



Independent Sentencing Review 2024 to 2025:
Call for Evidence

A response by
The Chartered Institute of Legal Executives (CILEX)

January 2025

Introduction

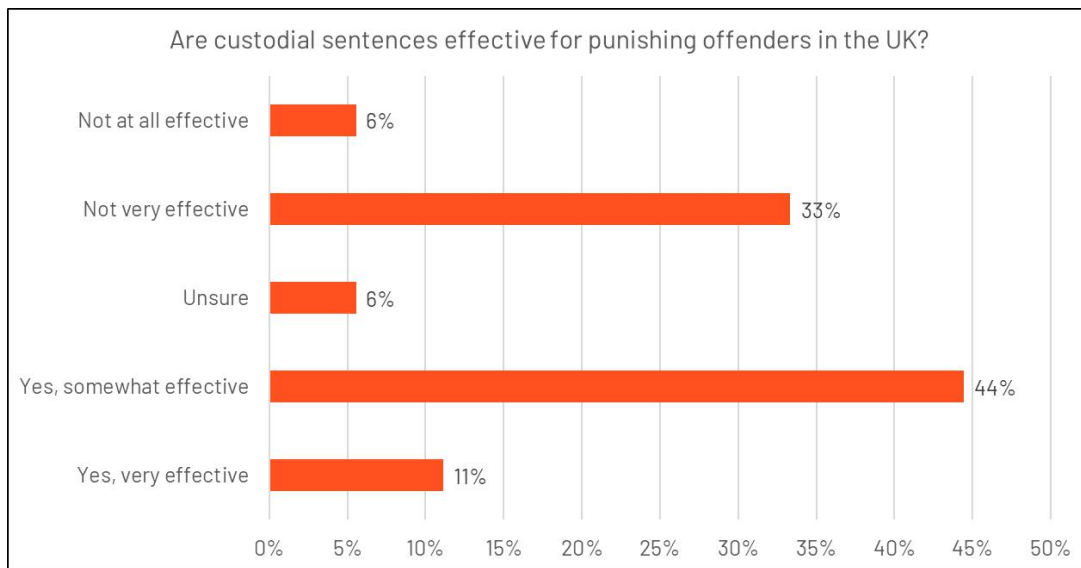
- 0.1. CILEX would like to take the opportunity to respond to the Independent Sentencing Review's call for evidence. CILEX welcomes the review and recognises the opportunity which it brings to create valued amendments to sentencing.
- 0.2. The Chartered Institute of Legal Executives (CILEX) is the professional association and governing body for Chartered Legal Executive lawyers (commonly known as 'CILEX Lawyers'), other legal practitioners and paralegals. Under the Legal Services Act 2007, CILEX acts as the Approved Regulator (AR) and delegates these regulatory powers to the independent regulator, CILEx Regulation Ltd (CRL).
- 0.3. CILEX represents over 17,500 members of which 77% of the membership are female, 17% of members are from an ethnic minority background, 4% are LGBTQA+ and 6.2% have a disability. Additionally, in terms of social mobility, 64% of CILEX members attended a state-run or state-funded school and 49% have an undergraduate university degree. 15% of members come from households which received free school meals.
- 0.4. As part of CILEX's response, CILEX surveyed criminal practitioners. Below is original data on the topics mentioned within the independent sentencing review alongside CILEX's view on the questions below.

Question 1 – What have been the key drivers in changes in sentencing, and how have these changes met the statutory purposes of sentencing?

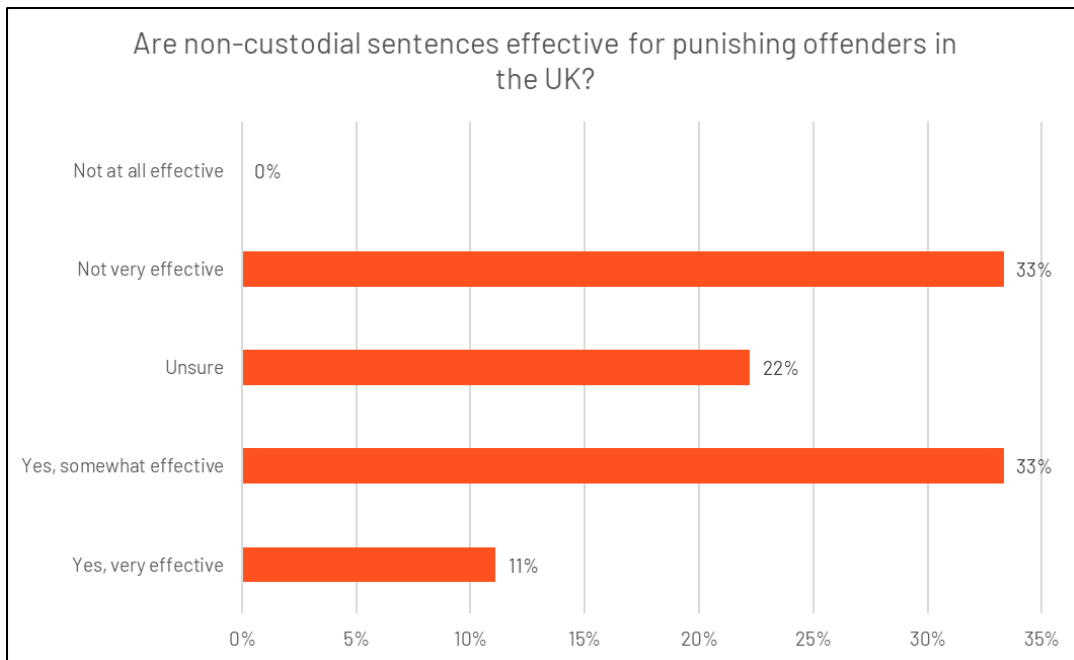
- 1.1. CILEX believes that the key drivers in rising sentencing lengths are those raised by The Howard League for Penal Reform: *"The first is a continuous escalation in the length of sentences imposed for more serious offences. The second is a lack of confidence in the efficacy of non-custodial sentences for less serious offences."*¹
- 1.2. Additionally, CILEX believes that the key drivers in changes to sentencing has been an increase in re-offending – due from both the lack of social support on release and the lack of institutional planning for the prisoner's release. Additionally, CILEX calls for better collaboration between institutions, whether that is housing providers through to prospective employers in order to prevent re-offending.
- 1.3. Additionally, on exiting prison, CILEX believes that the Government should also review its provision of long-term pastoral support. This may involve in-patient or out-patient rehabilitation, or forms of therapy. Whilst naturally there would be

¹ The Howard League for Penal Reform, 'Sentence Inflation: a Judicial Critique' 2024

