

Scottish Sentencing Council – Written evidence (JCS0009)

1. The Scottish Sentencing Council is pleased to provide evidence to the Committee to assist with its inquiry into community sentences and welcomes its interest in the experience in the Scottish jurisdiction.
2. The Council was established in 2015 under the Criminal Justice and Licensing (Scotland) Act 2010. It is an independent, advisory body, consisting of judicial, legal, and lay members. The 2010 Act provides that the Council's objectives are to promote consistency in sentencing practice; to assist the development of policy in relation to sentencing; and to promote greater awareness and understanding of sentencing policy and practice.
3. A variety of research and engagement has been carried out under the Council's auspices which we consider may be of interest to the Committee. A short summary of the findings from this work is provided.

Judicial attitudes

4. The Council carried out a consultative exercise with sentencers across Scotland in early 2021. This sought to identify any gaps or barriers to provision of community-based disposals and to ascertain what might improve judicial confidence in community-based interventions. The Council's subsequent [report](#) noted that:
 - there is a perceived need for greater consistency across Scotland in the provision of community-based programmes and services;
 - one of the greatest challenges to judicial confidence in community-based disposals concerns limitations of resources to support their management and delivery;
 - community-based disposals, in appropriate cases, are commonly viewed by sentencers as providing a greater chance of rehabilitation and, in general terms, as a more cost-effective alternative to imprisonment;
 - some legislative and other processes can hinder the use and completion of community sentences; and
 - there is a perceived lack of public awareness of, and confidence in, community disposals.
5. Some sentencers expressed a view that community-based programmes and services should be made available for a wider range of offence types and to address a wider range of issues. In particular, urban and more central areas are regarded as having greater provision than rural areas.
6. In some areas, the resources available to justice social workers in local authorities and NHS services – for example, to support mental health

treatment and addiction - are seen by some as insufficient for the purposes of providing adequate monitoring to support effective sentences.

Stakeholder views

7. A stakeholder event was carried out in March 2022 to explore the issues raised in further detail. The [report](#) of that event noted that:
 - in order to achieve the aim of using custody only where there is no alternative, there needs to be access to a range of consistent, effective, and adequately-resourced alternatives, capable of maintaining the confidence of the public and the judiciary;
 - gaps in provision are sometimes geographically based; but, equally, certain cohorts of offender (such as those convicted of less serious or very serious offences, and those with mental health issues) are not always sufficiently provided for;
 - monitoring the performance of those on an order is not simply a matter of dealing swiftly with breaches; it is also about recognising that some of those on orders were likely to require support to complete the orders;
 - consideration of success and effectiveness should include whether there was an overall benefit to communities through a reduction in reoffending; and
 - consideration should be given to whether the present menu of sentencing options is sufficient, perhaps to include an exploration of suspended sentences (which are not available in Scotland) and greater flexibility in the powers available to courts when imposing community-based sentences.

Public perceptions

8. The Council has commissioned various studies into public knowledge and perceptions of sentencing.
9. [A nationally representative survey](#) (September 2019) included a component on perceptions of community sentences generally. Views on the effectiveness of community sentences were mixed. Almost half (48%) of respondents expressed a view that community sentences do not help to reduce reoffending while 40% expressed a view that they are an effective means of reducing rates of reoffending. Those with a degree or equivalent tended to be more positive about community sentences with over half of this group (54%) stating that they felt community sentences do help to reduce reoffending, compared with one third of those with a school or college qualification (33%) and just under a third of those with no formal qualifications (30%) who did not agree with this statement. One of the survey findings was that levels of confidence in the Scottish criminal justice system varied with level of education, with confidence levels higher among more highly educated respondents than among less qualified respondents,

suggesting awareness-raising activity might be best focussed among the latter group and that the Council should consider how best to communicate information in an accessible way and to engage with people's concerns.

10. That survey also explored public perceptions of sentencing in relation to the specific offences of causing death by careless, or inconsiderate, driving; causing death by dangerous driving; rape; historical sexual assault; and possession of indecent images of children. This involved participants being presented with sentencing scenarios for these offences; community sentences featured in some of these exercises.
11. The University of the West of Scotland carried out [research](#) during 2019 and 2020 exploring the opinions of young people between the ages of 14 and 25 on sentencing and the Council's draft sentencing young people guideline. Participants included young people with experience of the criminal justice system – either through receiving a conviction, or as victims of crime.
12. Across the focus groups, there was support for rehabilitation as the primary purpose in sentencing young people. However, views differed on what the next most important purpose of sentencing should be. Those with experience of the criminal justice system believed that it should be providing the person who had offended with the opportunity to make amends, while those invited to join focus groups through their involvement in youth work organisations thought that it should be protection of the public.
13. When participants were presented with a range of sentencing options a community payback order with supervision was often viewed to be the best option. This was attributed to the involvement of a social worker in the sentence, addressing the needs of the young person and providing someone to listen to them. Mentors, mentoring, and counselling were suggested as areas where the criminal justice system sometimes fell short. This was also reflected in the view held by some participants that mental health support was frequently an unmet need for those within the criminal justice system. Having an option that would provide mental health support as part of an integrated sentence was suggested by participants.
14. This research complemented a wider exercise into public perceptions of offending by young people and sentencing between 2017 and 2018. The [Report of focus groups on youth offending and sentencing](#) (December 2019) highlighted that:
 - participants tended to see rehabilitation as a key goal in sentencing young people – more so than when sentencing adults, although punishment and deterrence were also important;

