

Briefing Note

08 March 2022.

**Assessment of Risk and Needs and the Management of Identified Risk within Custody and Community Settings.**

This note is intended to provide further information around Scotland's Criminal Justice System's approach to the assessment of risk and needs and the management of identified risk in custody and community settings. It has been prepared with support from the Scottish Prison Service, Risk Management Authority and Professional Social Work Advisors.

There are no decisions made across both Custody and, Community and in relation to access to programmes, that rely solely on the general risk assessment of LS/CMI as this is done through a combination of the application of appropriate tools and structured professional judgement. Although risk can never be entirely eliminated, it is assessed, monitored and managed appropriately with a clear, robust and consistent focus on protection.

## **Community Approach**

In the Community, Justice Social Workers work every day to achieve outcomes of public safety, justice and social inclusion. Preparing assessments and reports are crucial parts of the social work tasks in the justice system to inform robust decision making. As part of these assessments, Justice Social Workers will complete risk assessments for a number of tasks.

The agreed standard of risk assessment practice involves identifying key information from a variety of sources, analysing their meaning and evaluating this against the appropriate criteria. Risk assessment is conducted in an evidence-based, structured manner, incorporating appropriate tools and professional decision making, acknowledging any limitations of the assessment.

A number of instruments or tools may be used as part of the risk assessment. The Risk Assessment Tools Evaluation Directory (RATED) provides information on more than 70 tools that can be used as part of a risk assessment. LS/CMI is considered to be a GENERAL Risk assessment tool, so for specific types of offending such as Intimate Partner Violence, Stalking, Sexual Offences and violent offending there are a significant number of additional risk assessment tools that will be

utilised. In particular for Domestic Abuse the Risk Assessment carried is the Spousal Assault Risk Assessment (SARA) and for Sexual offending it is (RM2K and SA07) violent offending would be measured using the LS/CMI Risk of Serious Harm (ROSH)

When preparing a report for the Sheriff Court or High Court, the worker will follow guidance for Criminal Justice Social Work Reports. This guidance reinforces “A number of instruments or tools may be used to inform risk assessment. None of these alone gives a full picture of the risk posed by an individual.”

The purpose of the Criminal Justice Social Work Report (CJSWR) is to assist in the sentencing process (post-conviction) and to complement the range of other information available to Sentencers (for example, victim information and narrative from the Procurator Fiscal). In particular, the CJSWR provides information on social work interventions and how these may impact upon offending behaviour.

Justice social workers are skilled in information gathering from a variety of sources in order to inform their assessment which forms the basis for the criminal justice social work report that is presented to the Court to assist the sentencer when reaching a decision about disposal of the case in Court.

At this stage, the social worker will undertake an initial risk/need assessment using the initial assessment part of the LS/CMI which comprises 2 elements - the screening version of Level of Service Inventory (the LSI-R:SV) plus an initial analysis of offending.

The LSI-R: SV is an 8 item risk/ need assessment tool and the initial analysis of offending is structured around a consideration of the pattern, nature and serious of offending to date. This information is contained within the criminal justice social work report and provides the sentencer with an analysis of past behaviours, current life circumstances and what can be done to address the issues that have been identified as underlying the offending behaviour such as substance misuse, mental health issues, poor family relationships, childhood trauma, etc.

The justice social worker will comment on any potential community safety issues and whether, in their opinion, the identified risks can be addressed and the person could be safely managed in the community. The risk assessment is part of their consideration but they will also be considering aspects such as the individual's current circumstances, levels of insight/remorse and willingness to engage in offence focussed work when reaching a conclusion regarding potential suitability for community based supervision.

When a Community Payback Order with a supervision requirement is the Court outcome, the allocated social worker would then proceed to complete a full LS/CMI 1-8 which is the depth of assessment that should be applied in *all* cases where there is statutory social work supervision in the community.

This provides the Case Management Plan identifying all the areas that contribute to potential risks of further offending which the social worker will address during the period of supervision. In the highest risk cases there will be a more detailed risk management plan completed (Risk of Serious Harm : ROSH assessment).

