



**RSE Working Group Submission to the Scottish Prisons Commission**

1. The Royal Society of Edinburgh (RSE), Scotland's National Academy, established a working group of Fellows with a range of experiences and knowledge in relation to the criminal justice system to formulate a submission to the work of the Scottish Prisons Commission. These comments have been developed from discussions within the working group focussed on the issues within the remit of the Commission. A list of the Fellows that participated in this working group is enclosed as an appendix. If the Commission wished to discuss any aspects of the submission, then the RSE would be happy to arrange for a number of the Fellows involved in preparing the submission to be available for a meeting.
2. In addition to the comments within this submission, the RSE would also commend to the Scottish Prisons Commission the report of a conference that was hosted and organised by the RSE in December 2006 in association with Encounter. This conference enabled detailed contributions and discussion around many of the key issues in which the Commission will be interested from a range of individuals with expertise in the criminal justice system.
3. The RSE recognises that the rationale for the establishment of the Commission was set out in full in a speech to Parliament on the 20th September 2007 by the Cabinet Secretary for Justice. In this speech Kenny MacAskill reflected that Scotland has a higher imprisonment rate than a number of neighbouring countries, that this prison population has risen by 15% in the last 10 years, while at the same time recorded crime has fallen by 5%, and raised the question as to whether there are more appropriate and effective means of tackling the offending behaviour of some types of offender other than imprisonment.
4. The RSE notes that by February 2008 it is reported that the Scottish prison population reached 8000 for the first time, including around 340 on Home Detention Curfews. This meant that over 7600 individuals were physically in a Scottish prison, exceeding the current design capacity for around 6400 places by over 1200. It is clear that the prison system is currently in a position where a significant number of prisons are well over their design capacity, which may have consequences for the conduct within prisons and the ability of staff to effectively pursue rehabilitation programmes. If the prison population were to continue at this level into the future then there would clearly need to be a prison building programme significantly above that already committed to. Whether imprisonment or an alternative is used it is clear that adequate resourcing needs to be made available to ensure that the system is effective. Whilst prisons are expensive, it is also the case that if a significant shift is to be made to alternative disposals this will increase the cost pressures on the providers of such alternatives and this must be properly resourced.

5. It is important to stress that whilst there is a budgetary element to the penal system; reform should not be driven by a desire to obtain short term financial savings, but instead by what will achieve the best overall outcomes desired of the criminal justice system. It should also not be assumed that existing provision for alternative disposals is adequate, and it would be important to assess the adequacy of resourcing of existing alternative disposals, which may in fact lead to a short term increase in resource requirement.

### **The range of disposals**

6. In considering the role of imprisonment within the criminal justice system the RSE believes that it is important for every stage of the process to be considered and a judgement taken as to what measure will be likely to produce the best outcome for society as a whole. This would be judged by criteria such as protecting society from crime, providing an appropriate punishment, and producing the most effective means of reducing reoffending. Intervention at a lower and earlier level of disposal is likely to be the most effective measure to reduce offending behaviour. Each intervention should be seeking to reduce the prospect of the individual progressing on to offending behaviour likely to result in a further intervention higher up the ladder.
7. Alternative disposals can also produce other benefits such as reparation to the community or victim affected by the offending activity, which can help to heal the damage done by the offending.
8. Initially contact with individuals demonstrating behaviours that may be developing towards criminal actions may well be with public services such as schools, social work or NHS services. There are also many excellent voluntary sector organisations that work with people who may be moving towards or already involved in offending behaviours, and their involvement can be crucial in guiding people away from criminal activity. Social work does not have the power to imprison, but can make disposals that can be useful in tackling problematic behaviour.
9. At the point at which an offence is committed the police can become involved. Again, the police do not have the power to imprison, however when they have identified an individual and have evidence that leads them to believe a crime has been committed, the option exists to issue a police caution or refer on to the Procurator Fiscal.
10. At this stage the Procurator Fiscal can choose whether to issue a PF fine, including where appropriate a "compensation offer", to pursue a diversion from prosecution, and for certain offences decide at which level of the court system to seek to prosecute the case. Special courts such as Drug Courts are an option in some circumstances.
11. Once a case is in court, and has been proven, the courts then have a range of choices, depending on statute, including imprisonment, and other disposals including community sentences or forfeit of proceeds. It must be remembered that the Government has no power to direct courts as to how to dispose of cases, and in particular no power to direct courts whether or not to impose imprisonment. Parliament may limit the court's power to imprison and indeed may prescribe imprisonment in certain cases (e.g. murder), but in general it is important that the sentencing judge should have a discretion in selecting the appropriate disposal and in deciding whether or not prison is appropriate,

and, if so, the appropriate length of the sentence having regard to the court's sentencing powers.

