“If you’re attaching a condition to caution, it needs to be something that benefits them”***

***“Unpaid work should be accredited – it should give them accreditation, certificate, helping to upskill them. Unpaid work should be meaningful”***

One campaigner told us of a condition where they were banned from public transport despite relying on it to get to school:

***“I used to have get two buses to school, and then I was banned from public transport. How else was I meant to get to school? I was taken to court for still being on public transport”***

The campaigners discussed useful conditions that could be attached to cautions, including alcohol awareness courses, family counselling sessions, and signposting to services that could help with financial issues and poverty.

There was also discussion that attaching a condition to a ‘diversionary’ caution may give false hope that the condition would be of benefit to the person receiving it.

***“You’re offering something to people and giving them false hope of support – this leads them into confession just so you can jump on that – it means that person won’t ask for help again and leaves them with massive mistrust of the system”***

As diversionary cautions are the upper-tier of OOCs, we accept that they will come with conditions. However, we feel it is necessary that the Bill gives due regard to the condition being something that will benefit the person receiving the caution to desist from low-level offending and ultimately turn their lives around, by imposing conditions that would assist with substance and alcohol misuse if relevant, or have the person take on unpaid work that would result in a qualification or accreditation that could ultimately lead to the person receiving the caution taking on gainful, meaningful employment.

**We are therefore calling for you to support an amendment outlining that a new clause be added to the Bill to ensure conditions are conducive to reducing reoffending.**

**In Clause 88, Page 79, line 36**

at end insert—

“(c)

make reasonable efforts, or ensure that reasonable efforts are or have been made, to ensure conditions include interventions to support the offender to desist from offending.”

These ‘reasonable efforts’ can constitute taking steps to engage young adults with support and diversionary schemes. Our recent evidence review on diverting young adults away from the cycle of crisis and crime looks at schemes in Leicestershire, North Yorkshire, and South Wales and Gwent where people who have received conditional cautions can be referred into services that provide support such as an allocated keyworker, emotional support, and signposting to further services.<sup>vi</sup>

## Part 7: Sentencing

### The Current Situation

Each year, 30,000 people each year go to prison on sentences of less than six months, representing half of all people sent to prison to serve a sentence.<sup>vii</sup> Since then, longer-term trends show decreases in prisoners serving short sentences of less than 4 years, in a move towards focusing on more serious offences.<sup>viii</sup> Nevertheless, over the past year, there have been decreases in the sentenced prisoner population across all sentence lengths except for the shortest sentences, where there was a 14% annual increase in people serving 6 months or less in prison.<sup>ix</sup>

**The majority of people serving sentences of less than six months are in prison for nonviolent offences. Some common offences that receive a short time in custody are theft and drug offences<sup>x</sup>, linked to underlying problems such as poverty, addiction, homelessness and poor mental health. The most common offence for which people are sentenced to prison is theft.**

Short prison sentences are proven to be less effective at reducing reoffending than community sentences.<sup>xi</sup> There are smarter ways of tackling persistent, petty crime. Short prison sentences are short-sighted because they disrupt family ties, housing, employment and treatment programmes for example, but they do not provide any meaningful rehabilitation. These sentences contribute to prison 'churn' and volatility. At the same time, the use of community sentences, which can include requirements such as mental health treatment, alcohol misuse treatment and drug misuse treatment, has declined.

Research demonstrates that short prison sentences have a particularly harmful effect on women and primary carers. Research shows that 'two thirds of women sentenced to imprisonment in England and Wales receive terms of six months or less, and many of them have been victims of much more serious offences than those they are accused of committing.'<sup>xii</sup> In Baldwin and Epstein's study, 17 women had served between 2- 23 weeks, none for offences involving violence, some for first offences, and between them they left a total of 50 children behind.'<sup>xiii</sup>

Our members' experiences reflect the detrimental impact of short sentences:

***"Although I was in prison for a short time I felt traumatized by the whole experience. In fact, sending me to prison was just a waste of time and money. I was released with no explanation and no support. I found myself back in the violent relationship which exacerbated my addiction which led to further arrests and trauma."***

***"I have done 19 short prison sentences in the last 20 years. A lot of the time I didn't get any interventions [to address] the problems that led me to being in custody – substance misuse, alcohol, drug addiction, homelessness. These are the reasons I was breaking the law - to try and get myself somewhere to live for the night, to fund my addiction and just to survive really."***

### The Cost of Short Sentences

In 2010, the National Audit Office estimated that the cost of looking after short-sentenced prisoners, not including education and healthcare, was £286 million.<sup>xiv</sup> As of 2020, the annual cost per prison place was £44,640<sup>xv</sup>, compared to approximately £4305 per community order.<sup>xvi</sup> The total cost of reoffences committed by adults who had previously received a custodial sentence of less than 12 months is £5.0 billion<sup>xvii</sup>. The research consensus suggests that short custodial sentences are not cost-effective, and do not serve to reduce reoffending, despite reducing reoffending being a departmental priority for the Ministry of Justice.