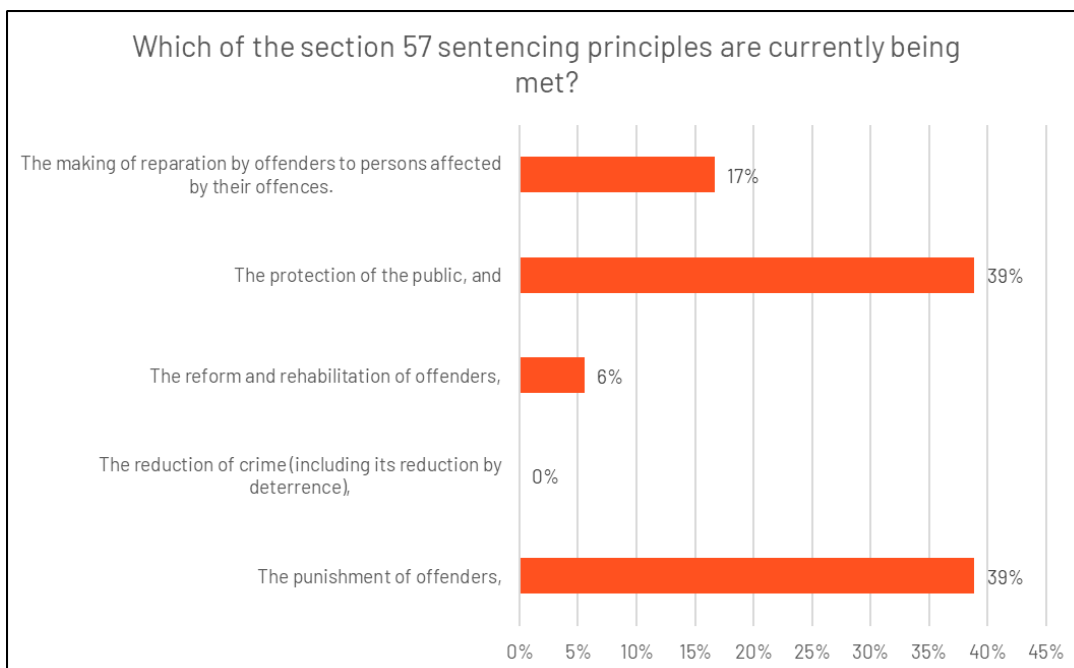
upfront costs to increased rehabilitation or therapy, however this would have a downstream benefit of reducing re-offending rates.



- 1.4. On review of sentencing lengths, CILEX believes that the impact of schedule 21 on wider sentencing has been detrimental – as has the expansion of mandatory sentences. CILEX believes that a portion of the expansion of mandatory sentences / whole life orders, has been based on political factors, rather than considered balance of the s57 sentencing principles.
- 1.5. When surveyed, CILEX members considered custodial sentences to be only partially effective. With 55% of those surveyed considering sentences to be effective to an extent, compared to 39% who considered it ineffective to an extent.
- 1.6. For non-custodial sentences, members considered these to be less effective, with only 44% of members considering non-custodial sentences to be effective to some extent. Although a larger portion of members were unsure as to their effectiveness.



- 1.7. As a result, CILEX members have a hesitant view as to which of the s57 sentencing principles are being met, with no members believing that the current sentences (custodial or non-custodial) are reducing crime.



- 1.8. When questioned, members highlighted core issues such as the below as to the changes they have seen in sentencing:
- “Sentencing is a lottery based on many factors. The main change has been the enthusiasm of courts to relieve offenders of money they don’t have, e.g. £2 a week from benefits. [This] costs more to enforce.”

- "Sentences seem to be inconsistent or not being appropriately applied due to certain characteristics of the offender"
- "there is a significant move away from the imposition of custodial sentences which in turn provides a level of comfort to the repeat offender that the chance of a custodial sentence is slimmer than ever before, little deterrent from continued offending"
- The community punishments are not always effective. Offenders struggle with accommodation and are punished by breach if they lose their homes. The punishments are not always tailored made in a particular way to suit an individual. Probation seem more concerned about recall and will recall for any slight mishap, which can be beyond someone's control."

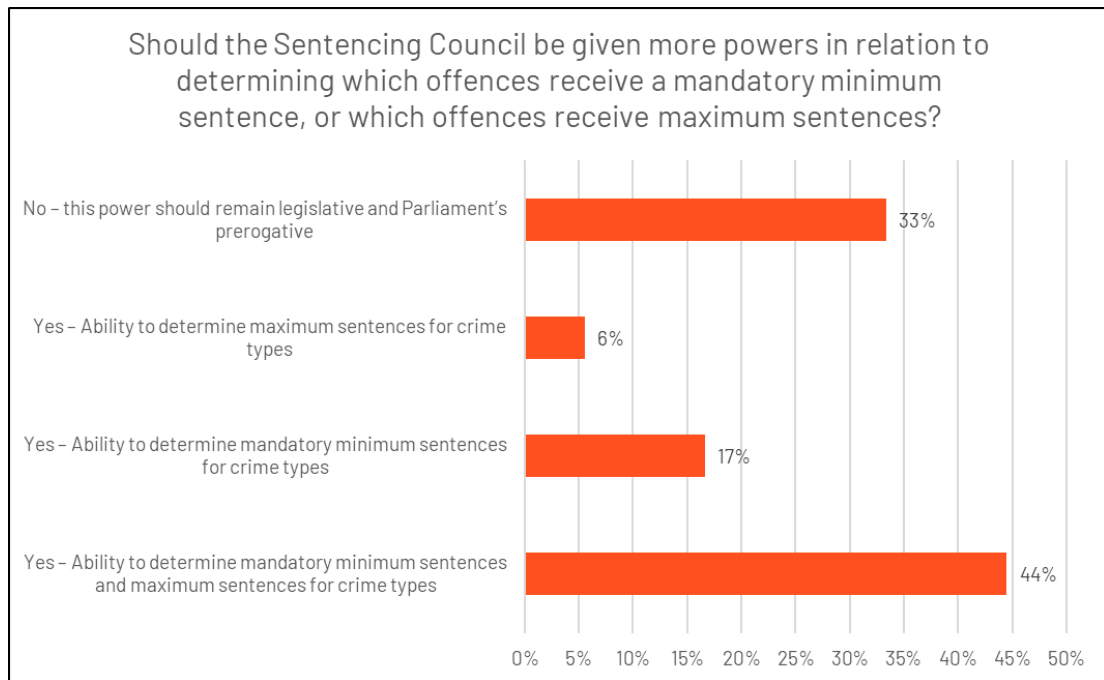
1.9. CILEX asked members to comment on which types of offences had experienced large or rapid inflation. The below were prominent types of offences:

- Dishonesty Offences
- Domestic Violence
- Drugs
- Public Disorder
- Homicide Offences

1.10. CILEX is of the view that offences relating to drugs should experience a deflation in sentencing, and more offences should be reduced by statute to non-custodial sentences only. This would decrease the numbers of individuals in prison, and also lead to better rehabilitation. Furthermore, it would also allow the offences to be dealt with in a swifter way by the courts, reducing the criminal court backlog.

Question 2 - How might we reform structures and processes to better meet the purposes of sentencing whilst ensuring a sustainable system?

- 2.1. The Government and Parliament must be evidence led in relation to sentencing, with a commitment to developing sentences which are guided by the sentencing principles under s57 of the Sentencing Act 2020, and not by political expedience.
- 2.2. When questioned, CILEX members believe that the Sentencing Council should have further powers – namely the ability to determine mandatory minimum and maximum sentences. CILEX concurs with this view and believes that it should be delegated to the Sentencing Council – who can provide evidence-led views on mandatory minimums and maximums.



