



Community Justice Scotland

Ceartas Coimhearsnachd Alba

Written evidence submission on remand to the Justice Committee

31 January 2018

Introduction

1. Community Justice Scotland is the new national body for community justice, established by the Community Justice (Scotland) Act 2016 and launched on 1 April 2017.¹ Our aim is to create a more robust and effective community justice system which we promote as Smart Justice.

2. Our vision is to make Scotland a safer place to live by promoting world-class standards of community justice. We also wish to work with others to achieve an increase in the use of non-custodial /community based interventions². To do this we will work with partners to drive change by identifying challenges and supporting improvements in our community justice system, explore new thinking and promote best practice wherever it arises. We welcome the opportunity to submit evidence on remand to the Justice Committee.

Remand

3. Community Justice Scotland's view is that people should not be made subject to remand unless the nature of the crime they are accused of puts them at significant and imminent risk of harm to others. People who are not convicted of a crime should not be held in a custodial establishment. If a person is at risk to themselves they should be assessed medically and placed into a care setting rather than remanded. We must not lose sight of justice in pursuit of our shared ambition to become the safest country in the world.

4. Yet, as highlighted by HM Chief Inspector of Prisons in evidence to the Justice Committee³, almost 19% of the total prison population can be individuals on remand, amounting to 1370 people in 2017. Of those held on remand 9% have no fixed abode (10% of females and 8% of males) which compares to 8% of those in custody who have no fixed abode (10% females, 8% males). As per Scottish Government Justice Analytical Services data, the median⁴ time a person spent on remand (days) disaggregated by gender in 2007-08 to 2012-13 was as follows:

¹ Community Justice (Scotland) Act 2016
<http://www.legislation.gov.uk/asp/2016/10/section/10/enacted>

² Community Justice Scotland corporate plan 2017-2020 <https://communityjustice.scot/wp-content/uploads/2018/01/CJS-Corporate-Plan-2017-2020-website.pdf>

³ HMIPS evidence to Scottish Parliament Justice Committee roundtable on remand, January 2018
http://www.parliament.scot/S5_JusticeCommittee/Inquiries/Remand-HMIPS.pdf

⁴ The median (i.e. the midpoint when sorted into ascending/descending order) rather than the arithmetic mean (straight average) is regarded as a more accurate average as it discounts small numbers of cases where the person is on remand for a very long period of time.



Table 1: Median number of days spent on remand by gender:

Year	Women	Men	All
2007-08	21	24	23
2008-09	22	24	23
2009-10	21	24	23
2010-11	21	24	23
2011-12	22	25	24
2012-13	22	25	23

Based on Scottish Government modelling, it is estimated that roughly half of all those on remand went on to receive a custodial sentence. These figures highlight that despite a reducing number of people in the prison population overall, the number of days individuals are held on remand (untried) remained static. In spite of policy shifts since 2007 including a presumption against short sentences, reforms for women offenders and the whole systems approach for youth justice there is still no shift in the median number of days people are held.

5. Data provided demonstrates an understanding of total individuals held on remand and the median period for this, but the reasons *why* people are remanded are unclear. To achieve transparency and equity decisions should be based on a harm/risk assessment, itself based on comprehensive information, including what is available from statutory or third sector bodies in the relevant local area as an alternative to remand. An international symposium held in Edinburgh in 2016 on 'Reimagining Custody, Community and Citizenship for 21st Century Scotland'⁵ noted '*a widespread inappropriate use of confinement*', further commenting that this may be '*linked to a shortage of suitable accommodation*'. The manifesto that emerged from the Symposium concluded that '*Custody should not be used as a means of providing welfare services to a group of vulnerable people who might otherwise benefit from a community-based alternative*'⁶.

6. The high numbers being held on remand have a cost in terms of the negative impacts on the individual being held as well as on their families, as evidenced by Families Outside⁷. There are potential longer-term impacts on the children of people being held on remand. Evidence shows that familial incarceration is an adverse childhood experience (ACE). ACEs have been shown to contribute to less

⁵ Proceedings of SPS Symposium on 'Reimagining Custody, Community and Citizenship for 21st Century Scotland' 2-3 June 2016

⁶ 'Reimagining Custody, Community and Citizenship for 21st Century Scotland, An International Symposium Manifesto', SPS, 2-3 June 2016

⁷ Families Outside evidence to Scottish Parliament Justice Committee roundtable on remand, January 2018 http://www.parliament.scot/S5_JusticeCommittee/Inquiries/Remand-FamiliesOutside.pdf



favourable outcomes for young people in later life by continuing a cycle of negative experiences into the next generation⁸.

7. Maintaining a job, accommodation, access to welfare benefits for families & dependents and relationships are all made more difficult by being placed on remand as the local ties are strained and, in many cases, broken during that period. The negative impact on mental health is often reinforced by the inability to access vital support and other services in prison, given the uncertain length of time that people are remanded and their different status as un-convicted persons. With this in mind it is apparent that remand in custody contributes to the 'failure-demand' identified by the Christie Commission.

