

ADDITIONAL WRITTEN EVIDENCE

Further Written Evidence to the Justice Committee regarding prisons, throughcare and alternatives

Submitted by Alan Staff, CEO Apex Scotland following roundtable session 15 September.

The nature of the round-table format did not permit an exploration of some of the key factors which related to the debate and to the questions from members. Contributors were informed that it would be possible to submit further written evidence following the event and I have taken advantage of this to highlight a number of specific issues which need to be considered within the wider discourse around the future of the Scottish penal system and any reforms which may be considered.

Following the order of topics sent out with the briefing:

1. **Prison population** - It is evident that there are a number of specific trends in prison occupancy which have largely emerged over the past decade and have posed particular challenges to an estate which has largely remained unchanged in its nature within living memory. There are two specific challenges, firstly the rising numbers of people on retrospective sentences who are likely to be advanced in years to start with and will grow older and frailer during the course of their sentence. This poses challenges around access, facilities, meaningful activity and especially healthcare. Apex are concerned that few services exist to enable throughcare and successful social re-integration for people in this category and the problem is perceived to be more about containment facilities than what happens at the end of the sentence. A similar if even more pressing issue exists for the rapidly increasing younger age group imprisoned for what are now considered to be 'toxic' offences such as sexual offending, hate crime and domestic violence. The additional difficulties faced by this ever-increasing proportion of the prison population are significant and include challenges in gaining employment, housing, social support networks, credit and many other basic needs to enable successful re-integration. These additional needs are not recognised within mainstream employability models in Scotland and most of the services which support prison leavers do not accept working with sex-offenders or those with other high tariff offending reporting requirements. This sub-section of the offending population is very much in danger of being 'left behind' without help unless action is taken to respond to the immanent loss of European Social Funding in 2021. Without such help they represent one of the higher risks in the community, and ideally any custodial sentence should also define the post-release rehabilitation package

which would enable the system to reduce the likelihood of re-offending or escalation.

2. **Remand** - The levels of remand in Scotland are clearly unacceptably high and impose life- changing penalties on people before they have been found guilty of anything. Commonly loss of employment, accommodation, relationships and other aspects of life which rely on continuity are directly caused by remand and Apex urges Ministers to do whatever they can to discourage widespread use of this blunt and unfair instrument. Apex in common with other third sector organisations support the adoption of electronic monitoring as a means of ensuring contact where this can prevent the use of remand. However, every report and consultation on this matter has pointed to the evidence base which shows that electronic monitoring only really works if it is backed up by support facilities including mentoring, signposting and advice. The sector offers widespread opportunities to provide this sort of support network and has proven more than capable for many years as it has been a significant provider of sentence related activities including bail supervision, arrest referrals, drug treatment orders and community sentences. We strongly recommend that collaborative action is undertaken with the sector to underpin any roll out of EM.
3. **Women and remand** - Questions were asked during the round table as to why the proportion of women on remand was so high. There are a number of well recognised reasons for this but the most obvious ones are that Community Payback Orders as currently generally provided tend to be designed for young men. Most sentencers would rightly think twice about giving a community order to a young woman who may be highly vulnerable, sexually abused or having poor mental health if it means them being loaded into the back of a crowded mini-bus with a group of strange men and driven around the countryside. As this may be the only real available option in the community then remand is often seen as the most appropriate action for women. The second reason is that women are statistically more likely to initially be given monetary fines but since most of their offending is rooted in poverty in the first place this often increases levels of deprivation and makes defaulting and non-payment more probable. Persistent nonpayment of fines is a common cause of remanding creating a vicious circle. Supportive monitoring will always be a more effective and efficient way of ensuring that justice is even handed and actually contributes to reducing the determinants of crime rather than exacerbating them.
4. **Prison regime** - The use of individual telephones for prisoners has proven problematic, however the very successful virtual visits model run by Apex in Aberdeen in partnership with SPS for many years was recently stopped by SPS in favor of in-house provision which has proven complicated, expensive and without all of the additional benefits of support for families that the preceding model