## Support

The public strongly oppose the use of prison for petty crime. A poll commissioned by Revolving Doors<sup>xviii</sup> found that:

- 80% of the public think that theft of daily essentials such as food, sanitary products and nappies does not warrant a prison sentence. This was true for voters across all the major parties.
- 74% of the public think people with drug or alcohol addictions belong in treatment programmes instead of prison.
- A majority of voters said they were likely to vote for an MP candidate that supported reducing prison populations and using the savings to invest in drug treatment and mental health programmes (only 16% said they were unlikely to do so). Each of the major parties had more people likely to support this policy than unlikely to do so.

Our 2018 campaign to reduce the use of short sentences was supported by over 30 signatories, including members of parliament, peers in the House of Lords, charities, researchers, and thinktanks.<sup>xix</sup> Despite this support, our call to reduce the use of short-term imprisonment remains as relevant as it was in 2019.

It is clear that smart, effective community solutions are necessary in place of short, disruptive, and cost-heavy prison sentences, and that this notion has a great deal of support.

### **The tide is already turning against short prison sentences**

In 2018, the House of Commons Justice Committee recommended that the UK Government should introduce a presumption against short custodial sentences.<sup>xx</sup>

In January 2019, the then Prisons Minister and MP Rory Stewart told the Telegraph that he supported a presumption against prison sentences of 6 months or less.<sup>xxi</sup> In February 2019, the then Justice Secretary and MP David Gauke said that: 'For the offenders completing these short sentences whose lives are destabilised, and for society which incurs a heavy financial and social cost, prison simply isn't working', going on to say: 'there is a very strong case to abolish sentences of six months or less altogether.'<sup>xxii</sup>

In 2020, we called on the Government to prioritise community and suspended sentences ahead of short custodial sentences of 6 months or less for all non-violent and non-sexual offences, and where community alternatives do not present a risk of harm to the public, in order to reduce the risk of Covid-19 transmission and outbreaks in prisons. A coalition of over 50 charities, academics, Police and Crime Commissioners and politicians supported our call.<sup>xxiii</sup>

### **The presumption against short sentences is working, and being extended, in Scotland.**

In Scotland, a presumption against prison sentences of 12 months or less was introduced in July 2019 under the Presumption Against Short Periods of Imprisonment (Scotland) Order 2019<sup>xxiv</sup> (PASS), an increase of the previous presumption against sentences of 3 months or less that was introduced in 2011, in acknowledgment that disruptive short prison sentences create a revolving door of crisis and crime and prison churn. Since PASS was implemented in Scotland in 2011, the number of community sentences has increased, and the number of custodial sentences under 12 months has decreased significantly, from 13,119 in 2011-12 to 9,486 in 2017-18. This is particularly the case for sentences of 6 months or less.<sup>xxv</sup> Since the extension of PASS in 2019, there was a decrease in the number of 6-12 month sentences in the period between the extension of the presumption in July 2019 and the lockdown in late March 2020.<sup>xxvi</sup> Community Justice Scotland, a national body responsible for reducing reoffending, state that they 'support the extension of PASS. Evidence shows that short term prison

sentences are not effective in meeting a person's needs and reducing their likelihood of reoffending, and in fact often do more harm than good.'

## **A presumption against short prison sentences will not result in an up-tariffing of sentences**

Some fear that a presumption against short prison sentences would simply result in an up-tariffing of sentences in the absence of clear guidelines for the court. For this reason, it is necessary that a presumption against short prison sentences includes requirements for courts to consider the severity of the offence(s) before passing a custodial sentence of 6 months or less, and a requirement for courts to clearly state its reason for no other sentence being appropriate if a custodial sentence of 6 months or less is passed, on record in its proceedings. Mechanisms of accountability such as this will hinder arbitrary up-tariffing of sentences.

