The Scottish Prisons Commission: 10 Years On

BRIEFING PAPER
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INTRODUCTION | 1

Ten years ago the Scottish Prisons Commission, also known as the McLeish Commission, published its report, Scotland’s Choice: The Report of the Scottish Prisons Commission. The report contained 23 recommendations covering an almost unprecedented range of criminal justice issues from community sentences to young people, from the purposes of punishment to decisions about parole and release. Perhaps most remarkably, it called outright for a reduction target to be set for the prison population, from nearly 8,000 to 5,000, a drop of nearly 38%, a pace of reduction that has never been seen in prison populations in the UK.

In the decade since the report was launched, most of the findings it contained have been accepted by the Scottish Government and many of its recommendations enacted. Given this, the present moment offers a useful opportunity to consider how the Commission’s work has informed and shaped the direction of justice in Scotland.

This conference, being held to mark the 10th anniversary of the Commission’s report, provides this moment for reflection, but equally important, creates an opportunity to look forward. How will justice work in Scotland ten years hence, in 2028? What do we want it to look like, and what challenges and resources will present themselves along the way?

This briefing paper highlights the key issues that the Commission concerned itself with during its deliberations, quoting from its report and sketching how the landscape in these areas has developed since then. We hope it serves as a useful refresher for stimulating your participation at the conference on 29th June 2018. The presentations, lectures and discussion at this event will inform the development of this paper into a longer report to be published on the SCCJR website in the autumn. We welcome your thoughts and comments to inform this before, during and after the conference, so please keep in touch.

The Scottish Centre for Crime and Justice Research (SCCJR) is delighted to be hosting this event. SCCJR was only two years old as a research centre when some of its academics were invited to advise informally on the Commission’s work. Through this engagement, academics provided information and support, and as a Centre we are proud to have been part of such a thoughtful and aspirational project. We stand behind the work of the Commission in realising the potential of academic research to inform and support progressive social change.
The Commission featured a mix of justice experts, who professionally held leadership roles in key parts of the justice system, and non-expert public figures in business and journalism. Together the group tackled the big questions, taking seriously the then Cabinet Secretary for Justice, Kenny MacAskill’s, challenge in setting up the Commission:

‘Why does Scotland imprison so many more of its people than its neighbours in Europe, and what does it say about a system of justice that so efficiently collects those in our society who are the least well off, and with the most complex health and wellbeing issues?’

Reflecting on how far we have come and how much work we need to do on these issues will be a core focus of the conference.

Scotland’s high imprisonment rate has long been a concern of research and policy and was a primary impetus in setting up the Commission in 2007. The country then and now leads (along with England and Wales) most of Europe in its use of prison, and all of Europe in the turnover of its prison population. Prior to the McLeish Commission, numerous reforms responded to this concern reviewing particular drivers and solutions including remand (pre-trial and pre-sentenced detention), diversion from prosecution and courts, and community-based alternatives to imprisonment. The Commission’s work encompassed all these issues and more. Prior to setting out its recommendations, it took stock of how punishment is used and understood in Scotland, finding:

- High imprisonment under low crime conditions
- Use of imprisonment for the troubled rather than troubling
- Use of imprisonment for very short periods
- Prisoners pulled back into the system through parole recall and criminal histories
- Imperviousness of prison population to crime trends
- Poor public awareness of crime and punishment trends
- Poor public awareness of the kinds and effects of different sentences
### Key Stats

#### CRIME
Compared to 2007-08, in 2016/17 recordings of:
- Non-sexual crimes of violence **decreased** 44%
- Dishonesty crimes **decreased** 32%
- Fire-raising, vandalism, etc. **decreased** 56%
- Other crimes **decreased** 32%
- Sexual Crimes **increased** 65%

#### PROSECUTIONS
Compared to 2007-08, in 2016/17 there were:
- 23,000 **fewer** Children's Panel Referrals
- 111,000 **fewer** criminal reports received by COPFS
- 42,000 **fewer** people proceeded against in Scottish courts

#### CONVICTIONS AND SENTENCES
Compared to 2007/08, in 2016/17 there were:
- 40,000 **fewer** people convicted of a crime (a 31% drop)
- 4,000 **fewer** people sentenced to prison (a 24% drop)
- Nearly 2,000 **more** people receiving a community sentence (11% increase)
- 38,000 **fewer** financial penalties issued (a 46% drop)

But large scale decreases in crimes and prosecutions have not triggered similar declines in imprisonment:

#### PRISON
- Still **high** prison population (7,500-7,600)
- But **declining** over past 5 years
- 21% **increase** in sentences over 6 months up to 2 years but 58% **decrease** in sentences of 3 months or less
- Recall rates are still **increasing**

#### PAROLE
- Nearly three-quarters eligible for parole in 2015-16 were denied it (determinate)
- Only 12% of lifers recommended for on parole in 2015-16
- These are nearly half the rates in 2003