All cases are subject to review involving the social worker, the service user, any other professionals involved in the case and a chair person at 3 months. At these meetings, the case management plan will be considered to ensure it is meeting the identified risks/needs and a date set for further review depending on progress at either 3 months or 6 months. accordingly, the LS/CMI is reviewed at these points and revised if circumstances have changed. If any risks have increased, the Case Management Plan is amended to address these changes. For those individuals who pose a risk of serious harm, a structured in depth analysis of this is undertaken to scrutinise the risk they pose. This will determine

whether a Risk Management Plan is required and whether the individual is subject to MAPPA.

## **Custody Approach**

### **Background**

LS/CMI is the central risk management tool utilised for all statutory prisoners. Whilst other complementary risk tools may also be completed, such as SA07 for Sex Offenders, LS/CMI should be completed for all. LS/CMI National Framework Guidance sets out that it should be completed by Prison Based Social Workers and that it should be completed for all Statutory Cases by month 5 of their sentence. This is in order that it is available for the initial Integrated Case Management Case Conference (ICMCC) which requires to be held within the first 6 months.

This paper focuses on the LS/CMI impact upon release decisions only - it is important to note that the outcome of an LS/CMI assessment is never a lone factor in determining a release decision, it is one of **a number of factors** which may be considered when reaching a decision. LS/CMI may be a consideration when enacting the following release decisions.

## **Temporary Release – First Grant of Temporary Release – Life Sentences**

In order to qualify for any unescorted community access (work placement, unescorted day release, home leave), Life Sentenced individuals must be granted a First Grant of Temporary Release (FGTR) by Scottish Ministers. The decision to apply for an FGTR is made by the relevant SPS Risk Management Team (RMT). This is a multi-disciplinary team whose core membership includes: Senior Operational SPS Staff, Prison Based Social Work, SPS Psychology and Health Care Professionals.

In reaching a decision to apply for FGTR, the RMT will consider a wide range of factors and available assessments, including the outcome of the LS/CMI which, alongside other factors, will give some indication of the manageability of risk within the community. A related Case Management Plan will be presented and agreed with members, if appropriate before a decision to progress to FGTR is made. Records of the decisions made, and of the key considerations in reaching these decisions are clearly recorded in the RMT paperwork.

Prior to Scottish Ministers then being asked to consider an FGTR, SPS undertakes a comprehensive assurance process, with SPS HQ reviewing the application from the relevant RMT against a clear set of standards and guidelines to ensure that the decisions made are accurately recorded and founded on appropriate evidence. Once this is completed, if appropriate, Scottish Ministers will receive a 'case summary' requesting their approval. This case summary will always advise of the outcome of the LS/CMI assessment.

LS/CMI thereafter remains a dynamic risk tool and, at any point, if there is any significant change in an individual's circumstances it may be revised (as well as at other specific sentence points, pre-parole for example). In such a circumstance, the RMT will re-convene and consider the ongoing manageability of risk with cognises of the individual having community access.

### **Temporary Release - Non-Life Sentences**

If the appropriate criteria are met, Long Term Prisoners (LTPs) and Order of Life Long Restriction (OLR) offenders can be granted unescorted community access via temporary release, without requiring an FGTR. Although FGTR is not required, with the exception of the HQ Assurance and formal sign off by Scottish Ministers, the process for these individuals is the same as it is for life sentenced prisoners. The SPS RMT



is the final decision making body in these circumstances and as part of their decision making, they will consider a wide range of factors and available assessments, including the outcome of the LS/CMI which, alongside other factors, will give some indication of the manageability of risk within the community. A related Case Management Plan will be presented and agreed with members, if appropriate before a decision to progress is made. Records of the decisions made, and of the key considerations in reaching these decisions are clearly recorded in the RMT paperwork.

Once again LS/CMI is a dynamic risk tool and, at any point, if there is any significant change in an individual's circumstances it may be revised (as well as at specific sentence points, pre-parole etc.). In such a circumstance, the RMT will re-convene and consider the ongoing manageability of risk with cognises of the individual having community access.