- successful interventions were often seen to come before sentencing, often taking the form of diversions from prosecution rather than as a result of it; and
 - when undertaking the sentencing case study, participants tended to agree on a sentence that was very similar to that given by the court.
15. A number of other studies examining specific offences (such as domestic abuse or sexual offences) which include discussion of public perceptions of sentencing in these wider contexts are available from the [research and engagement](#) section of our website.

Mental health

16. The Council has been considering for some time the important and complex issue of mental health and sentencing. Most recently, we commissioned the Sentencing Academy to carry out a literature review, [Mental Health and Sentencing](#) (May 2022), to examine the challenges of and approaches to sentencing offenders with mental health issues.
17. The review explored the relationship between mental ill-health and the impact of punishment, finding that many offenders live with some degree of mental health issues, ranging from schizophrenia, to ADHD, to traumatic brain injuries. It noted that the impact of a given sentence may be different for those living with mental health issues compared to the general population. For example, prison may have a greater impact on some offenders with mental health issues, while other conditions may make it harder for offenders to engage with community payback orders.
18. Community payback orders can include requirements to participate in rehabilitative programmes, mental health treatment or drug or alcohol treatment. A mental health treatment requirement (MHTR) obliges the offender to submit to medical or psychological treatment with a view to improving his or her mental health. We understand similar powers exist in England and Wales. The review noted that the number of offenders who receive MHTRs in Scotland is very low and that no research has yet been carried out on its impact in relation to mental health or desistance.
19. The Council hosted a [roundtable discussion](#) with experts and sentencers to explore mental health and sentencing in 2019. Themes arising included the effect on sentencing of issues with court reports; specifically, the effect of a lack of information about available disposals in criminal justice social work reports (CJSWRs) and some participants expressed concerns about delays in obtaining psychiatric and psychological reports.
20. It was suggested during discussion that without sufficient information about the types of programmes available in the community and in prisons, what exactly is involved in such programmes, how long they will take, and if there are any waiting times, that it is difficult for sentencing judges to be

confident that they can determine an appropriate sentence, or that it will be effectively implemented.

21. It was noted that the availability of viable sentencing options for community disposals is one of the most important factors in whether or not a sentence will be successful. Unless there is robust management of the resources available this may continue to be an issue.
22. It was further felt that the level of resources and support available to offenders through drug treatment and testing orders, together with the multi-disciplinary approach of such orders, is not generally available to offenders with mental welfare difficulties. It was suggested that if such an approach was available, it might be more effective than a community payback order with a mental health treatment requirement.

Comparative sentencing

23. Given the Committee's interest in other jurisdictions, members may also wish to be aware of a [literature review](#) commissioned by the Council exploring the challenges in comparing sentencing between Scotland, and England and Wales, as well as opportunities for evidence-led sentencing practice to learn from comparative studies.
24. While concluding that direct comparisons between jurisdictions are fraught with difficulty, the authors considered that comparative research in the following areas could be useful:
 - perceptions of people who have experienced different sentences in different jurisdictions and the development of sentencing research and policy in both jurisdictions;
 - the relative effectiveness of different sanctions (suggesting in particular the broadly comparable community order (in England and Wales) and the community payback order (in Scotland) as ripe for comparison); and
 - public attitudes to and knowledge of sentencing.
25. Research into the effectiveness of comparable sanctions and into public perceptions were identified as having the potential to be of "immediate practical benefit" to sentencing research and policy in both Scotland and England and Wales.

The Council's position

26. We consider that judicial awareness could be improved, and the sentencing process might therefore be expedited by: the provision of greater information in CJSWRs about available local authority and third sector initiatives; enhanced engagement with service providers; and a database of the resources available. We consider this would be particularly valuable to

practitioners and sheriffs who move across jurisdictions, as local variations in available services can affect sentencing options.

27. It is our impression that sentencers generally desire greater flexibility to impose an appropriate sentence for the particular case before them and potential legislative changes to enable this should be considered. In particular, there may be a case for simplifying the legislation in relation to community sentences to enable greater flexibility in sentencing. In addition, we believe that consideration should be given to improving breach processes which, under current arrangements, can sometimes interrupt the successful completion of community orders, hindering progress towards rehabilitation.
28. The Council is also of the view that there is a need to improve public awareness of, and confidence in, community disposals, and that relevant local and national organisations should carry out activity to enhance public understanding of what community sentences involve and what they can achieve. The Council plans to examine in more detail public perceptions of community sentencing and is currently planning activity specifically designed to improve awareness of community-based sentencing options.

June 2023