'Astonishingly, the number of people recalled on licences has soared by nearly 1,000%. ... We heard worrying evidence about the number of ex-prisoners on release licences being returned to prison not because of reoffending but because they had not stuck to the other conditions of their release licences.'
Communities and Justice | 3

It might plausibly be claimed that the Commission’s dominant aspiration was positioning the community as the future of justice in Scotland. Given the predominance of crime in Scotland which leads to lower end punishments, the community should be: the default location for the vast majority of the punished, a resource to be empowered, an entity with a duty of learning about and supporting reintegration. Key achievements of the community focus have been the creation of the Community Payback Order (or CPO, referred to as the ‘community supervision sentence’ in the McLeish Report) which has effectively subsumed probation and community service; the establishment of 32 Community Planning Partnerships, the creation of Community Justice Scotland and a National Strategy for Community Justice.

The National Strategy defines community justice as: “the collection of individuals, agencies and services that work together to support, manage and supervise people who have committed offences, from the point of arrest... until they are reintegrated into the community.” Key aims of the strategy are to: (1) Increase communities’ awareness and understanding of community justice. (2) Strengthen community participation in the planning, delivery and evaluation of community justice services and policy. (3) Change the conversation to support reintegration and reduce stigma.

Who is this community? Why should they get involved? What are the opportunities for them to get involved?

Key Stats

- Community sentences had been decreasing every year between 2007-08 (16,709) and 2010-11 (15,615).
- The number of community sentences has since increased to 18,600, by 20% between 2016-17 and 2010-11, the year CPOs were introduced.
- The average length of unpaid work hours in CPOs is gradually increasing (with more orders falling into the longer level 2 order of over 100 to 300 hours).
- Supervision periods in CPOs have seen substantial increases, too: supervision requirements at the maximum time limit (over two years up to three years) have grown the most (54% increase since 2012-13, and 25% increase in supervision orders more than 18 months up to two years).
Women in the justice system has been a regular concern in policy reviews and reform efforts in Scotland, with the drive to reduce the number of women in prison accelerating from the late 1990s, following a spate of suicides. The Commission noted in its report the particularly intense and compound issues affecting women in Scottish prisons, and four years later, in 2012, the Angiolini Commission reported its investigation of women and criminal justice. There are a range of Government and autonomous bodies focused on the needs of women in the justice system, and a specific women’s strategy of the Scottish Prison Service, which includes eventual closure of Cornton Vale and creation of community-based independent living units as the custody model for women.

The population of the main women’s prison, Cornton Vale has more than halved; women (adults and young people) are now held in several local prisons in addition to Cornton Vale (including Polmont, Grampian, Edinburgh, Greenock, Inverness)

Key Stats

- The average number of women in prison is functionally the same in 2016-17 (366) as it was ten years ago (372)
- The crimes of shoplifting, breach of the peace and crimes against public justice accounted for more than half 53% of all prison sentences women received in Scotland in 2016-17
- Between 1997/98 and 2006/07, the number of women in prison increased by 90%; between 2007-08 and 2016-17, the number has decreased 1.6%
- The proportion of women held in prison on remand has not changed since the Commission’s report: nearly one-third of women in prison were on remand in 2013-14 (the last year official statistics of the Scottish prison population were published)
- The growth in women’s rate of parole recall is much higher than for men (a 40% increase between 2013-14 and 2007-08 compared to 14% increase for men), but the overall numbers are very low (14 women in 2013-14)
INEQUALITY | 5

Inequality – in social, economic, religious, national and ethnic terms – remains a major challenge in Scotland, and plays out in a range of ways within and beyond the justice sector. Recent Government inquiries have examined inequalities in health, higher education and childhood. Criminal justice institutions seem to reflect the most concentrated levels of inequality. Roger Houchin’s well-known 2005 report on prison and social exclusion showed that in 2003 the poorest 12% of council areas supplied Scottish prisons with more than half the nation’s prisoners. Houchin described imprisonment as “just another element of social exclusion, the same as having bad housing, getting poor educational opportunities and having bad health.” More recently, health researcher Lesley Graham found that serving a prison sentence is associated with increased mortality from all causes, even when controlling for other factors like poverty and educational attainment. These pieces of research reaffirm imprisonment as both reflecting but also intensifying inequality and reducing life chances.

Susan McVie and colleagues in Edinburgh have spent several years investigating inequality and note that crime as well as justice has unequal impacts, with patterns of victimisation showing that it is the most well off who also have benefitted most from the historic crime drop of the past 20 years.

WHAT IS PUNISHMENT FOR? WHAT CAN PUNISHMENT ACHIEVE? | 6

The Commission was guided by these five principles:

- Justice requires punishment to be visible, swift and fair.
- Punishment should work to secure public safety and support victim recovery.
- Communities can and should be at the centre of a strategy of working with offenders.
- We should stabilise and reduce current prison populations.
- Scotland should aspire to become recognised internationally for just and effective penal practices.