If the appropriate criteria are met, Short Term Prisoners (STPs) serving at least 12 months (and less than 4 years) can be considered for unescorted community access via temporary release, regardless of location. Note that Home Leave can only be accessed from the Open Estate for STPs however. For these individuals the RMT remains the decision making

body however due to their sentence length an LS/CMI assessment is not required therefore this would not form part of the decision making process.

## **Parole**

Prior to a Parole Hearing taking place a Parole Dossier is compiled and provided to the Board. This Dossier is made up of a number of reports including a Prison Based Social Work Report, completed in accordance with National Outcomes and Standards for Social Work Services in the Criminal Justice System (Throughcare Section). This report will include a summary and the outcomes of the LS/CMI assessment alongside:

- the basis for report including any contact with Personal Officer/other relevant SPS staff/other services or agencies and any relevant data or documentation such as Scottish Criminal Records Office (SCRO) information, Social Enquiry Report (SER) / Criminal Justice Social Work (CJSW) Report or indictment;
- any suggested licence conditions, as part of a risk management plan and discussed with the Community Based Social Work (CBSW);
- information regarding the prisoner's response to imprisonment including any programmes, education, work placements etc. completed while in prison;

- health or substance misuse issues; and
- plans for release and response to being supervised in the community.

The LS/CMI outcome itself therefore only forms part of the Prison Based Social Work Report and indeed of the wider dossier, which is comprised of a number of additional reports – it is not a lone factor when the Parole Board are considering release.

### **Home Detention Curfew (HDC)**

Individuals who are serving a long-term sentence (4>years) can be released under HDC. These individuals can only obtain HDC release if they have been pre-approved for release on parole at the halfway stage of their sentence by the parole board. The maximum period for which a long-term prisoner can be released on HDC is therefore restricted to the period between the decision being taken and the halfway stage of their sentence when being released on Parole.

In these circumstances the LS/CMI assessment, and any other appropriately completed risk assessment tools would be considered as part of the HDC decision making process. Comprehensive HDC Assessment Framework Guidance provides decision makers with detailed guidance on what weighting they should give to available risk assessments such as LS/CMI. It provides that such risk assessments

(previous or current) are just one of numerous potential sources of information that can be used to inform the assessment of whether an individual is suitable for HDC.

The majority of individuals who undertake HDC are non-statutory short term prisoners (<4 years) however. These individuals would not have a current LS/CMI Assessment completed therefore this would not feature within the decision making process. However, a previous assessment, for example where they have previously served a long-term sentence, may be still be referred to and may form part of the decision making process.

### **Control of Flexible Release**

The Prisoners and Criminal Proceedings (Scotland) Act 1993 as amended by the Prisoner (Control of Release) (Scotland) Act 2015 (as amended by the Management of Offenders (Scotland) Act 2019) provides SPS, on behalf of Scottish Ministers, with the discretion to bring forward the release date of people in our care by no more than 2 working days for the purposes of benefiting a prisoner's reintegration into the community. This can be utilised for both short and long term prisoners.

In reaching a decision; guidance provides that the decision maker must consider the potential risk and impact of a Flexible Release on individuals, families and on the community. Any evidence or intelligence that highlights significant risk or could result in an offence being committed

may result in the application being rejected. Whilst guidance does not explicitly specify that LS/CMI should be considered, for a statutory prisoner the decision maker would therefore likely consider the outcome of this alongside any other relevant risk tools, management plans etc. Once again a number of factors are considered in reaching a decision, and risk assessment tool outcomes such as LS/CMI are never relied upon alone.

NB the legislation and guidance is clear that this power should not be used for any purpose other than where there is evidence that suitable arrangements are required to address a prisoner's reintegration and these cannot be addressed immediately upon their planned day of liberation.

### **Early Release (under COVID Regulations 2020)**

This only related to a very small cohort of Short-Term Prisoners who were within 3 months of their Earliest Date of Liberation (EDL). These individuals did not have a live LS/CMI in place and this did not form part of the decision making process.

## **Compassionate Release**

In considering whether someone can be released under the Compassionate Release Policy, the policy clearly states that the assessment of the risk of re-offending or public harm must be low and that the risk must be able to be managed.