Local Community Justice Outcomes Improvement Plans and remand

8. Community Justice Scotland has reviewed the local Community Justice Outcomes Improvement Plans (CJOIPs) published by the statutory community justice partners for the first time in April 2017. The duty to cooperate in the preparation of the CJOIPs is intended to encourage greater partnership working amongst the statutory partners to achieve improved community justice outcomes locally. The list of statutory partners to be involved in the CJOIP is given in Appendix A. From our analysis of these first CJOIPs, local partners recognise the potential issues arising from the use of remand and the need to reduce its use - with electronic monitoring and bail supervision being commonly suggested alternatives requiring further exploration. Areas listed in Appendix B have specified actions around remand reduction in their plans, which local partners in those areas will review and report upon later this year as statutorily required.

Alternatives to Remand

9. We support alternatives to remand including the greater use of bail supervision. Supervised bail in Scotland is a social work or third sector service whereby those who would otherwise be put on remand (that is, imprisoned while awaiting trial) are released on bail on the condition that they meet with a bail supervisor a specified number of times a week, with the aim of supporting the accused to comply with bail conditions and reducing remand numbers.⁹ We note the Law Society of Scotland's submission to the Committee that 'all crimes in Scotland are now bail-able including murder'.¹⁰ Scottish Government data shows however that

⁸ Study of Adverse Childhood Experiences, CDC-Kaiser Permanente, USA 1995-1997
<https://www.cdc.gov/violenceprevention/acestudy/about.html>

⁹ Wilson C & Perman J, 'Supervised Bail in Scotland: Research on Use and Impact', Edinburgh, 2012, subject to Crown Copyright <http://www.nls.uk/scotgov/2012/9781780457451.pdf>

¹⁰ Law Society of Scotland, Evidence to Justice Committee round table on remand January 2018
http://www.parliament.scot/S5_JusticeCommittee/Inquiries/Remand-LSS.pdf



requests for bail information to allow for bail supervision as opposed to remand has reduced.¹¹

10. As referenced in the Scottish Working Group on Women Offenders (SWGWO)/Prison Reform Trust evidence to the recent Justice Committee round table on remand¹², supported bail '*offers intensive support to not only reduce the need for remand but ultimately reduce the likelihood of reoffending*'. Individualised responses to remand are crucial to deliver a wholly person-centred justice system. Resources to increase the use of supported bail would need to be applied consistently across the country and resourced appropriately.

11. Research into bail supervision for young people within the youth justice system also highlights the lack of suitable housing as a contributory factor in the overuse of remand. The additional support that young people, or indeed those with mental health or learning difficulties may need, may also make it difficult for them to comply with bail criteria or to understand the implications of non-compliance. A study of all supervised bail schemes in Scotland in 2012 found that one-fifth of people subject to supervised bail were given a custodial sentence; two-fifths received a community sentence and two-fifths were found not guilty, admonished or received a deferred sentence. Additionally custodial sentences were less common where bail supervision was successfully completed. This reinforces the view that bail supervision may encourage the application of community sentences rather than custody. The research also highlighted the financial benefits of supervised bail.

12. We note that the Scottish Government is committed to introducing a Presumption against Short Term Sentences of less than 12 months and look forward to further consultation on this in due course. This proposal will inevitably require consideration of appropriate and commensurate resource investment across localities to support wider community provision rather than custody.

13. Proposals to allow for greater use of electronic monitoring which may reduce further offending whilst offering an alternative to remand or ultimately a custodial sentence are welcome. This should not of course happen in isolation but as part of a package of support measures either from the statutory or third sector. Such support services could include services such as mentoring.

¹¹ Scottish Government (2017) Criminal Justice Social Work Statistics in Scotland: 2015-2016' <http://www.gov.scot/Publications/2017/02/2907/12>

¹² Scottish Working Group on Women Offenders/Prison Reform Trust evidence to Justice Committee round table on remand January 2018 http://www.parliament.scot/S5_JusticeCommittee/Inquiries/Remand-PRTandSWGWO.pdf



Some international comparisons

14. Internationally there are many examples of a move from custody to community based provision even when people have been convicted of an offence. In Sweden a reduction in the prison population has been attributed to investment in non-custodial probationary sentences instead of short term sentences as well as a focus on evidence-based rehabilitation. German courts have ruled that a defendant should have access to Prosecutors' files in order to be able to contest any case for pre-trial detention. The rules on remand in Germany require that this should be proportionate and sentences of less than six months are not imposed unless special circumstances apply. The Netherlands has one of the lowest incarceration rates in Europe (57/100,000) in part due to a changing policy environment: where fines, suspended or community sentences are given for even relatively serious crimes and where electronic monitoring is widely used.¹³ In Georgia, USA more people charged with drug crimes are receiving treatment not prison.