- 2.3. CILEX does not believe that any of the s57 sentencing principles should be removed. Instead CILEX advocates for restructuring the hierarchy within the legislation. The current hierarchy is as follows:

"section 57(2) The court must have regard to the following purposes of sentencing—

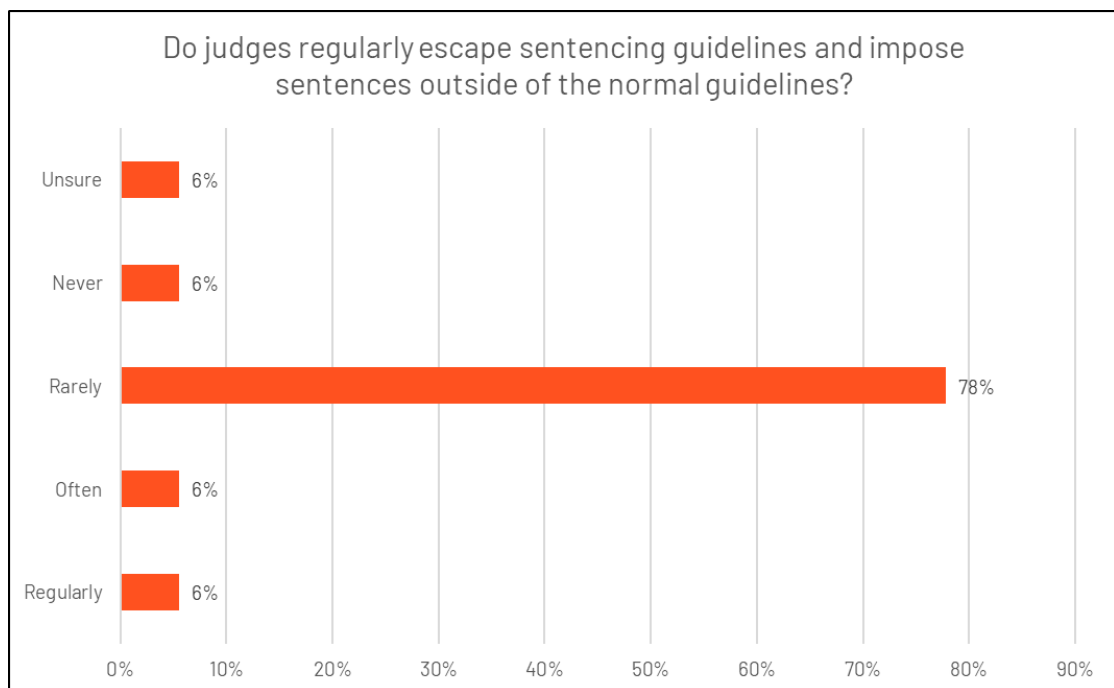
- (a) the punishment of offenders,*
- (b) the reduction of crime (including its reduction by deterrence),*
- (c) the reform and rehabilitation of offenders,*
- (d) the protection of the public, and*
- (e) the making of reparation by offenders to persons affected by their offences."*

- 2.4. CILEX instead recommends the following hierarchy:

"section 57(2) The court must have regard to the following purposes of sentencing—

- (a) The protection of the public,*
- (b) The reduction of crime (including its reduction by deterrence),*
- (c) The reform and rehabilitation of offenders,*
- (d) The making of reparation by offenders to persons affected by their offences, and*
- (e) The punishment of offenders"*

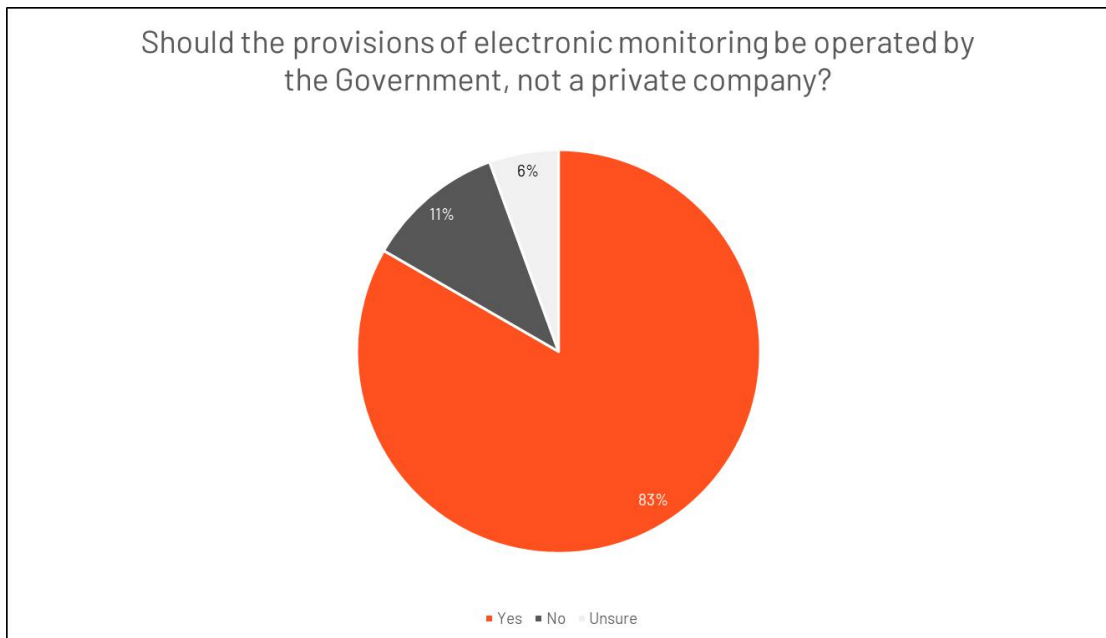
- 2.5. CILEX believes that this restructuring would revert judicial opinion when sentencing offenders to one where the protection of the public is paramount, and the punishment of offences (which whilst important) is at the bottom of the hierarchy.
- 2.6. Furthermore, CILEX believes that the notion of 'crossing the custody threshold' should be raised. This would increase the numbers of non-custodial sentences passed, and similarly reduce the number of custodial sentences. CILEX believes this could be achieved through systematic amendment to the sentencing guidelines, and amendments to primary legislation.
- 2.7. CILEX believes that there is high judicial confidence in the sentencing options. This is best demonstrated by CILEX members, when surveyed, confirming by 78% that judges rarely escape sentencing guidelines. However, when asked, there was no common category of offence which escaped the guidelines more often than others.



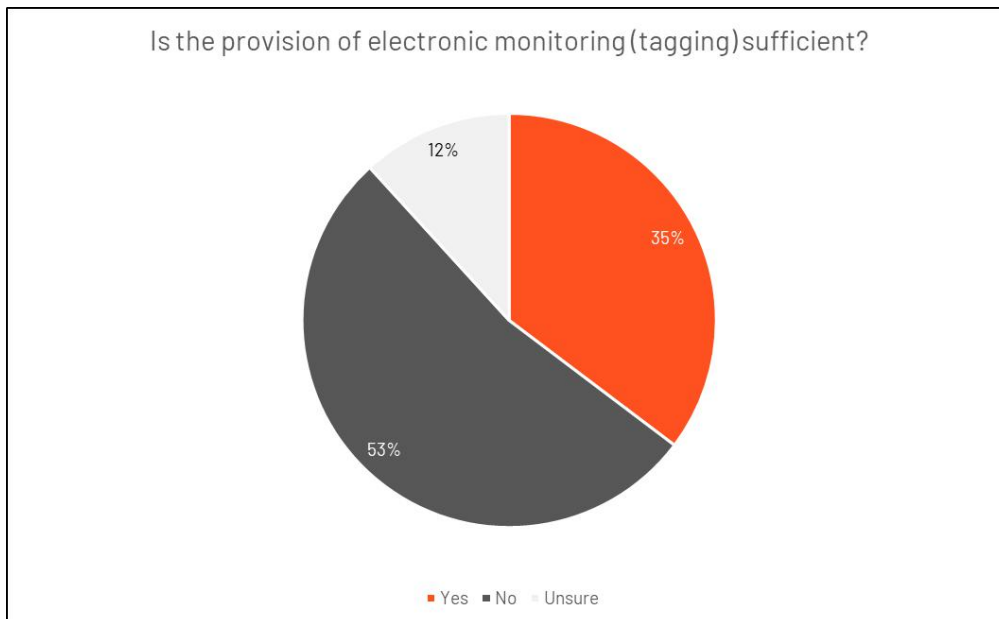
Question 3 - How can we use technology to be innovative in our sentencing options, including considering how we administer sentences and manage offenders in the community?