offered. Virtual visits can offer many advantages and the infrastructure to run it is easy to put in place. We believe that this may be a far more beneficial model than short term stopgaps such as personal phones with subsequent security issues. In addition, the lack of engagement with the third sector around rehabilitation focused activity is a serious missed opportunity. Apex among others has experience of delivering a range of courses to inmates which have always been well received but there continue to be huge differences between different prison establishments and their willingness to work with external agencies. The National PSPs Shine Mentoring and New Routes have both proven very successful producing far better engagement levels than previous prison based voluntary throughcare models. These are examples of what can be achieved through collaborative activity, but only operate because of direct government grant which stipulated it had to be carried out by third sector co-operatives. Where such direct funding initiative is not present squabbling over who can and cannot commission, and protective practices can seriously impair productive activity and lead to inefficient use of existing resources.

5. **Prison reform** - Finally, the calls for a new health and welfare strategy for Scotland's prisons is welcomed, as is the greater emphasis on human rights. If this is to be an improvement then we need to recognise that the key component of any rehabilitation or recovery strategy has to be the enabling of hope – in other words there has to be a sense of progression and forward movement with a goal or goals at the end. To make that real we need to see prison as part of a life journey which means that even when inside the individual has a sense of what they will be doing and where they will be going once they are released. Putting in place post release support well before the date is vital, and those who will be involved in that follow up need the chance to form relationships and constructive plans whilst the individual is still serving their sentence. The third sector has again demonstrated for many years how effectively it can do this, but continues to operate on insecure commissioning arrangements. Steps should be taken to mainstream these throughcare support and rehabilitation mentoring programmes so as to ensure that this is easily available across the whole prison system. The second key factor in rehabilitation is the ability to take personal responsibility for as much of your life as you can which means having an element of choice. Coupled with this is the opportunity for time to be productively occupied. There is a belief that depriving someone not only of their liberty but also of regular mental and physical stimulation is a justified element of the punishment, however in reality it brutalises and creates violence, institutionalisation and poor mental health. Overcrowding has far too frequently prevented well-intentioned person-centered approaches in prisons which is why if things are to change significantly, we need to get the numbers in prison down to at least within the design capacity and staff resource capability.

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Follow on points from Dr Katrina Morrison on behalf of Howard League Scotland following the Prisons and Prison Policy roundtable at the Criminal Justice Committee, 15th September 21.

These are the points I wished to make during the meeting, but there wasn't sufficient time. I hope you will have the opportunity to consider these points during your discussions about this session as a Committee.

Pauline McNeill – remand

- The solution to the problem of regime for remand prisoners has to lie in rapidly reduce the numbers held on remand. If we had a choice, the focus *has* to be on reducing the numbers on remand, and rapidly, rather than providing full regimes. There may be other issues which require attention too, such as the lack of throughcare support provided for people released from remand (as highlighted by Alan Staff), but the number one priority is to rapidly and very significantly reduce the numbers on remand.

Jamie Greene and Russell Findlay – mobiles for drugs

- Before any action is taken about mobiles, it is important to find out exactly how many mobiles have actually been tampered with? Is all tampering the same? Are they all tampered and ready to use for other purposes? We can't base any radical action based on one comment made by an officer in a news story. We know there are problems but we need this to be quantified before we jump to any rapid (knee jerk) policy-response.
- Phones have been smuggled into prisons since mobiles were invented – this is not just about the mobiles issued by the SPS. Illegal phones continue to circulate alongside the government issued phones and have been used for illegal activities for years within prison. We must be careful not to throw the baby out with the bath water before we understand the nature and scale of the problem.
- The benefits of mobiles have been widely praised – by HMIPS, Families Outside, Howard League Scotland. Many calls are made to the Samaritans in addition to families. There are also huge benefits for families outside who are the hidden victims of imprisonment. It is important that these benefits are not forgotten in the discussions around mobiles in prison too.