These principles embody certain ideas about punishment and its relationship to justice generally. They speak to who is to be involved and what is to be achieved both during after state punishment. The idea of ‘payback’ was advanced as a core ethos of punishment, but in sharp distinction to England and Wales, defined as reparation rather than vengeance. To what extent has reparation as a rationale for punishment been realised? Is reparation the right narrative for or justification of punishment? What might a constructive orientation for justice look like and from whose perspective? Finally, how might the quantity of justice be related to the quality of justice?

1 http://news.bbc.co.uk/1/hi/scotland/4200147.stm
The conference is structured to develop conversation on the themes raised herein. We will have plenary speakers addressing the issue of inequality, followed by breakout sessions featuring interactive conversations about women, community justice and the persistence of a high prison population. Concluding the day, the former Commissioners and their Chair will be assembled to reflect on their work and to answer questions put to them by the conference delegates. The day will end with a brief commentary by the Scottish Government on its Justice Strategy. Throughout the day, a few questions provide a focus for deliberations:

- The Present: How far have we come, and how are we doing in achieving justice?
- The Future: What should justice look like in 2028?
- Values: What are priorities and values guide this vision?
- Practicalities: What would it take to actually achieve it?
- Scottish Distinctiveness: What would a Scottish Approach to justice look like?
- Roles: What contributions can or should academia/policy/practice make?
- Community: What is the practical case for greater community involvement in criminal justice? And, beyond agencies, what might a community-oriented justice practice look like?
- A Focus on Reduction: Given the reductionist message of the Prisons Commission (to reduce the numbers in prison, to recognise the limited ability and appropriateness of criminal justice services addressing core social needs), can we ‘do less’ to achieve more not only in prisons but other areas of justice?
- Hard Issues: How can we tackle hard cases (long term prisoners, those committing very serious crimes)?
- Education and Awareness: How can we effectively address public misperceptions of crime and punishment issues?
| R1 | Imprisonment should be reserved for people whose offences are so serious that no other form of punishment will do and for those who pose a threat of serious harm to the public. |
| R2 | Paying back in the community should become the default position in dealing with less serious offenders. [By payback, we mean finding constructive ways to compensate or repair harms caused by crime.] |
| R3 | Extend the types and availability of effective alternatives to prosecution coordinated by enhanced court-based social work units. |
| R4 | Place an onus on the Crown to seek to roll-up outstanding matters. |
| R5 | Extend the types and availability of bail-related information and supervision services across Scotland, including electronically monitored bail conditions. |
| R6 | Explore options for detaining 16 and 17 year olds in secure youth facilities separate from older offenders and those under the age of 16. |
| R7 | To bring Scotland into line with international Conventions re-examine the case for diverting 16 and 17 year olds to Specialist Youth Hearings. |
| R8 | Establish an independent National Sentencing Council to develop clear sentencing guidelines. |
| R9 | Establish a National Community Justice Council to lead the implementation of a new Community Supervision Sentence, develop improved services for ex-prisoners and drive forward changes. |
| R10 | The National Sentencing Council and the National Community Justice Council should be jointly charged with enhancing public understanding of, and confidence in, the credibility of both sentencing and the management of community sentences. |
| R11 | There should be one single Community Supervision Sentence (CSS) with a wide range of possible conditions and measures through which offenders can payback in the community. |
| R12 | The development of a 3-stage approach to sentencing and managing community sentences: how much payback, what kind of payback, checking progress. |
| R13 | Swift and regular review of progress and compliance with community sentences. |
R14  Require a sentencing judge, who would otherwise have imposed a sentence of 6 months imprisonment or less, to impose a Community Supervision Sentence instead.

R15  Enable a sentencing judge who has formed the view that a custodial sentence is appropriate to consider whether it should be served as a conditional (i.e. suspended) sentence.

R16  Subject to the full implementation of our other recommendations, the current Home Detention Curfew scheme should be terminated.

R17  The National Community Justice Council should be charged with and resourced to provide dynamic leadership in developing the status, visibility, quality, consistency and credibility of criminal justice social work nationwide.

R18  Promote recognition across all Government departments, all public services, all sectors and all communities of a duty to reintegrate and [including] addressing the social and health related needs of many offenders.

R19  A more restricted and rational use of imprisonment [including] providing and prioritising rehabilitation.

R20  The Parole Board should be provided with additional options to better manage release and compliance with licence conditions, including drug treatment and testing services and extending electronically-monitored home detention.

R21  If the Custodial Sentences and Weapons (Scotland) Act (2007) is to be implemented, its implementation must follow the implementation of this Commission’s other recommendations and the achievement of reductions in the short sentence prison population.

R22  Preparing for release and training for freedom be retained and reinforced as the proper purposes of the Open Estate – not easing overcrowding.

R23  Pursue a target of reducing the prison population to an average daily population of 5,000.