- 3.1. CILEX supports the use of technology to deliver sentencing options. CILEX believes that electronic monitoring for the purposes of tracking location, monitoring alcohol use and other aspects of behaviour is a preferable alternative to custody. However, CILEX supports electronic monitoring in its entirety being operated by the Government, not a private company. CILEX

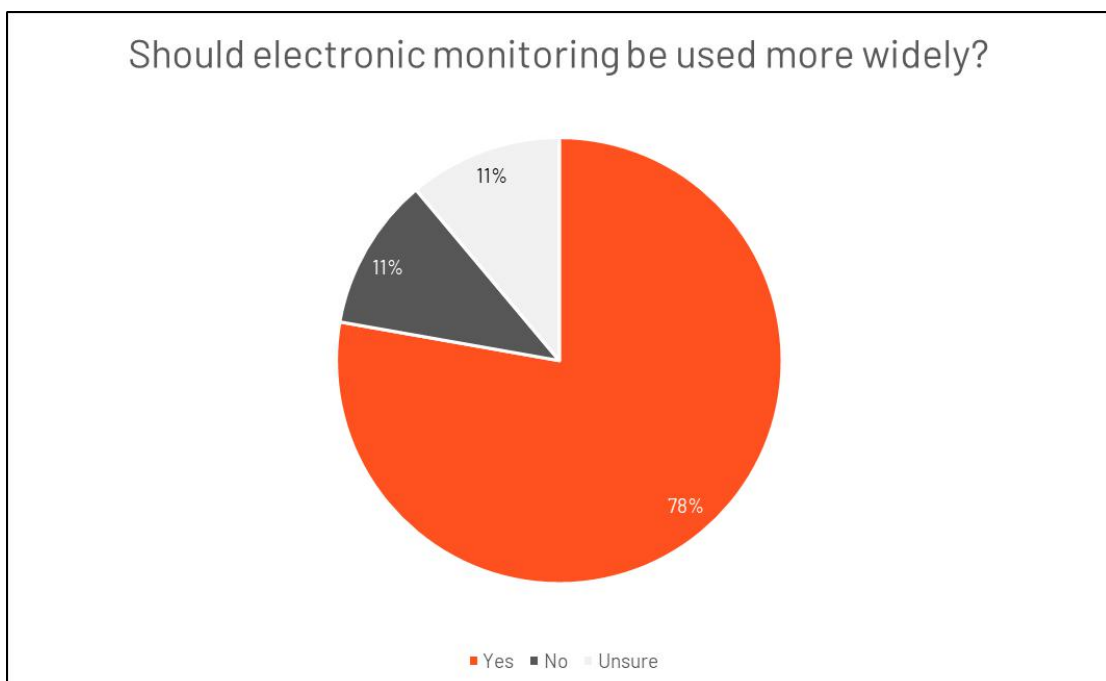
believes that outsourcing this resource increases its cost per defendant. There are also notable issues with electronic monitoring which could be better addressed if the initiative was not profit-led. 83% of surveyed CILEX members support electronic monitoring being operated by the Government.



- 3.2. CILEX supports new solutions and emerging technology so long as the technology is safe and proportionate. CILEX however calls for ongoing consideration of the rights of offenders to be restrained only where necessary. For example, increased use of artificial intelligence may lead to privacy breaches. CILEX notes that this may be necessary, depending on the circumstances of each offence/offender, and therefore it asks the government to adequately consider each new use of technology and methods proportionately.
- 3.3. 53% of CILEX members surveyed do not believe that the provision of electronic monitoring is sufficient. CILEX believes that better technology is needed to locate the offender, and the boundary for electronic tracking. This would lead to less call-outs for monitoring errors, and less unnecessary police involvement. It would also lead to reduced caseloads for probation, where they have to review erroneous cases where tags have been 'set off'. This would also reduce the court's time spent on these issues and reduce the workload of criminal practitioners.



- 3.4. 78% of CILEX members surveyed believe that electronic monitoring should be used more widely. Given the substantial cost of incarceration, CILEX believes that electronic monitoring could be used in a way which is more financially beneficial. If more funding was provided for probation hostels, accompanied with increased electronic monitoring, this would reduce the overall cost to the exchequer.

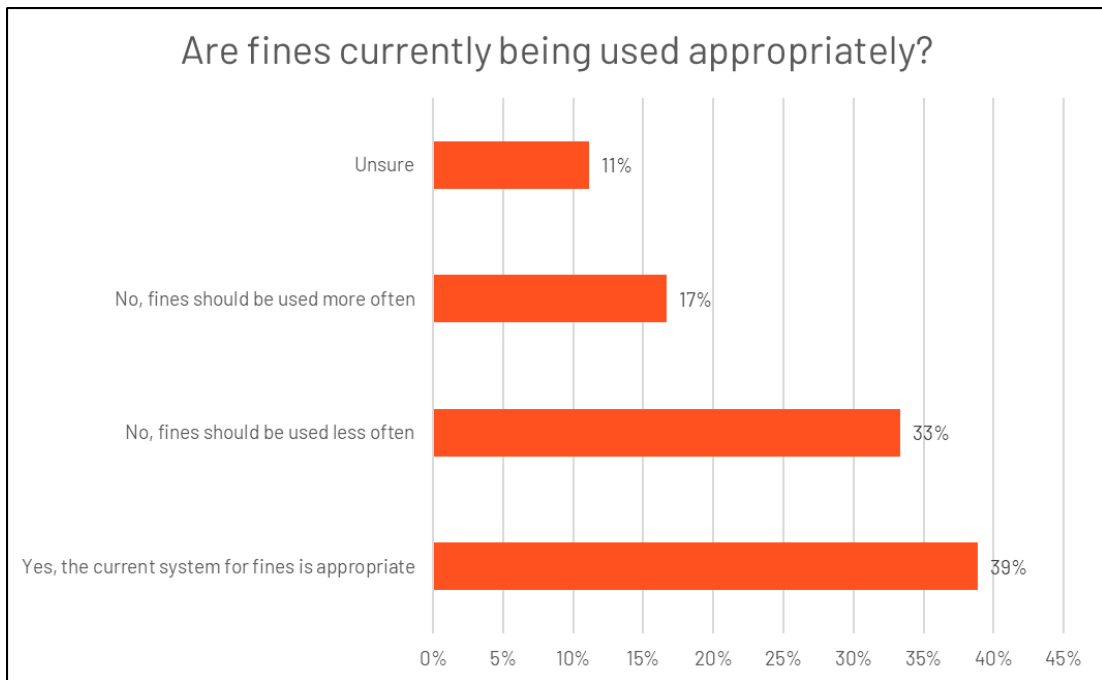


- 3.5. CILEX believes that the sentencing council guidelines should be amended to increase the percentage of offences which allow for electronic monitoring.