Jamie Greene – capital spending and return for investment:

- As Professor McNeill said, prisons offer a terrible return for investment financially speaking. We agree with this wholeheartedly. However, it is important to understand that even if the prison population is reduced, as we hope, funds will not be released immediately. To do so would require the

closure of a whole prison, or parts of prisons. We need fewer people in prison and we also need better equipped and well-staffed prisons. Moving away from prison will (eventually) mean that money can be much, much more effectively spent, but in the shorter term, we need more investment in prevention, diversion and support, *as well as* adequate funding for our prisons to do their job well. Crucially, we can't do this in isolation of tackling social justice issues. This also relates to Professor McNeill's point about the futility of transferable rehabilitation i.e. it should be conducted in the community where reintegration will eventually occur, and it's certainly not happening in prisons at the moment.

Russell Findlay – throughcare support

- It would be great to have some concrete deadlines for announcements about the future of throughcare as Teresa Medhurst said 'this issue was being looked at'. Perhaps this is something the Committee could keep a close eye on?

Russell Findlay - Serious and organised crime and drugs

- In relation to the activities of SOC and drugs in prison, it is of course correct to focus on the supply of drugs (by asking questions of phones and security measures in prison). But it is entirely wrong to focus on this issue exclusively without recognising the importance of the *demand* for drugs in prison too. Would the activities of SOC in prisons be so significant if there weren't such a high proportion of people there with addiction problems, or who are vulnerable to beginning drugs in prison? We argue that if you are concerned about drugs in prison, we must look at demand, as well as supply.
- This also chimes with Wendy Sinclair Gieben about the need to take a public health approach to the problem of drugs: it is palpably obvious that the criminal justice, retributivist approach, has not been working.

Pauline McNeil – progression

- Wendy Sinclair Gieben mentioned a thematic review into progression that is underway at HMIPS. Either in this review, or elsewhere, we feel there is a need to *radically* reconsider risk management and progression throughout the prison sentence. Any consideration of how to manage progression as we move out of the pandemic must not merely address tinkering with existing systems. These have been problematic for long before the pandemic with significant backlogs and people spending longer than they need to in custody because they have not completed the recommended programmes, in potential breach of their human rights. We don't profess to have all the answers here, but we note one suggestion from the Parole Board for Scotland to carry on much risk assessment in the community (or a 'half-way house'). We are not necessarily endorsing this, but note there is much scope for a much more creative way to support people to move through their sentence involving, for example better targeted risk assessment, and potentially carry on much more of this in the community than at present.

Russell Findlay – victims and parole

- Howard League Scotland strongly argue against public's attendance at parole hearings and tribunals. At this point, the prisoner has the potential to be released, they have already been sentenced and have either served their punishment parts or the minimum time required for custody. There is a fundamental misunderstanding about parole. It is *not* another court of law, it *does not* have all the symbolic meanings of the State holding individuals to account for their actions, judged by their peers for the more serious cases. For these things we have criminal trials, and it is important for their legitimacy that the public can attend these apart from some selected exceptions. Parole hearings and tribunals have a *judicial function*, but they are *not* courts with all the attendant symbolism of being judged by ones peers. At the point of parole, the prisoner is eligible for release and they will (usually) serve the rest of their punishment in the community on license. The balance between the right of the public to know the details about parole versus the right of privacy for the prisoner, is therefore very differently balanced in parole hearings versus criminal trials. We know that people up for parole find these occasions extremely stressful, and very personal information is often discussed in them (for example, intimate details about sexual thoughts, etc.). We strongly feel that if the public were to be involved in parole hearings, this would have a very detrimental impact on prisoners, either leading to them not wishing to be fully honest, or by depending the feelings of shame they have about their offence.
- There are other ways that the public can learn more about parole, thus increasingly public confidence int his system. We would be very happy to discuss this further with you if this would be of interest to you.
- Relatedly, when John Watt (Parole Board Chair) said that the public should know when someone is going to be released and that (security provisions allowing) this could be put up on their website. We disagree with this in the strongest terms. At the point of release from parole, the focus *has* to be on reintegration, and in minimising potential distress to victims and their families (who should be encouraged to take up the VNS and to have access to support if required). Notification of someone's release to the wider public is completely unnecessary and is likely to severely impact opportunities to reintegrate where people continue to be defined by their past.