12. If the Scottish Government wishes to see more minor or non-violent offenders dealt with by disposals other than imprisonment, it will require to persuade the Scottish Parliament to legislate to that effect. Over the course of recent years we have seen a range of offences sentence lengths increased by statute, and prosecution policy resulting in some types of cases being prosecuted through the High Courts which would previously have been dealt with by the Sheriff Courts. Overall this has contributed to the record prison population that we now have.
13. Crucially, if the policy aim of reducing the prison population is to be realised then it is important to maintain public confidence in the system. Many people see community disposals as a "soft option", and if public confidence is to be maintained then it is essential that such disposals are seen to be either more effective than, or at least as effective at changing offending behaviour, as imprisonment.
14. In addition to maintaining public confidence in alternative disposals to prison it is also essential that the courts have confidence in the effectiveness of such disposals. For this to happen, where possible, an evidence base should be provided – this could be from existing UK data, or from alternative disposals currently used in other countries. Looking to the future, measuring and monitoring the effectiveness of alternative disposals in reducing reoffending is required in order that such disposals can be increasingly used in cases where the evidence base and profiling of the offender provides a strong case that the alternative disposal will have a real chance of success.
15. In this context a mature debate about risk is essential. There is a public reluctance to accept risk of re-offending, contributed to by the media. There is a need for some degree of recognition that there can be no guarantee that re-offending will not take place, and there is a need for a mature political debate on this issue. As part of such a debate there also needs to be a programme of public engagement and information about both alternatives to imprisonment and risk.

#### **When should imprisonment be used?**

16. It is recognised that imprisonment is required for certain categories of offence, for example those of a serious violent or sexual nature. It is also the case that for some less serious offences where alternative disposals have been exhausted and the offending behaviour continues then there can also be a case for imprisonment, both to protect society from the offending behaviour, and to seek to rehabilitate. Indeed it may be the only realistic option. Prison should be seen as a sanction of last resort, used when the seriousness of the offence requires it, or when all other reasonable disposals have been tried, or are deemed to be unlikely to succeed.
17. Whether prison is the correct place for certain categories of offender is a key question. Overall, the view of the working group was that prison is normally the wrong place to deal with some categories of offender, examples being fine defaulters, people with addiction problems, and people with mental health problems. The Cabinet Secretary for Justice, in a speech to Parliament, recognised that a third of prisoners have an alcohol problem, over half have a drugs problem, and 70% have a mental health condition.

18. It is therefore crucial that credible disposals that have the confidence of the courts and the public are established. One recent example which is to be encouraged is the introduction of fine enforcement officers.
19. The Drugs Courts initiative should be studied closely to see if it achieved higher success rates in helping move people out of drug use and reducing re-offending, whilst offenders with mental health problems are in most cases more appropriately dealt with in a health related establishment, with appropriate levels of security depending on the assessed threat to public safety or self harm. Profiling individuals who would be likely to respond well to this approach will be a key factor towards success.
20. It is frequently observed that the majority of female prisoners in Cornton Vale do not need to be in a closed prison environment. The child care responsibilities of many female prisoners are an additional factor that makes prison in many cases an inappropriate disposal. Most could be either in community disposals or in a more open environment. For others, prison provides a refuge and a disciplined environment which may be of assistance in addressing the underlying reasons for their offending behaviour.
21. The profile of women prisoners is markedly different from those of men, in that addiction, mental health and abuse are more highly represented. Women also respond differently to the prison environment, and for example the suicide rate in prison is higher than for men, whereas in the population in general the reverse is true.
22. Many of the issues that the Commission would wish to consider in relation to women and prison are covered extensively in the Corston Report published by the Home Office in March 2007, and we would recommend that the Commission consider the recommendations contained within it. This report looked in to the situation in England and Wales; however there are many aspects of it which are readily applicable to Scotland.
23. It is quite clear that imprisoning people for fine default is an expensive, and in many cases counter productive means of dealing with the problem, and alternative powers to require the payment of the fine is one option that should be considered. Whilst we would argue that imprisoning fine defaulters is not the best disposal, neither is it the solution to the issue of overcrowding of Scotland's prisons, as whilst in 2006/7 over the year 5265 adults were imprisoned for fine default, the short nature of the sentences meant that only on average 46 places per day would be freed up by such a measure.
24. In addition to looking at changing prosecution policy for certain types of offence the Government should also give consideration to whether there are categories of offences which can currently result in a prison sentence, which they believe to be unsuitable for such a disposal, and if so, should seek to persuade Parliament to legislate accordingly.
25. Many short sentences are ineffective at tackling re-offending as there is insufficient time to put in a programme to address the offending basis, whilst the impact of being imprisoned can lead to loss of employment, family and home, potentially increasing the likelihood of re-offending on release.
26. It should also be recognised that a number of short sentences relate to multiple repeat offenders for whom a number of alternative disposals may already have been tried, and where a short sentence is the only realistic option if confidence in the criminal justice system is to be maintained.