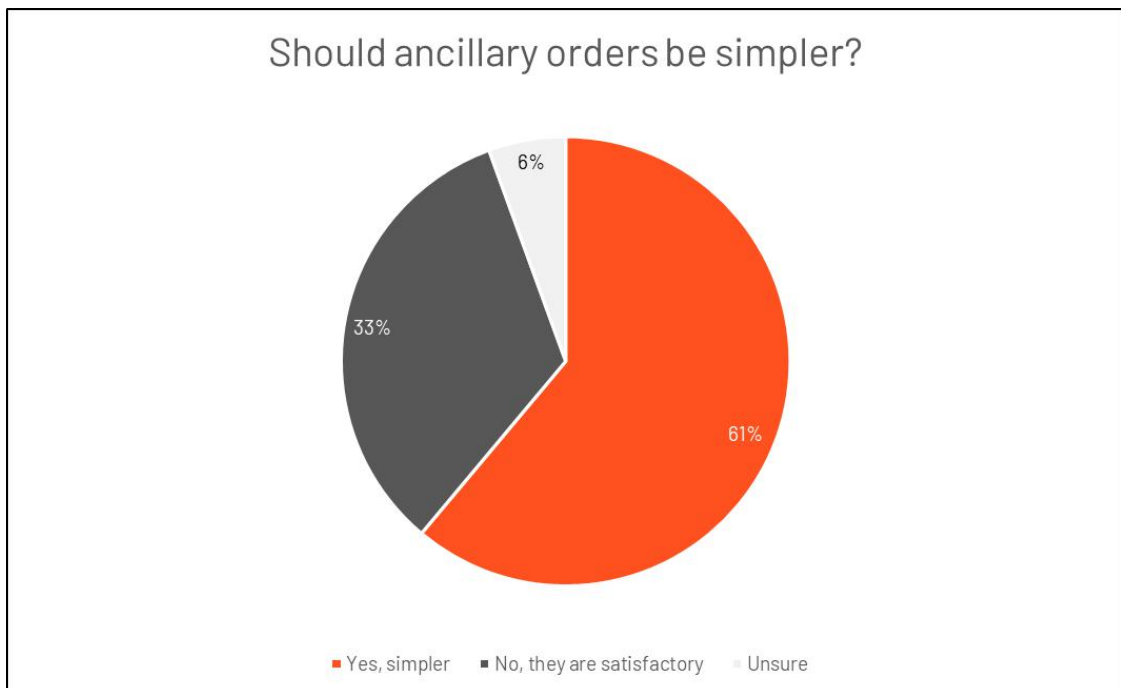
Question 4 - How should we reform the use of community sentences and other alternatives to custody to deliver justice and improve outcomes for offenders, victims and communities?

- 4.1. Custodial sentences should be restricted to offenders who are likely to cause serious harm to others in the future. Prison should be a primary vehicle for protecting the public, not as a method of punishment. As part of this, CILEX believes that more punitive methods of community sentences should be introduced, with new community requirements which can impede on an individual's liberty without the need for prison. E.g. 700 hours of community service (which is not currently available under the law) would be akin to 20 weeks unemployment if served within a year. This would form both a deterrent to the public and be punitive. This would cost the treasury as the individual would likely need to receive some form of state benefit whilst undertaking this programme, but this would still be cheaper than the £53,000 bill which the treasury has to pay for state-held prisoners.²
- 4.2. Additionally, as part of this CILEX believes that specific programmes could be made available to those undertaking community sentences. E.g. for a 26-year old individual convicted of possession with intent to supply, a 6-month mandatory course in plumbing, or bricklaying would be beneficial. It could be delivered better in the community, and if delivered intensely, could lead to reformed individuals who have better employment prospects. This would reduce crime in society and also lead to reduced employment shortages in core sectors.
- 4.3. When surveyed, CILEX members are split as to whether fines are being used appropriately. With only 39% of members believing that the current system for fines is appropriate. When asked whether fines should be used more or less often, less often was the members' preferred choice.

² Ministry of Justice, Cost per place and cost per prisoner by individual prison, HMPPS 2022-2023, p3

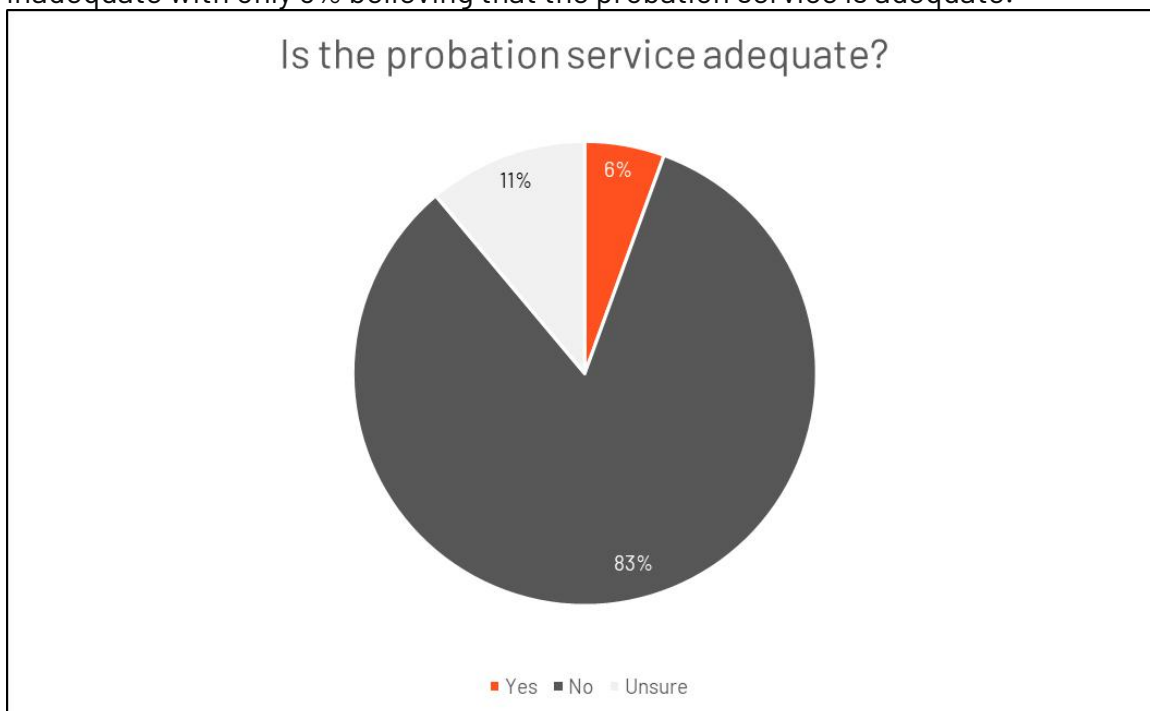


- 4.4. Additionally, CILEX believe that ancillary orders should be made simpler. CILEX believes that the catalogue of ancillary orders is unnecessarily complex, both for practitioners and for parties to proceedings. Over 61% of CILEX members when surveyed believed that ancillary orders should be made simpler.

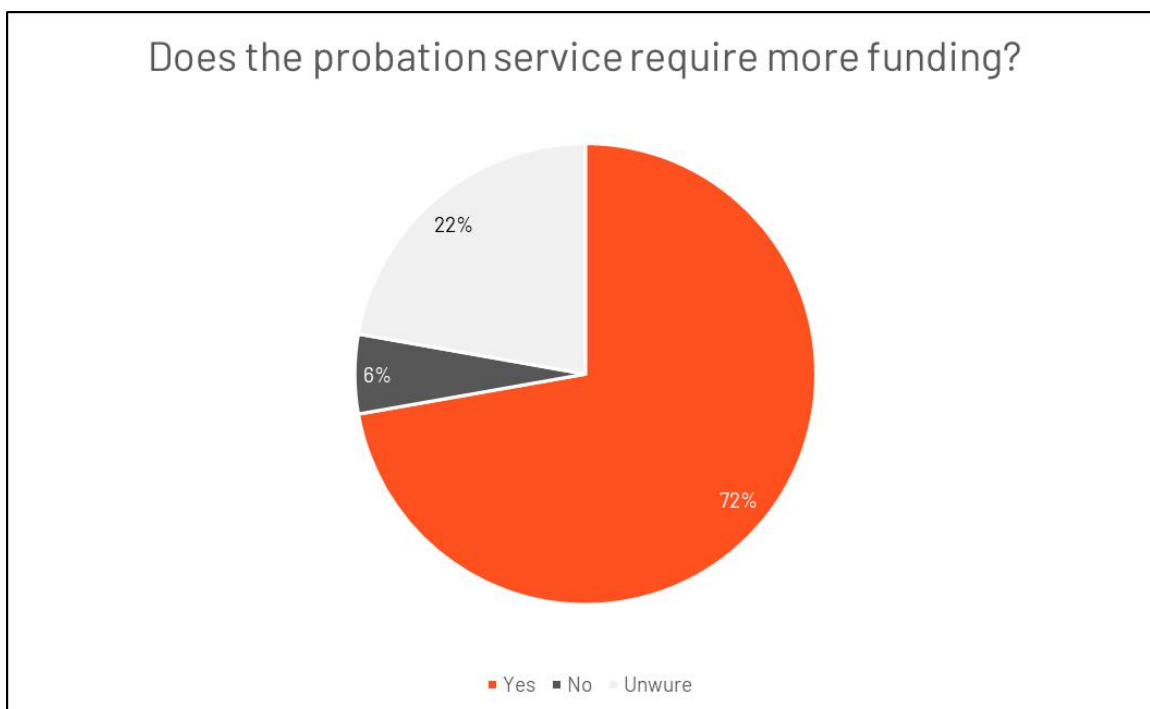


- 4.5. CILEX does not believe that the probation service has adequate resourcing and that as a result the probation service cannot currently function adequately. Of the criminal practitioners surveyed, 83% believe that the probation service is

inadequate with only 6% believing that the probation service is adequate.