The learnings from Scotland above also demonstrate that no significant up-tariffing of sentences has been seen since both the presumption and the presumption extension were introduced. Statistics published by the Scottish Government in February 2020 showed that:

- Numbers of custodial disposals have been falling since April 2019 and reached a low in November / December 2019
- In November and December of 2019, the number of custodial sentences given for a period of 12 months or less was around 665, the lowest value since April 2017
- The proportion of all disposals accounted for by custodial sentences of 12 months or less has fallen from 12.8% in April 2019 to 9.5% in November 2019

**We are therefore urging you to support the addition of a new clause to introduce a presumption against short prison sentences, of 6 months or less.**

### **“Presumption against short prison sentences**

After Clause 124, insert the following new Clause—

In section 230 of the Sentencing Code (threshold for imposing discretionary custodial sentence), after subsection (2) insert—

“(2A) The court must not pass a custodial sentence if it is of the opinion that—

- (a) the offence, or
- (b) the combination of the offence and one or more offences associated with it,

was not so serious that a custodial sentence of more than 6 months can be justified for the offence unless the court considers that no other sentence is appropriate.

(2B) Where a court passes a sentence under subsection (2A), it must—

- (a) state its reasons for the opinion that no other sentence is appropriate, and
- (b) arrange for those reasons to be entered in the record of the proceedings.””

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- <sup>i</sup> <http://www.revolving-doors.org.uk/file/2451/download?token=XT3bl7VL>
- <sup>ii</sup> <https://www.npcc.police.uk/Publication/Charging%20and%20Out%20of%20Court%20Disposals%20A%20National%20Strategy.pdf>
- <sup>iii</sup> <https://www.npcc.police.uk/Publication/Charging%20and%20Out%20of%20Court%20Disposals%20A%20National%20Strategy.pdf>
- <sup>iv</sup> <https://justiceinnovation.org/articles/unpacking-ministry-justices-new-bill>
- <sup>v</sup> <https://justiceinnovation.org/sites/default/files/media/document/2020/Delivering%20a%20smarter%20approach.pdf>
- <sup>vi</sup> <http://www.revolving-doors.org.uk/file/2601/download?token=-ChRnsJ3>
- <sup>vii</sup> <http://www.revolving-doors.org.uk/file/2271/download?token=p3aMJI PX>
- <sup>viii</sup> <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2021/offender-management-statistics-quarterly-january-to-march-2021>
- <sup>ix</sup> <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2021/offender-management-statistics-quarterly-january-to-march-2021>
- <sup>x</sup> <http://www.revolving-doors.org.uk/file/2271/download?token=p3aMJI PX>
- <sup>xi</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/814177/impact-short-custodial-sentences.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814177/impact-short-custodial-sentences.pdf)
- <sup>xii</sup> <https://www.nicco.org.uk/userfiles/downloads/5bc45012612b4-short-but-not-sweet.pdf>
- <sup>xiii</sup> <https://www.nicco.org.uk/userfiles/downloads/5bc45012612b4-short-but-not-sweet.pdf>
- <sup>xiv</sup> <https://www.nao.org.uk/wp-content/uploads/2010/03/0910431es.pdf>
- <sup>xv</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/929417/costs-prison-place-costs-prisoner-2019-2020-summary.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929417/costs-prison-place-costs-prisoner-2019-2020-summary.pdf)
- <sup>xvi</sup> <https://sentencingacademy.org.uk/wp-content/uploads/2021/01/The-Effectiveness-of-Sentencing-Options-1.pdf>
- <sup>xvii</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/814650/economic-social-costs-reoffending.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814650/economic-social-costs-reoffending.pdf)
- <sup>xviii</sup> Populus poll of 944 adults in England and Wales commissioned by Revolving Doors Agency. Fieldwork undertaken 12th-13th February 2018.
- <sup>xix</sup> <http://www.revolving-doors.org.uk/changing-policy/sentencing>
- <sup>xx</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/482/482.pdf>
- <sup>xxi</sup> <https://www.telegraph.co.uk/news/0/six-month-minimum-jail-terms-refurbished-cells-full-body-scanners/>
- <sup>xxii</sup> <https://www.gov.uk/government/speeches/beyond-prison-redefining-punishment-david-gauke-speech>
- <sup>xxiii</sup> <http://www.revolving-doors.org.uk/blog/save-lives-prevent-use-short-prison-sentences>
- <sup>xxiv</sup> <https://sp-bpr-en-prod-cdnep.azureedge.net/published/J/2019/6/21/Presumption-Against-Short-Periods-of-Imprisonment--Scotland--Order-2019/JS052019R14.pdf>
- <sup>xxv</sup> <https://communityjustice.scot/wp-content/uploads/2019/05/Sentenced-to-Smart-Justice-A-report-on-the-proposed-extension-of-the-Presumption-Against-Short-Sentences.-2.pdf>
- <sup>xxvi</sup> <https://www.gov.scot/publications/extended-presumption-against-short-sentences-monitoring-information-january-december-2020/pages/4/>