27. The likely impact of the changes to the prison population and sentencing practice, following the implementation of the end to the early-release provisions, as required by the Custodial Sentences etc. Act 2007, are difficult to predict. Overall it was felt that the provisions would not be likely to alter sentencing practice by the courts, but would be liable to result in some longer periods of imprisonment being served, causing upward pressure on prison populations. It is however very difficult to quantify the effect in advance of experience.

### **Young Offenders**

28. For young offenders there are some effective programmes for tackling the offending behaviour of low tariff offenders; however there is a need to examine introducing programmes of dealing with the offending behaviour of high tariff young offenders. Programmes such as Airborne did achieve success with a number of young people. It is also important to realise that when dealing with high tariff offenders the success rate can on occasions seem low, however in judging success or failure the comparison should be against other disposals that are dealing with offenders of the same category.
29. It is important to recognise that programmes designed to tackle the offending behaviour of high tariff young offenders are only likely to have successful outcomes if they are residential.

### **Remand prisoners**

30. Prisoners on remand are a major component of the daily prison population; in 2006/7 the average daily remand population was 1567, of which 1325 were untried. There needs to be a detailed analysis of the perceived level of threat of reoffending posed by each prisoner on remand, and also the type of crime that the remanded prisoner is accused of. It would also be appropriate to establish some form of "remand hostel" to keep untried remand prisoners separate from prisoners convicted and sentenced to a prison sentence. There may still be a case that for the most serious violent offences where there is judged to be a significant risk of absconding or committing a further serious offence that prison custody may be necessary to protect public safety. Likewise where an accused has a history of breaking bail conditions in the past, it may be necessary for the person to be remanded in custody.

### **Associated Issues**

#### **Employment of offenders**

31. One of the significant challenges for any person convicted of a criminal offence is obtaining paid employment after completing their sentence. Failure to obtain employment can be a reason, though not an excuse, why someone would be more inclined to revert to an offending behaviour. Alternative disposals to prison can be a way of maintaining an offender's employment in the first place, whilst for those who have received a custodial sentence there needs to be more effective support in moving back into the regular economy. Whilst training and education are obvious aspects of such support there is also a need to develop a partnership with employers whereby the Government provides incentives to employers to "take the risk" of employing

someone with a criminal record – obviously there are certain positions that would not be appropriate depending on the type of offending behaviour.

32. Organisations such as Apex Scotland have been successful through a range of services in placing individuals with a history of offending, alcohol or drug abuse, or homelessness into training and employment. The Scottish Prisons Commission should engage with Apex to identify the key areas of work that have proven to be successful in order to make recommendations to the Government about how best resources can be targeted to maximise the effectiveness of supporting the transition of individuals to a non-offending lifestyle.
33. Services to support individuals in the transition to non-offending behaviour should be as seamless as possible whether delivered within a prison environment or not. This applies equally to programmes aimed at tackling addiction problems, as well as to programmes aimed at improving employability through education and skills.

### **Literacy**

34. A larger proportion of prisoners have significant literacy problems than the general population. Primarily, it is of course best if this is tackled before someone becomes involved in offending behaviour, and programmes to improve literacy in schools and amongst adults are important, but equally for those offenders who are leaving prison, and seeking to develop the skills that are necessary to re-enter the workplace, enhanced support for literacy is a vital component.

### **Further contact**

35. Members of the working group within the RSE would be pleased to meet with the Scottish Prisons Commission if this would be helpful. If this would be of interest please contact, Bristow Muldoon, Parliamentary Liaison Officer, or William Hardie, Consultations Officer.

Reference:

Statistics in paragraphs 23 and 30 are sourced from the Scottish Executive Statistical Bulletin CrJ/2007/7.

### **Appendix**

Fellows of the Royal Society of Edinburgh involved in producing this submission were:

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