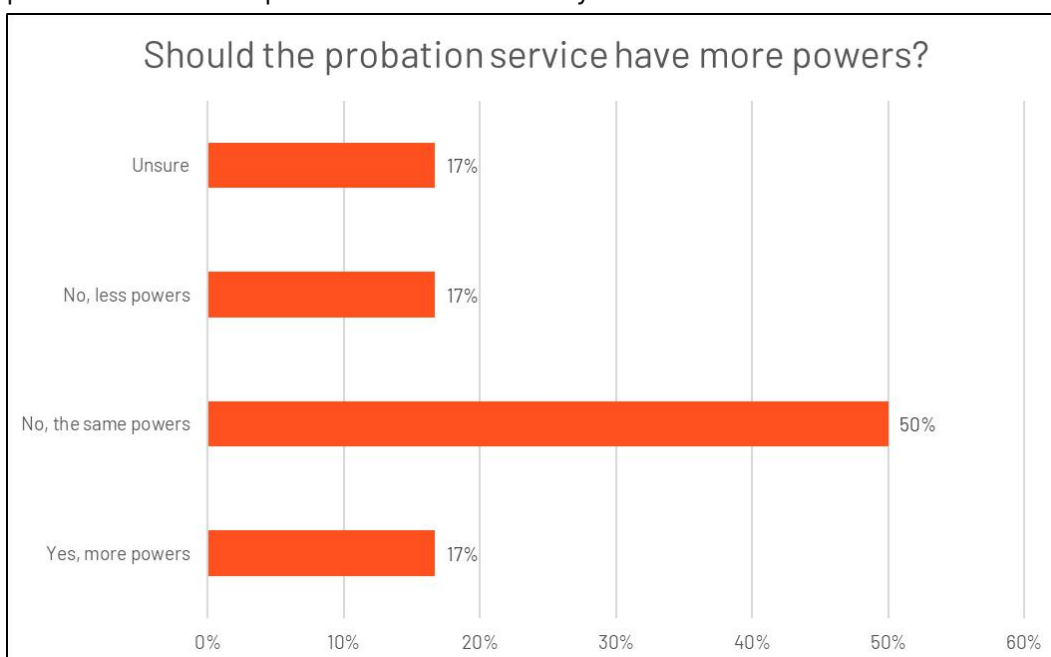


- 4.6. As part of this, 72% of CILEX members believe that the probation service requires more funding. CILEX believes that adequately funding the probation service leads to further savings on future spend where the probation service adequately assists those who have been convicted to rehabilitate, reform, and not reoffend. CILEX believes that adequately funding the probation service should be a top priority, in order to reduce pressure on the courts and the wider criminal justice sector in the future (leading to savings), as well as to reduce the number of offences.



4.7. CILEX encourages the use of tailored supervision for specific cohorts. CILEX believes that if this is tailored at a near-granular level, it could actually achieve rehabilitation. This is in comparison to the current broad programmes which have limited success rates.

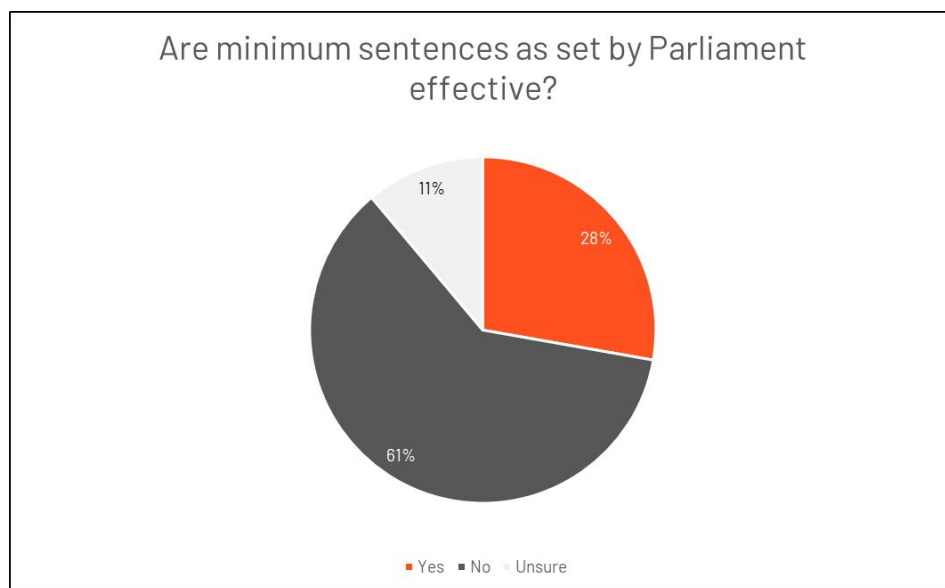
4.8. However, when surveyed, 50% of CILEX members believe that probation has the correct level of powers. CILEX therefore encourages probation to use its powers in a more specific and tailored way.



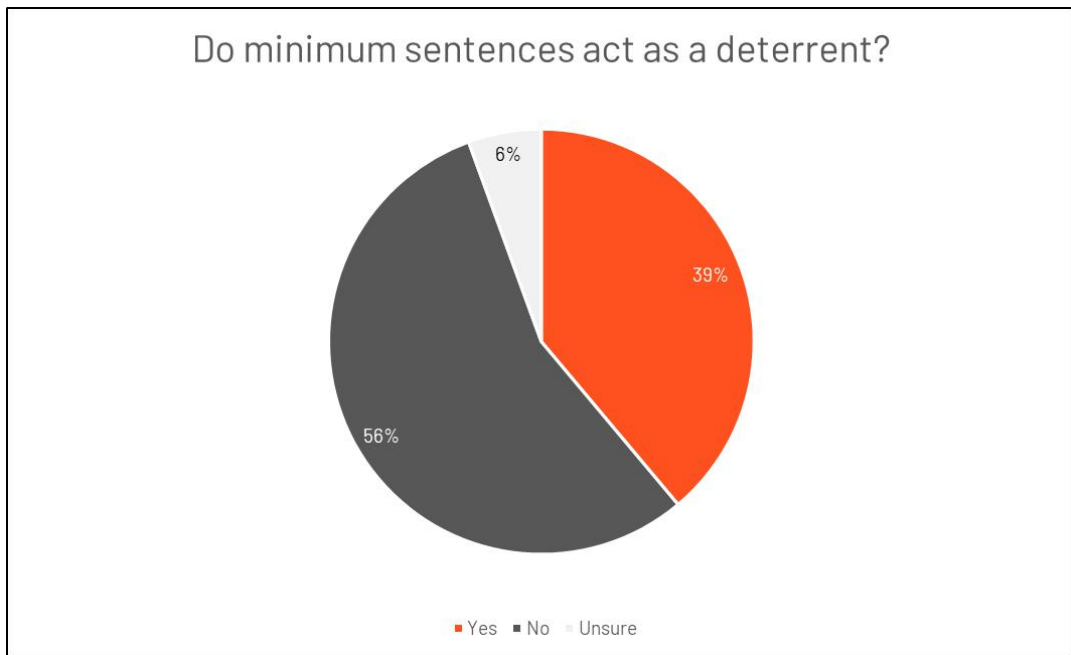
- 4.9. Lastly, CILEX encourages the introduction of a system similar to Detention and Training Orders for specific adult offences. CILEX discusses this further below.