Conclusion

15. The basis for the use of remand in Scotland should be based, primarily, on the individual presenting a significant and imminent risk of harm to themselves or the community. Where this test is not met, then community-based alternatives such as bail supervision or electronic monitoring should be used.

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¹³ Allen Rob, Reducing the use of imprisonment: what can we learn from Europe? Criminal Justice Alliance 2012 http://criminaljusticealliance.org/wp-content/uploads/2015/02/CJA_ReducingImprisonment_Europe.pdf



Appendix A

Community Justice Scotland

Community Justice Statutory partners required to cooperate to produce a local Community Justice Outcomes Improvement Plan

Each local authority

Each health board

The Chief Constable of the Police Service of Scotland

The Scottish Fire and Rescue Service

Skills Development Scotland

Integration Joint Boards for Health and Social Care

Scottish Courts and Tribunals Service

Scottish Ministers (Crown Office and Procurator Fiscals and the Scottish Prison Service).



Appendix B

Community Justice Scotland Improvement Team CJOIP Review – Alternatives to Remand

The following extracts taken from local area CJOIPs are references to alternatives to remand:

Aberdeenshire

Improvement Action: Consider how alternatives to remand (e.g. Bail Supervision) can be taken forward in terms of preventing people becoming further involved in the criminal justice system and also supporting those who are already in it, to prevent reoffending.

Clackmannanshire

A Criminal Justice Community of Practice will provide recommendations based on findings and record & implement quick wins against the following aspects of improving community justice:

- Providing a more consistent, graduated response to difficulties with compliance, focused on supporting individuals to comply with the requirements of their order
- Increasing the availability and quality of alternatives to remand such as electronic monitoring and bail supervision
- Developing the use of other activities in CPO's and pathways to volunteering
- Increasing the availability and quality of services in order to maximise the use of community disposals such as community payback orders, DTTOs, electronic monitoring and structured deferred sentences
- Capitalising on third sector interventions to improve community justice outcomes
- Supporting service users; encouraging them to be well prepared and being motivated for participation supported to participate and apply any learning; and supported to follow up on goals they have set as a result of participation.

Dumfries and Galloway

Action: Community disposals and Alternatives to remand: The Dumfries and Galloway Community Justice Partnership will look for opportunities to engage with the local judiciary and Crown Office and Procurator Fiscal Service to encourage the use of alternatives to remand and maximise the use of community disposals. We will also ensure alternatives to both remand and custody are of high quality, providing a credible and consistent community alternative.

Dundee

The multiagency Vulnerable Adolescent Partnership (VAP) will continue to co-ordinate the strategic response to Youth Justice. The VAP will remain committed to the Scottish Government vision expressed in "Preventing Offending: Getting it Right for young people." The indicators listed here correspond with the key targets within the VAP Action Plan.



- An Early and Effective Intervention (EEI) response will be maintained to ensure alleged offences are addressed timeously and proportionately.
- The Whole System Approach will be promoted, encouraging approaches that offer 16+17 year olds Children's services and delay their entry into CJS systems (Diversion , retention in Hearing system, remit back to Hearing)
- We will continue to promote community alternative to Secure Accommodation (ISMS) and alternatives to remand and custody for young people.
- We have multiagency processes in place to respond to the risk and needs of young people assessed to pose a high risk to others (Care and Risk Management, CARM).

Action: Work to shift the balance from use of custody to community sentences by ensuring there is a range of community sentencing alternatives and alternatives to remand in place that the judiciary are aware of and have confidence in. Ensure ongoing liaison with Sheriffs in this regard.

East Renfrewshire

Action: Increase the availability and quality of alternatives to remand, by increasing effective use of electronic monitoring and bail supervision.

Western Isles

A key tenet of the vision for community justice is to prevent escalation of the criminal justice system response through the use of diversion from prosecution and non-court disposals where appropriate, and minimising the use of prison in favour of community sentences and alternatives to remand. Effective interventions are those which are proportionate, timely, tailored to the individual and person-centred. By working to a broader definition of interventions, this outcome brings a wider range of partners than purely justice interventions such as health and those delivered by the Third Sector.

Falkirk

Action: Ensure protocols are in place to maximise the availability and quality of alternatives to remand such as electronic monitoring and bail supervision.

Glasgow

A new supported bail project in Glasgow (<http://www.turningpointscotland.com/glasgow-womenssupported-bail-service/>) is demonstrating less disruptive and more cost efficient alternatives to remand. The service provides opportunity to support and empower women to access services and begin to address factors present in their lives that will reduce their risk of reoffending.

Action: Identify and promote robust alternatives to remand

Scottish Borders

Action: Scope the potential for developing a range of alternatives to remand/custody in order to support women within community settings and which address the risk/needs.



South Lanarkshire

In order to see a decrease in the use of remand South Lanarkshire would look to promote an increase in the use of Movement restriction conditions, restriction of liberty orders and bail supervision as alternatives to remand. There are indicators of an increase in young people on remand and we are currently exploring the underlying reasons of this so that actions can be taken to reduce numbers.





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