On that basis, although LS/CMI assessment is not explicitly mentioned, it would be a key consideration when considering applications. In the rare circumstances whereby someone is released under Compassionate Release, the assessment should take account of factors such as potential reduction and improvement in capacity.

It is therefore likely that an updated version of the LS/CMI assessment would be required to be completed as part of the process, considering the impact of the individual now having reduced capacity, against their original presenting risk and protective factors.

The SPS RMT is expected to contribute to the assessment and the multi-disciplinary team of professionals within it will explore the case in detail prior to making any application. Again whilst an LS/CMI assessment will not be a sole factor in determining an application, the policy is clear that the risk must be low and manageable.

## **Parole Board Decisions**

Parole decisions are taken on the basis of the range of information provided by Scottish Ministers in the dossier. Dossiers include reports from Social Work which, where relevant, may make reference to an LS/CMI risk assessment where one has been carried out. Other assessments are also provided to the Parole Board by other professionals to ensure the Board has all available information on which to reach a defensible decision. Other assessments included the Offender Assessment System (OASys) for cross border offenders, violent offending ( HCR-20), Intimate Partner Violence ( SARAv3) and for sexual offending ( RM2000, RSVP and SA07)

As well as the most recently updated LS/CMI, the dossier will also contain a significant range of other information, such as, details of the index offence, the trial judge's report, details of previous convictions (where appropriate), reports from SPS on the offenders response in custody, any relevant health reports, victim representations and prisoner representations in order that all of this information is considered in the decision making process.

Decisions are recorded by the Board in a decision minute which will contain the reasons behind the decision and will make reference to the key factors on which that decision is based from the range of information supplied to them (which will include, but not necessarily referred to, LS/CMI).



## Access to Programmes within Custody and Community

### COMMUNITY

LSCMI has a pre-court/sentencing component based on the central eight criminogenic factors and gives a snapshot of the level of risk of reconviction when compiling a Criminal Justice Social Work Report (CJSWR). The next stage of the LSCMI (usually post sentence at court or liberation) is an extended assessment of risk which develops into a case management plan to target criminogenic need and risk. The third stage (if needed) is the risk of serious harm assessment which includes a full formulation. LSCMI is a tool to guide and all stages in the assessment process but it has clinical override.

**The community delivers a number of programmes, however the two main national programmes are Moving Forward: Making Changes (for those who have committed sex offences) and Caledonian (Domestic Violence). When considering suitability, practitioners use a wide variety of sources including all available risk assessments. Although LSCMI is used as part of a range of risk assessment tools to aid sentencing, specific risk tools are used to inform suitability for programmes. For example, SA07 for Moving Forward: Making Changes and SARA v3 for Caledonian.**

### CUSTODY

In custody when an individual is referred for consideration for an offending behaviour programme they will be assessed via the generic programmes assessment process (with the exception of Short Term Intervention Programme) if they score medium or above on the relevant

risk assessment tool. A file review is completed and an interview is carried out with the individual. This information is then collated and discussed at a multidisciplinary board (psychology, social work and programmes staff are all present, in addition to any other staff that are relevant to the decision making). The board considers risk level, criminogenic needs and how the programme can be delivered in line with the individuals learning style. The board then make programme recommendations based on all of the available information. If a programme recommendation is made then programme access is based on critical dates, motivation, security and programme availability.

There are exceptions to the above process:

- There are cases where clinical override should be applied, for instance, if the individual scores low but practitioners believe that there is a programme need or if they feel that risk is not represented accurately in the risk assessment
- Order of Lifelong Restrictions prisoners will have had risk assessments specific to their offending behaviour and this will inform decisions regarding treatment pathways
- There will be times when a risk assessment is not available e.g. short termers. In this instance, decision regarding suitability should be based on the criminogenic factors and what a specific programme targets
- The short term intervention programme does not use this assessment method / approach

**Eligibility for programmes assessment is screened for using a relevant risk assessment tool (for the majority of programmes LSCMI is used, but there are exceptions). If eligible, there will be a file review, interview and then all of the information will be reviewed at a multidisciplinary board and a decision will be made based on all of the available evidence.**