Question 5 – How should custodial sentences be reformed to deliver justice and improve outcomes for offenders, victims and communities?

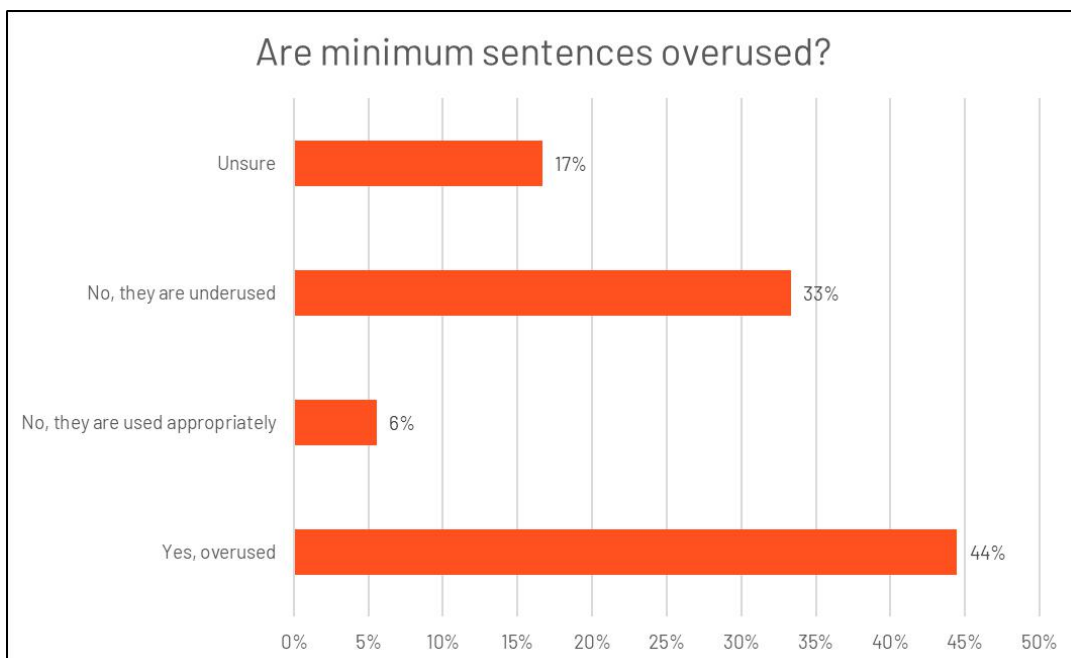
- 5.1. CILEX does not believe that minimum sentences as set by Parliament are effective. CILEX believes that these have often been arbitrarily created based on political expedience, rather than compliance with the s57 sentencing principles. As part of this, 61% of CILEX members surveyed do not believe that minimum sentences are effective. CILEX believes that this figure is reflective of the wider legal sector.



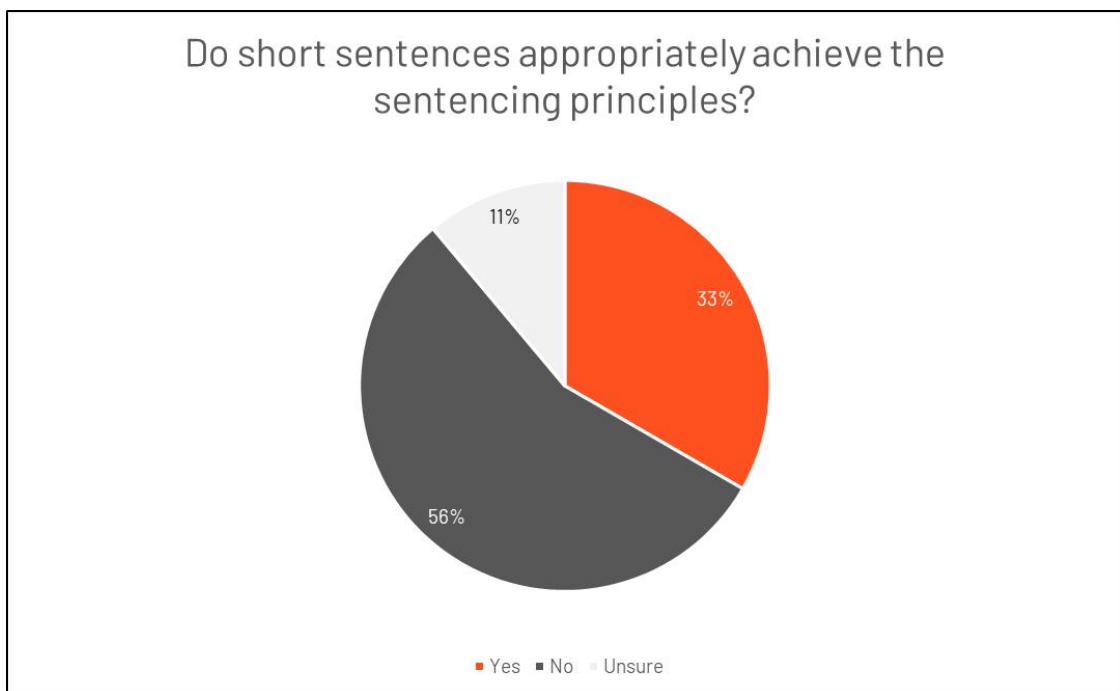
- 5.2. Further to this, CILEX does not believe that minimum sentences act as a deterrent, with 56% of members surveyed believing this. CILEX believes that where defendants are not deterred by a custodial sentence, they are also unlikely to be deterred by a minimum sentence.



- 5.3. Further to this, CILEX is of the view that minimum sentences are overused with 44% of members in agreement. CILEX believes that minimum sentences merely prevent judges from implementing sound sentences based on existing law, as a result of external political views. This is not evidence led, nor is it case-specific. Instead CILEX calls for further use of robust sentencing council guidelines to guide judges and for any mandatory or minimum sentences to be set by the Sentencing Council.



- 5.4. CILEX is of the view that short sentences do not appropriately achieve the sentencing principles, with 56% of members surveyed in agreement. CILEX believes that short sentences only act as an introduction into a 'revolving door' position for Defendants, with low-level offenders quickly becoming repeat offenders.

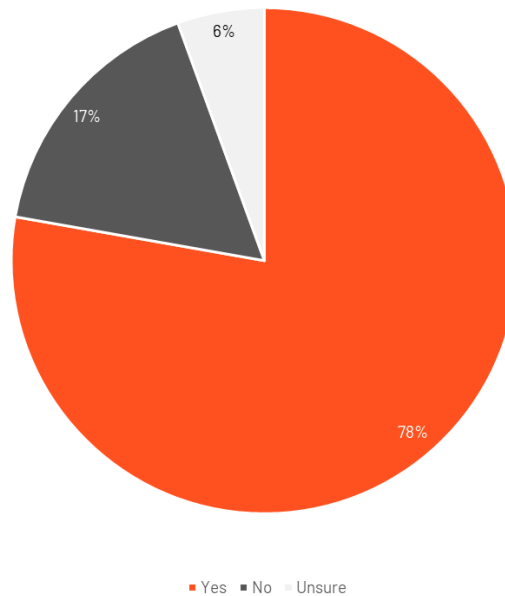


- 5.5. CILEX would support the wider use of Detention and Training Orders for adult offenders who have committed specific offences, this is discussed below. CILEX would also encourage the wider use of community orders with rehabilitative requirements.

Question 6 - How should we reform the way offenders progress through their custodial sentences to ensure we are delivering justice and improving outcomes for offenders, victims, and communities?

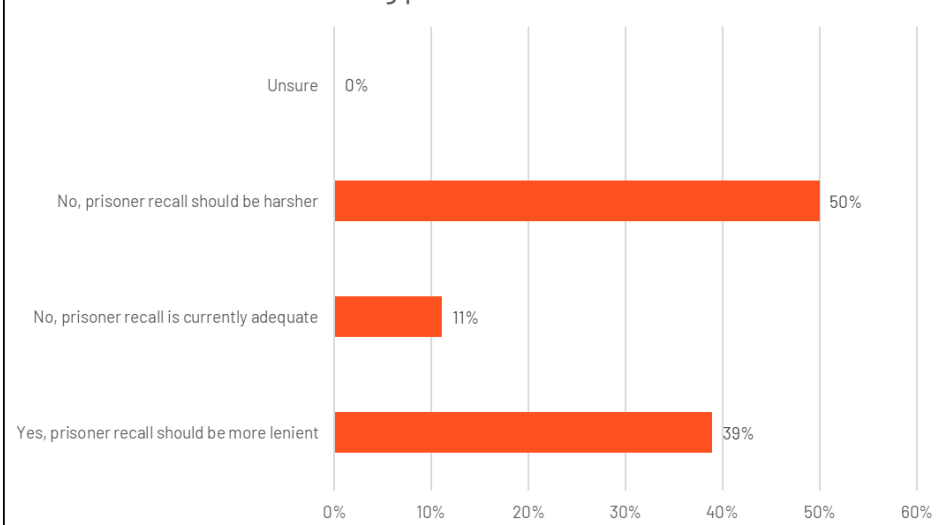
- 6.1. CILEX supports the use of open conditions, Home Detention Curfew and automatic release points for specific categories of offence and offender. CILEX believes that each of these present an opportunity to rehabilitate offenders and to remove the cycle of repeat offending. However, CILEX also believes that each of these presents a 'cliff-edge' approach to supervising offenders and believes that continued support to offenders is needed to prevent relapsing behaviour and re-offending once the intervention (e.g. Home Detention Curfew) is lifted.
- 6.2. Similarly incentivisation is crucial for rehabilitation. Staged incentives would be valuable to reduce reoffending and increase uptake of rehabilitation. CILEX recommends rolling out a scheme similar to Youth Detention and Training Orders. CILEX believes that DATO, as an intense system of incarceration and then ordered rehabilitation, has been successful in reducing re-offending rates. CILEX believes that whilst the upfront cost would be extensive, it would be a valuable method of tailoring solutions to individual offenders and reducing re-offending rates. Over 78% of CILEX members surveyed support this scheme.

Should the government consider a fundamentally new type of custodial sentence which builds in staged incentives for rehabilitation – e.g. similar to a Youth Court’s Detention and Training Order?



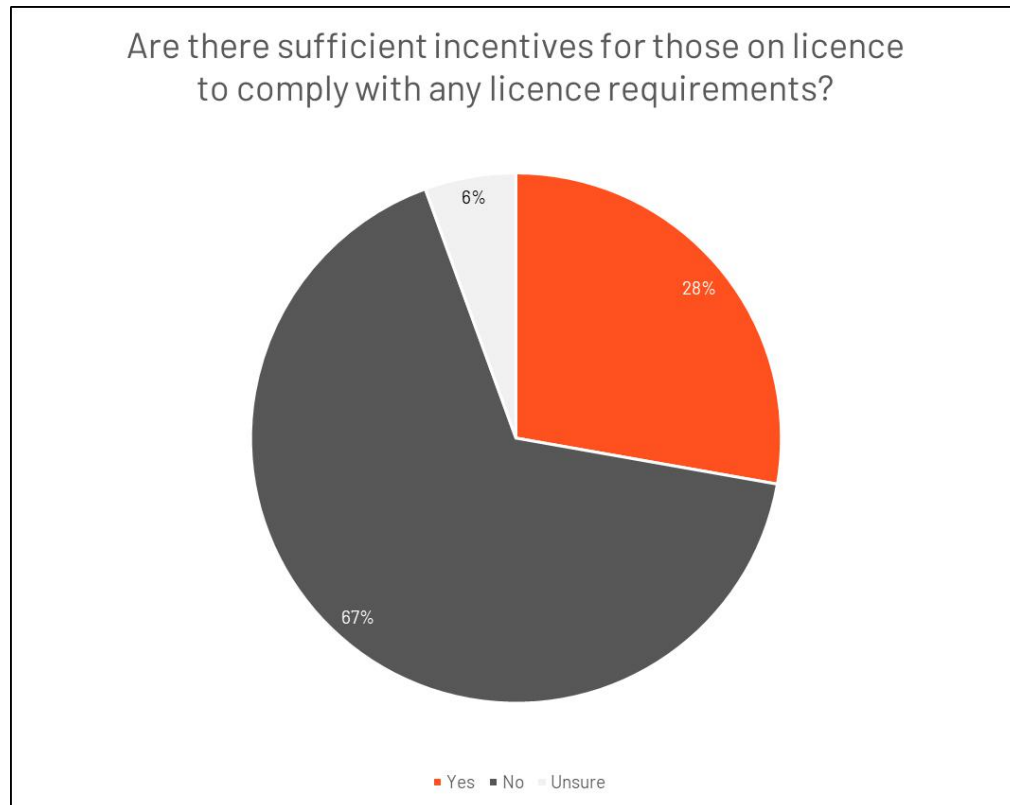
- 6.3. CILEX members when surveyed remain split as to whether prisoner recall should be harsher or more lenient, CILEX practitioners were fairly even split. As a result, CILEX does not comment on whether prisoner recall should be more lenient or harsher.

Should recalling prisoners be more lenient?



- 6.4. When surveyed, CILEX members were of the view that there are insufficient incentives for those on licence to comply with licence requirements. With 67%

of members not believing there are sufficient incentives, CILEX is of the view that incentives such as diminishing licence requirements, guaranteed reduced sentence lengths if recalled, and access to financial support, would each lead to better incentivisation for licence requirements.



Question 7 - What, if any, changes are needed in sentencing to meet the individual needs of different victims and offenders and to drive better outcomes?

- 7.1. CILEX supports the use of Victim Impact Statements. CILEX believes that this provides the sentencer with understanding of the impact which the offence has had on the victim and leads to proportionate sentencing.
- 7.2. CILEX also supports wider transparency in sentencing. CILEX considers that making sentencing remarks more widely available, and at minimal cost, would be beneficial to victims and offenders, but also to practitioners.
- 7.3. CILEX heavily supports tailoring sentencing to specific individuals. But not necessarily to specific groups. CILEX believes that whilst there may be large cross-sections of society with similar mitigating considerations (e.g. single mothers with caring responsibilities drawn from the wider pool of female offenders) they are not synonymous. As a result, whilst CILEX supports separate youth-based sentencing guidelines, it does not believe that tailored sentencing for dedicated groups, e.g. women, or older offenders would be beneficial. CILEX notes that a large portion of the differences which would be established

between the average offender and an individual's mitigation can still be achieved through standard sentencing council guidelines. E.g. a victim of domestic violence who attacks the perpetrator of the domestic violence, can claim this in mitigation. A specific sentencing guideline for domestic violence victims is not necessary to achieve this mitigation.